HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREGON

HEARINGS

BEFORE THE

COMMITTEE ON PUBLIC LANDS AND SURVEYS UNITED STATES SENATE

SIXTY-NINTH CONGRESS

SECOND SESSION

PURSUANT TO

S. Res. 332

A RESOLUTION TO INVESTIGATE ALL MATTERS RELATING TO CONTRACT BETWEEN FRED HERRICK AND THE UNITED STATES FOREST SERVICE FOR THE PURCHASE OF CERTAIN TIMBER IN THE MALHEUR NATIONAL FOREST

JANUARY 28, AND FEBRUARY 11 TO 24, 1917

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The document's original page numbers are noted inside "fancy" brackets, {234}, and appear on a separate line at the far left margin. Unlike the original document, double line spacing has been used throughout to make the dialog easier to read. Exhibit documents have been indented for additional clarity and the type size has been reduced.

Throughout the original document there were some typographical conventions that have been followed in the digital document. Proper names are usually set in "small caps" rather than conventional type. So "Mr. Herrick" becomes "Mr. HERRICK" and "Senator Walsh" becomes "Senator WALSH." Dates of documents and titles of individuals (and other instances too) were printed in italics. Example: JAMES W. GIRARD, *Manager*. These conventions were followed throughout the digital document

In some cases I could not help but insert a footnote of explanation. These should be taken with a grain of salt as they are usually editorial in nature.

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{1}**HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREGON**

FRIDAY, JANUARY 28, 1927

UNITED STATES SENATE,
COMMITTEE ON PUBLIC LANDS AND SURVEYS,*Washington, D.C.*

The committee met, pursuant to call, at 2 o'clock p.m. in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (chairman), Smoot, Norbeck, Cameron, Oddie, Jones of New Mexico, and Kendrick.

Present also: Mr. L. F. Kneipp, Acting Chief Forest Service, Department of Agriculture, and Messrs. Thomas P. Littlepage, E.W. Barnes, and F. M. De Neffe, representing Grant County, Oreg.

The CHAIRMAN. The committee will come to order.

The committee has met to-day, pursuant to the recess taken yesterday, for the purpose of taking up Senate Resolution 332, introduced at the request of the Oregon State Legislature and the County Court of Grant County, Oreg. I will read the memorial of the State legislature, as it will perhaps be enlightening to the members of the committee:

SENATE JOINT MEMORIAL 5

To the honorable Senate of the United Stales of America in Congress assembled:

We, your memorialists, the senate of the State of Oregon, the house of representatives concurring, respectfully represent and petition as follows, to wit:

Whereas on the 15th day of June, 1923, a contract was entered into by and between the United States Forest Service and one Fred Herrick, of St. Maries, Idaho, for the purchase by said Herrick of approximately 890,000,000 feet of timber situated in the United States forest reserve in Grant County, Oreg., known as the Bear Valley unit, Malheur National Forest; and

Whereas by the terms of said contract the purchaser agreed within a period of two years from the date of said contract to construct and complete ready for operation approximately 80 miles of common-carrier railroad to a point within said Grant County, Oreg.; and

Whereas by the terms of said contract the purchaser agreed within a period of two years from the date of Oreg. contract to construct and complete ready for operation a sawmill at Burns, Oreg., and to commerce logging and milling operations by April 1, 1925; and

Whereas the citizens of Grant County, Oreg., recommended to and urged upon the United States Forest Service the necessity of entering into such a contract for the purpose of opening up said Grant County and developing a vast district of unlimited material wealth; and

Whereas it is charged by reliable citizens of Grant and Harney Counties that said Herrick has failed in the performance of his contract and has refused to carry out its terms, although extensions thereof have been granted; and

Whereas it is further charged by said citizens that further extensions of time will serve only to further delay the completion of said contract and the subsequent development of the natural resources of Grant County, and that prosperity of Grant Counties dependent largely upon the cutting of the timber sold under said contract and the operations which will be incidental thereto; and

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Whereas it is further charged by said citizens that an attempt is being made by said Herrick to secure a modification of said contract eliminating the clause therein contained providing that said railroad shall be a common carrier and that the elimination of said clause from said contract will enable said Herrick to bottle up the territory served by said railroads and retard the development thereof, thereby enabling said Herrick to secure an unjustifiable advantage; and

Whereas it is further charged by said citizens that the United States Forest Service has been negligent in enforcing the terms of said contract and has refused to cancel the same, and has been influenced to grant unwarranted extensions of said contract in so far as performance thereof is incumbent on said Herrick; and

Whereas it has been openly charged that said delay upon the part of said Forest Service has been due to alleged influence exerted by former employees of said service who are now associated with said Herrick:

Therefore be it

Resolved by the Senate of the State of Oregon, the House of Representatives jointly concurring therein,

That the Senate of the United States be, and it hereby is, memorialized to appoint a special committee to investigate the facts and circumstances surrounding the execution of the aforesaid contract and the granting of any and all extensions of tune for compliance with the terms thereof, and particularly as to any modification in said contract concerning the common-carrier clause therein contained; that said committee be authorized to recommend to the Department of Justice the institution of proper legal proceedings fully to protect the interest of the citizens of Grant County, the State of Oregon and the United States of America if, upon investigation by said committee, it shall develop that said Herrick has failed to comply with the terms of his contract; and be it further

Resolved, That the secretary of state of the State of Oregon be, and he hereby is, instructed to forward a copy of this resolution to each Member of Congress of the United States of America, to the President of the United States Senate, and the Speaker of the House of Representatives; and be it further

Resolved, That the Oregon delegation in the Congress be, and they hereby are requested to use their utmost efforts to secure such investigation.

Adopted by the Senate January 19, 1927.

HENRY L. CORBETT,
President of the Senate.

Concurred in by the house of representatives January 20, 1927.

JOHN H. CARKIN,
Speaker of the House

Copies mailed to each Member of Congress to-day.

SAM A. KOZER,
Secretary of State.

The CHAIRMAN. I also submit for the record resolutions of the county court of Grant County, Oreg., and of the Grant County Stock Association relating to the same subject.

(The resolutions referred to are here printed in full, as follows:)

RESOLUTION

At a regular meeting of the county court, Grant County, Oreg., sitting as a court for the transaction of county business and duly called and held at Canyon City, Grant County, Oreg., on Saturday, the 4th day of December, 1926, at 10 o'clock a. m. at which meeting there were present Orin L. Patterson, county judge, and George Yokom, county commissioner, being a quorum of the said county court, following resolution was unanimously adopted:

"Whereas on the 15th day of June, 1923, a contract was made and entered into by and between the United States Forestry Service and Fred Herrick, of St. Marys[1], Idaho, for the purchase by said Fred Herrick of certain timber situate in United States Forest Reserve in Grant County, Oreg.; and

"Whereas it was provided in and by said contact that the purchaser on or before two years from the date of said contract, to wit, on or before June 15, 1925, should, in addition to a railroad from Crane, Oreg., to Burns, Oreg., construct and complete ready for operation a sawmill at Burns, Oreg., all according to the detailed specifications set forth in said contract; and

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"Whereas the purchaser was, by the terms of said contract required to deposit a bond in the penal sum of 50,000, conditioned upon the faithful and strict performance by said purchaser of the terms of said contract; and

"Whereas prior to June 15, 1925, the time of the performance of said contract was extended for one year, to wit, until June 15, 1926, and paid contract was in other respects amended and modified, among other things to provide that the terminus of said railroad so to be constructed was not required to be at Seneca, where said railroad would connect with an established highway from Canyon City, built by Grant County and Bureau of Public Roads at great expense for a connection with said railroad; but at a point one mile southwest thereof, and said modifications were made without any notice to the citizens of Grant

[1]This is an incorrect spelling. The correct spelling, St. Maries, has been used throughout the remainder of the document.

County; and

"Whereas the purchaser wholly failed to perform the terms and conditions of said contract of June 15, 1923, as extended, and wholly failed to complete said railroad or sawmill prior to June 15, 1926; and

"Whereas by an agreement made and entered into June 19, 1926, an extension of time was granted to the purchaser as follows: For the completion of the grade from Burns to Seneca, September 15, 1926; for the completion of the railroad in operating condition from Burns to the timber, December 15, 1926; for the completion of the entire sawmill plant at Burns, Harney County, Oreg., ready for operation, March 1, 1927; for beginning cutting and removing of timber, January 1, 1927; and

"Whereas it was further provided by said agreement of June 19, 1926, that the bond for $50,000 deposited with the original contract of June 75, 1923, should be forfeited and the amount thereof retained by the United States Forestry Service as liquidated damages; that $50,000 in Liberty bonds should be forthwith deposited as guaranty of the performance of the terms and conditions of said extension agreement of June 19, 1926; and

"Whereas the said purchaser has failed to complete the grade from Burns to Seneca by September 15, 1926, or at the time of the adoption of this resolution, and has not progressed with said work in such manner as to make it possible that said railroad will be in operating condition on December 15, 1926, and has wholly failed to proceed with the construction in good faith of the sawmill at Burns, Harney County, Oreg., so as to render it possible that said sawmill will be completed on March 1, 1927, or at any time prior to March 1, 1928, if active construction on said sawmill were commenced forthwith; and

"Whereas more titan three years and eight months have elapsed since the execution of the original contract and the purchaser has wholly failed to comply with the terms and conditions thereof in good faith; and

"Whereas Fred Herrick Lumber Co. was thereafter organized under the laws of the State of Oregon for the purpose of conducting operations under the said contract of June 15, 1923, and the incorporators and present officers of the said Fred Herrick Lumber Co. are Fred Herrick and Messrs. Guard and Globucher {*sic*}, employees of the United States Forestry Service at the time the timber included in said contract was offered for sale, and it is apparent that the unusual privileges extended to the purchaser and the leniency shown in reference to the violation of the terms of said contract have been due to the connection with the purchaser of said former employees of the United States Forestry Service; and

"Whereas the prosperity of Grant County, Oreg., is in a large measure dependent upon the cutting of said timber and the operations which will be incidental thereto; and

"Whereas the said Grant County and all property owners therein arc seriously damaged by the existing condition: Now, therefore, be it

"*Resolved*, That the representatives of the State of Oregon in the Senate and House of Representatives of Congress be requested to demand s complete investigation of the original advertising of said timber for sale by the United States Forestry Service in August, 1922, the contract, of June 15, 1923, and any and all extensions thereof, and of the activities of the United States Forestry Service, and any and all present or former employees thereof, in connection with this matter, and that a copy of this resolution be sent to Oregon's delegation in Congress."

ORIN L. PATTERSON, *County Judge*.
GEORGE YOKOM, *Commissioner*.

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STATE OF OREGON,
County of Grant, ss:

I, Bessie Powell, county clerk for Grant County, State of Oregon, ex-officio recorder and clerk of the county court, for said county and State, do hereby certify that the foregoing copy of resolution of the county court for request, to demand investigation of sale of timber to Fred Herrick Lumber Co., etc., has been by me compared with the original resolution and that it is a true and correct transcript of said original and of the whole thereof, as the same appears on file at my office and in my official custody.

In testimony whereof I have hereunto set my hand and affixed my official seal this 6th day of December, 1926.

[L.S.] BESSIE POWELL, *Clerk.*
By HILDA MCCULLOCH, *Deputy.*

CANYON CITY, OREG., *December 15, 1926.*

To the Oregon delegation at Congress, Washington, D.C.:

Whereas the Grant County Stock Association was organized in Grant County, Oreg., in 1906, for the purpose of representing the livestock industry of the county and all thing pertainant {*sic*} and incident thereto; and

Whereas the said association has been directly connected and closely identified with the development and progress of the county and the welfare of its people, and in the administration of the natural resources, which are theirs by Divine gift; and

Whereas this association in 1923 approved the policy and indorsed the action of the Forest Service in offering for sale and selling certain timber units in Bear Valley to Fred Herrick for the purpose of opening up and developing a vast district of unlimited material wealth; and

Whereas this association believed from official guarantee and had the right to believe, that this development would he consumated {*sic*} by the construction of a common carrier railroad, with logging and milling operations by April 1, 1925; and

Whereas April 1, 1925 passed with no substantial compliance by said Herrick, with the conditions and requirements that were to develop the great county of Grant, and the stock industry, which we represent; and

Whereas the people of Grant County began to doubt the sincerity and efficiency of a great department of Government, and this association became permeated with fading faith in the Forest Service; and

Whereas this misplaced confidence and faith had a temporary stimulation when the Forest Service found and pronounced Mr. Herrick guilty and announced a fine of $50,000 for the nonperformance of his contract; and

Whereas new conditions and further time limits were given Mr. Herrick, and then another year went by with the carne trifling and dilatory tactics; and

Whereas Mr. Herrick was finally given until September 15, 1926, to complete the railroad grade to Seneca, and he again failed, and so far as we have been able to learn was not fined for this dereliction, as was a condition, and that he was given until December 15, 1926 to complete the railroad, and he failed, and so far as we know or can learn has not been fined as was stipulated in the extension granted, and

Whereas the sawmill at Burns was to be completed by March 1, 1927, and has never yet been started; and

Whereas since every condition from the beginning has been ignored and when extensions of times were granted with new and further conditions they were still ignored, and are still ignored, and all work is now suspended, we no longer have any fasts upon which to predicate any belief, faith, or hope in the much heralded operations of the said Fred Herrick; and

Whereas the action of the said Herrick is governed and controlled entirely by the forest officials, of which Col. W. B. Greely is the chief, and that Herrick's failures are and have been sanctioned by said officials:

Therefore, we have lost faith and confidence in both the master and his servant; and

Therefore we have resolved that it will be for the best interests of Grant County, the State of Oregon in particular, and the United States at large, to remove from the sanctity of office all officials who have sanctioned, condoned, or approved all the broken pledges of said Fred Herrick, and to cancel, annul, and forfeit the Herrick contract, and with the appointment of a new Chief Forester and new

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district officers, restore to the people a well-founded faith in the Forest Service which is now mired m a verbal swamp of useless warranties and forgotten covenants, and that the facts surrounding this entire transaction justify the Senate of the United States in demanding an investigation, that they might publicly reprimand any and all who have contributed to the long list of unfulfilled pledges, and that it is just as essential for men like Mr. Fred Herrick and the Hon. Chief Forester to keep his word and comply with contracts and agreements, as it is a struggling stockman in Grant County endeavoring to make a livelihood working with and for the Forest Service, and we therefore finally resolve that if the "word" of the Forest Service is as valueless in all things as it has been in connection with this matter, then the stockmen of the United States are dealing with a department of Government that should be abolished.

J. E. SNOW, *President.*
H. F. HERBURGER, *Secretary.*
HERMAN OLIVER,
GEORGE YOKOM,
JOHN CARTER,
W. C. STEWART,
Executive Committee.

The CHAIRMAN. Pursuant to that memorial of the State legislature and the resolutions from the Grant County court, Senator Cameron introduced for me the resolution that is now before us asking for an investigation.

(The resolution referred to is as follows:)

[S. Res. 332, Sixty-Ninth Congress, second session]

Whereas on June 15, 1923, a contract, was entered into by and between the United States Forest Service and one Fred Herrick, of Saint Maries, Idaho, for the purchase by said Herrick of approximately eight hundred and ninety million feet of timber situate in the United States' forest reserve in Grant County, Oregon, known as the Bear Valley Unit of the Malheur National Forest; and

Whereas by the terms of said contract the said purchaser agreed within a period of two years from the date of said contract to construct and complete, ready for operation approximately eighty miles of common carrier railroad to a designated point within said Grant County, Oregon; and

Whereas by the terms of said contract said Herrick agreed to commence logging operations by April 1, 1925 and

Whereas it is charged by reliable citizens of Grant and Harney Counties, Oregon, that said Herrick has failed and refused to carry out the terms of said contract, as is therein specified; and

Whereas on two different occasions said Forest Service has, since the signing of said contract, granted to said Herrick and to the corporations by means of which he is attempting to develop said project an extension of one fear to complete the performance of said contract, making a total of two years extension which has thus been granted; and

Whereas said Herrick and said corporations are now requesting another extension on said contract from said Forest Service; and

Whereas said citizens further charge that one James W. Guard, while in the employ of the United States Forest Service, in a responsible position, in its office in Missoula, Montana, was instrumental in getting said Herrick to bid on said timber and to enter into said contract; that soon after bids were opened and before said contract was signed, said Girard resigned his position with the Forest Service and entered said Herrick's employ in the development of said Project, at an increase in salary of $5,000 per year over what he had been receiving from the Government; that soon after said contract was signed one Frank Klobucher, also an employee of the Forest Service in said Missoula office, likewise resigned his position and accepted a position with said Herrick in connection with said project at a substantial increase in salary; that soon thereafter said Herrick, Girard, and Klobucher acted as incorporators of the Fred H. Herrick Lumber Company and of the Malheur Railroad Company, which are the operating corporations organized by said Herrick to develop said project, and said Girard and Klobucher became and now arc officers, directors, and stockholders of and in said corporation; and

Whereas reliable citizens of said counties also state that there are circumstances surrounding such transactions which strongly indicate that there was

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fraud and collusion between said Herrick and certain officials of the United States Forest Service in the making by said Herrick of said bid and in the execution of said contract, and that said Herrick has told different persons in said counties that he would not have entered into said contract if he had not been assured in advance by officials of the United States Forest Service that he would be granted all the extensions of time he desired to complete said contract; and

Whereas on December 4, 1926, the county court of said Grant County adopted resolutions in which, among other things, it is charged in effect that it is apparent that the unusual privileges extended to said Herrick and said corporations, and the leniency shown to them in regard to the violations of the terms of said contract, have been due to the connection between said Herrick and said former employees of the United States Forest Service, and said resolution requested that the Oregon delegation in Congress demand a complete investigation of the original advertising of said timber for sale by the Forest Service, and of the execution of said contract, and of all such extensions granted, and of the activities of present and former employees of the United States Forest Service in connection with said matters; and

Whereas said citizens further charge that neither said Herrick nor said corporations ever had and have not now sufficient financial resources to perform said contract according to its provisions, and charge that said contract was secured, as aforesaid, as a pure speculation on the part of said Herrick and said Girard; and

Whereas on January 20, 1927, the Legislative Assembly of the State of Oregon, without a dissenting vote, adopted a memorial, in which, among other things, it memorialized the Senate of the United States to appoint a special committee to investigate the facts surrounding the execution of said contract and the granting of said extensions of time; that such committee be authorized to recommend to the Department of

Justice the institution of proper legal proceedings to fully protect the interests of the citizens of said Grant County, the State of Oregon, and of the United States: Now, therefore, be it

Resolved, That the Committee on Public Lands and Surveys, or any duly authorized subcommittee thereof, is authorized to investigate and inquire into all matters and things surrounding and connected with the advertising and receiving of bids for the sale of said timber, the execution of said contract, and the granting of said extensions of time to perform said contract. For the purpose of this resolution such committee or subcommittee is authorized to hold hearings, to require by subpoena or otherwise the attendance of such witnesses, and the production of such books, papers, documents, and records and to administer such oaths and to take such testimony and to make such expenditures therefor as it may deem advisable. The cost of stenographic service to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of such committee or subcommittee, which shall not exceed the sum of $3,000 shall be paid from the contingent fund of the Senate, and the expenditure of said sum is hereby authorized for the above purposes. The said committee or subcommittee shall make a final report on said matters to the Senate as to its findings on or before the 28th day of February, 1927, together with recommendations for such legislation or action as it may deem necessary and proper.

Senator SMOOT. Senator Stanfield, do you know anything about the details of this yourself?

The CHAIRMAN. I know something of the details of it, Senator Smoot. There has been considerable agitation relative to the extensions of this contract in the State of Oregon ever since the extensions were granted.

Senator SMOOT. The last extension was for two years.

The CHAIRMAN. Yes; two years was the last extension. When the first extension was granted the understanding among the people there was that the railroad was being built and that actual operation would begin by April, 1925.[2] They are now excited because it has been rumored that further extensions are to be granted, and it is obvious to the people there that it will be considerable time, probably a matter of one or two years, before operation can begin now, before the railroad can be completed and the lumbering of the timber commenced.

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Senator SMOOT. Who holds the contract in Oregon?

The CHAIRMAN. As it has been told to me, the contract was given to Mr. Herrick, and it was assigned by Mr. Herrick to a corporation organized by him and two former members of the Forestry Service, a Mr. Girard and a Mr. Klobucher. It seems that Mr. Girard was the one who brought about the Herrick Association with the Bureau of Forestry. Immediately after Herrick secured the contract, he severed his relationship with the Bureau of Forestry and became, with Mr. Klobucher, one of the incorporators of the company now holding the contract. Mr. Girard is vice president of the company, and Mr. Klobucher, secretary and treasurer.

Those circumstances have excited the suspicions of the citizens there that there may be something wrong. There is roughly speaking, a charge of collusion between Herrick and these former employees of the Forest Service. It is not at all surprising that a suspicion of that kind has been created, as the impropriety of these men becoming associated in the company owning the contract is unquestionable.

You asked me as to what I know personally. I know nothing personally. I have not suspected that there was any collusion as between the former Forest officials and Mr. Herrick. However, that opinion does prevail, and it occurs to me that, there is only one way to clear it up, and that is to go into the matter and determine it. I think it is for the good of the Forest Service and for the good of Mr. Herrick that it should be done.

Senator SMOOT. I think so too. Would it not be better to have those people come here and hold the hearings here?

The CHAIRMAN. I think that would be best. That is exactly what has occurred to me.

Senator SMOOT. Rather than for the committee to go there. We have the Forest Service here, and have all the papers here.

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[2]Common usage in the time, 1927, was to place a comma between month and year. That is not true today; the comma has been omitted. The form used in 1927 is carried throughout this document.

The CHAIRMAN. This resolution provides for an early report, within a few days. It should be cleared up rapidly. I say that because I understand that Mr. Herrick is not, attempting to refinance his company, and that, refinancing is now pending. So it would be unfair to Mr. Herrick to make this a prolonged investigation, because it would undoubtedly hinder his refinancing operations.

Senator SMOOT. Did he not finance it once? Did he use up all the money?

The CHAIRMAN. The complaint is that he has never been adequately financed. It has been a matter of survival from day to day, and the indications are such as to lead one to believe that he never has been properly financed. That is his reason or excuse for the delay.

Senator KENDRICK. That situation, Mr. Chairman, would not be peculiar to Mr. Herrick's case.

Senator SMOOT. I do not know anything about it.

Senator KENDRICK. I say, his failure to be properly financed is not peculiar to him or his company. It has happened many times.

Senator SMOOT. I would not have asked the question if he had not already been granted an extension, and I supposed that the next was proposed upon the same theory. How many years has this been running on?

The CHAIRMAN. It has been running since 1923.

Senator SMOOT. You see, that is four years.

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Senator KENDRICK. I had not in mind anything that you said, Senator Smoot. My thought was that perhaps his failure to be properly financed may not have been due to any fault of his. He may have done everything he could to carry out the contract.

Senator SMOOT. That is true, and I would not have asked that question if it had not been for the fact that I understand he has had one extension.

The CHAIRMAN. The inability of Mr. Herrick to finance his operation under the contract is the reason generally given for the delay.

Senator SMOOT. Of course, the committee has a perfect right to go into this thing here without any resolution. Why not have the Forest Service come here, and the interested parties, and thresh it out right here? We have all the papers here and everything else.

Senator CAMERON. How about the expense?

Senator SMOOT. The committee has authority to hold hearings. You had your regular resolution passed, did you not?

The CHAIRMAN. We did; but in view of the fact that there is a charge of collusion the thought was that there should be a few witnesses brought here to testify, and that is the only purpose for any provision for expenditures. You will notice that it is limited to $3,000.

Senator SMOOT. Have you a copy of your resolution passed at the beginning of the session authorizing expenditures for hearings?

The CHAIRMAN. It does not provide for the subpoenaing of witnesses.

Senator SMOOT. In the Finance Committee we had that authority, and I supposed you would have it here.

(The resolution authorizing the committee generally to hold hearings was produced and was read by Senator Smoot, as follows:)

[Senate Resolution 120, Sixty-ninth Congress, first session]

Resolved, That the Committee on Public Lands and Surveys, or any subcommittee thereof, be, and hereby is, authorized during the Sixty-ninth Congress to send for persons, books, and papers, to administer oaths, and to employ a stenographer, at a cost not to exceed 25 cents per hundred words, to report such hearings as may be had in connection with any subject which may be before said committee, the expenses thereof to be paid out of the contingent fund of the Senate; and that the committee, or any subcommittee thereof, may sit during the sessions or recesses of the Senate.

Senator SMOOT. It is just the same.

The CHAIRMAN. Do you construe that as giving us power to subpoena witnesses?

Senator SMOOT. Oh, absolutely. Our resolution is a little broader than this, but you can subpoena them. Of course, if they did not pay any attention to the subpoena I do not think they would be liable to any action on the part of the Senate, but when a man asks for an extension and i5 asked to come before the committee here he could not expect to get an extension if he did not come.

It seems to me that we ought to have them here, all here together. We ought to have the Forest Service hear what is said and let them answer it, and get right down to the bottom of it. If I were you I would just send for those you want and get them here.

Senator KENDRICK. Would it not be your idea, Senator Smoot, that the witnesses on both sides should be here at the same time, that the entire hearing should be conducted at once?

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Senator SMOOT. Yes; just the same as in all investigations. There is not any question of titles to land involved here. It is not a question of overlapping of lands. There is no such question at all involved in this. It is only that, they want a renewal of that contract, and there is a situation such that a great many people out there think there has been fraud attached to it, and fraud now, and that there is fraud m asking for the extension.

Senator KENDRICK. Do you think the proponents and the opponents in this matter could immediately determine the number of witnesses they would require to place their information properly before this committee?

Senator SMOOT. I do not think there should be many, as far as that is concerned. The company, I suppose, would come anyhow upon notice, without any subpoena, because they are asking for the extension.

The CHAIRMAN. It may be that they would.

Senator SMOOT. Of course I would issue it anyhow.

Senator KENDRICK. My thought was that perhaps they might be opposing the investigation; that is, they might not be in sympathy with it.

Senator SMOOT. We do not need to issue subpoenas at first. The thing to do is write a letter, and then if they do not come subpoena them. In the Finance Committee we have never had a case yet where interested parties have, failed to come.

Senator CAMERON. It seems to me that the quicker we take it up the better.

Senator SMOOT. Right here and now.

The CHAIRMAN. It should be done at once, in fairness to the Forest Service and fairness to Herrick. It should be cleared up as rapidly as possible. Of course if there is collusion, or if there is fraud involved, or if it is not proper for the contract to be extended, that will be developed.

Now, Senator Smoot, I took the matter up with the parliamentarian of the Senate, as to our power to subpoena, and I am informed that if we had legislation pending before the committee on which we wanted to hold hearings this resolution would empower us to incur the necessary expense. But inasmuch as there is no legislation pending

Senator SMOOT. There is a resolution pending.

The CHAIRMAN. It will be when it is adopted. The question is whether we are going to proceed under this or not. If we are going to proceed I think the resolution should he adopted.

Senator SMOOT. Then why not just introduce a simple resolution without all these whereases, just a resolution saying that the hearings shall be held?

The CHAIRMAN. Of course, when it is passed they all go out anyway. They only embody the charges so that they may be properly considered by the Senators.

Senator, we have here to-day Mr. Kneipp of the Forestry Service and Mr. Barnes, who is the representative of the State of Oregon and Grant County in this matter, attended with his attorney. I wondered whether it would be well before we proceed further to have Mr. Kneipp and Mr. Barnes come before the committee and state very briefly the circumstances, letting Mr. Barnes state his contention and Mr. Kneipp make a brief reply or explanation.

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Senator SMOOT. I want to be perfectly fair to both sides. I think they all ought to be here and hear what is said.

The CHAIRMAN. The only question now is whether we shall go on with the investigation or not. If the committee feel that we could go ahead, then there is no need of holding any hearing to-day.

Senator JONES of New Mexico. As I understand it, the Legislature, of the State of Oregon has requested an investigation, has it not?

The CHAIRMAN. It has, Senator Jones. Just before you carne in I read the memorial from the State legislature, which contains the same whereases that are set forth in our resolution. Also, the county court of Grant County, wherein this body of timber lies, has presented a resolution asking for the investigation and making certain charges.

Senator KENDRICK. May I interrupt you there, Mr. Chairman?

The CHAIRMAN. You may.

Senator KENDRICK. Is it not entirely improbable that anything that may be said on either side here to-day would affect our attitude of mind so far as the necessity of holding this investigation is concerned?

The CHAIRMAN. It is inconceivable to me that anything that might be said here today would affect that question at all.

Senator KENDRICK. If that is true, I think it would be very much better not to open this case until everybody is ready.

Senator JONES of New Mexico. That is the way it strikes me. The Legislature of Oregon has requested that this Investigation be made, and when a great State of this Union makes such a request I think we should comply with it.

Senator SMOOT. Not only that, but in complying with it I think we should have their representatives here and let them submit any testimony they have.

Senator JONES of New Mexico. I think we should ask the attorney general of the State, or somebody representing the State of Oregon, to be here and present that side of the case. I do not think this committee need go any further than to see that the resolution is adopted.

Senator KENDRICK. And agree upon a plan for assembling the witnesses.

The CHAIRMAN. If we are to do that then, would this be our line of procedure? To report out the resolution, secure its adoption, and then inquire of all parties concerned—the Forest people Herrick, Grant County, and the State of Oregon—what witnesses they want to have served, and then pass on the materiality of those witnesses? I do not think we should incur the expense of bringing witnesses here whose testimony would be immaterial and irrelevant. And then request them to come, and if they do not come issue subpoenas.

Senator SMOOT. You have general authority to incur expense for stenographic services.

The CHAIRMAN. Yes, we have a general authorization.

Senator SMOOT. This is only a duplication of that.

The CHAIRMAN. In fact, the only thing provided in the resolution that we have not already is the power to subpoena.

Senator JONES of New Mexico. I think it limits the time pretty strictly. We will have to get busy right away. To that end I would suggest the appointment of a subcommittee to take up this whole thing and put the whole case in shape, that subcommittee to go to work at once.

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Senator SMOOT. Or the chairman could do it.

Senator JONES of New Mexico. The chairman would want some help in the matter.

The CHAIRMAN. I would be pleased to appoint a subcommittee. I think that is a good suggestion.

Senator KENDRICK. The first thing we want is the adoption of the resolution. Then it occurs to me that immediately after that the chairman might by wire each the people who are authorized to speak for each side and suggest to them that we would like to have such witnesses here as would be important, and no others.

Senator JONES of New Mexico. What I was thinking, Senator Kendrick, was this, that the chairman would want to know about the subcommittee, that he might consult the subcommittee with respect to these preliminary matters as well as other matters. If nobody else cares to do so, I move that the chairman be instructed to report favorably this resolution, and to appoint a subcommittee of five, at once, including himself as chairman, to conduct hearings under the resolution and arrange for them without delay.

Senator CAMERON. I second the motion.

(The question was put by the chairman and the motion prevailed.)

Senator SMOOT. I wonder if we need any amendments to the resolution? Let us read it over and see.

(Senator Smoot proceeded to read the resolution.)

Senator CAMERON. Don't you think we had better extend the time about five days?

Senator SMOOT. And after that we will not have very much time before March.

Senator JONES of New Mexico. Any limitation that w e put in here need not necessarily be conclusive as to the time. The committee can get to work as soon as possible. But I would extend that to the 28th of February anyhow.

(Senator Smoot resumed the reading of the resolution, and there was informal discussion which was not reported.)

Senator SMOOT (reading):

> The said committee or subcommittee shall make a final report on said matters to the Senate as to its findings on or before the 20th day of February, 1927.

Senator CAMERON. Make that the 28th.

Senator SMOOT Yes; the 28th of February.

Senator CAMERON. We do not have to wait until the 28th; you can get through before that, if possible.

Senator SMOOT. Oh, certainly.

The CHAIRMAN. If we could get this resolution adopted to-day, then to-morrow we could wire, for these

witnesses and get them here the first of the coming week.

Senator JONES of New Mexico. Is there anyone in Oregon who is prepared to present proof of these charges?

Senator CAMERON. Here are a lot of telegrams here.

The CHAIRMAN. Mr. Kneipp, how many witnesses have you?

Mr. KNEIPP. We can bring any number Senator but I think only four or five will be necessary. We have a very complete record of the whole, transaction.

The CHAIRMAN. All in favor of reporting the resolution as amended say aye; contrary, no. The ayes have it. Senator Cameron, will you report the resolution?

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I would like to suggest, if it meets with the approval of the committee, that Senator Cameron attempt to poll the committee to audit and control the contingent expenses of the Senate and obtain their unanimous consent.

Senator SMOOT. Let him take it up with the chairman of that committee, and let the chairman of the committee do that. I would let the chairman poll the committee.

The CHAIRMAN. I meant the chairman. I meant for Senator Cameron to take the matter up and try to get immediate consideration. Perhaps, Senator Smoot, a word from you to Senator Keyes, chairman of the Audit and Control Committee, would expedite it. Otherwise it might be several days before they would hold a meeting.

The committee will now go into executive session.

(Certain telegrams to members of the committee with reference to the subject matter of the resolution are here printed in full, as follows:)

CANYON CITY, OREG., *January 27, 1927.*

RALPH H. CAMERON,
United States Senate:

If this timber matter concerning Herrick and Forest officials is not collusion, it just as well be taken out of the dictionary.

L. G. DE WOLF, Izee, Oreg.

JOHN DAY, OREG., *January 27, 1927.*

HON. RALPH H. CAMERON,
United States Senate:

The people of this section of the country are much surprised at the attitude of Forest Department in trying to prevent an investigation in the timber deal between Herrick and the United States Forest officials. This should be done by all members at your command.

FRANK OLIVER.

CANYON CITY, OREG., *January 27, 1927.*

R. H. CAMERON,
United States Senate:

We hear through the press of you taking this matter of timber sale to Herrick made by one branch of our Government to an investigating committee. God bless you for it. I know that there is one good and true mall in our Hall of Congress.

KERRINGS[3] BROS., Izee, Oreg.

CANYON CITY, OREG., *January 27, 1927.*

RALPH H. CAMERON,
United States Senate:

I note in all our newspapers of your action trying to sate us from being bottled up forever. I mean that timber contracted to Herrick by this fine lunch of Forest officials. If you ever come to our country we will show you a good time.

CHAS. JOHNSON, *Izee, Oreg.*

CANYON CITY, OREG., *January 27, 1927.*

RALPH H. CAMERON:

Our people have been watching this timber matter of the Forest Department and Herrick. I want to say to you, Senator, if you ever get all investigation we will show plenty of collusion.

JAMES GANT, *Dayville, Oreg.*

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CANYON CITY, OREG., *January 27, 1927.*

HON. RALPH H. CAMERON,
United States Senate:

For good citizenship and good government an investigation in the timber deal of Fred Herrick and his ex-Forest officials copartners should be had.

BALES BROS., *Dayville, Oreg.*

CANYON CITY, OREG., *January 27, 1927.*

RALPH H. CAMERON,
United States Senate.

HONORABLE SIR: Please save us from this hungry bunch of manipulators. I am certain that upon investigation with regard to this timber deal of Herrick and the forest department you will find an awful mess to clean.

IRA SPROUL, *Izee, Oreg.*

CANYON CITY, OREG., *January 27, 1927.*

HON. RALPH H. CAMERON,
United States Senate:

I want to commend you on the stand you have taken for all the people of Oregon. You may rest assured we shall never forget you. Come out with that investigating committee who will not have much trouble to find a complete combination between Herrick and ex-forest men who have the gall of highwaymen.

W.H. PHILLIPS, *Izee, Oreg.*

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[3]Correct spelling is KERRINS.

CANYON CITY, OREG., *January 24, 1927.*

RALPH H. CAMERON,

United States Senate:

We are advised that memorial adopted by Oregon Legislature will embarrass negotiations of Fred Herrick for loan to finance this lumber and railroad activities. That is not true. Bankers must purge Herrick and his two ex-Forest Service officials before they can risk loan. The fact that there is collusion makes loan companies timid for-they fear investigation later if postponed now. Suspicion against Forest Service must be removed by investigation to put Herrick on solid financial foundation. If Herrick and service in the clear have nothing to fear from investigation, and financial backers must know there is no collusion to embarrass them later, there must be clean record upon which to base loan. Investigation may remove suspicion to the benefit of Herrick, Forest Service, Grant County, State of Oregon, and Government. Better clean house now than later.

ORIN, L. PATTERSON, *County Judge.*

CANYON CITY, OREG., *January 21, 1927.*

SENATOR RALPH H. CAMERON

United States Senate:

You will do Oregon a great service by convicting or removing suspicion against two ex-forest officials who are the incorporators of the Fred Herrick activities.

C. P. HAIGHT.

CANYON CITY, OREG., *January 21, 1927.*

SENATOR RALPH H. CAMERON:

Senatorial investigation desired. Ex-forest officials in Fred Herrick activity put the Forest Service under suspicion. Matter should be cleaned up.

ORVILLE CORBETT.

CANYON CITY, OREG., *January 24, 1927.*

RALPH H. CAMERON:

Our county desires to thank you for the resolution induced by you. What We want to know is why two former forest officials are note and always have been connected with this project. If they are clean, our investigation will not hurt. This matter involves millions of dollars.

J. P. COCHRANE.

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CANYON CITY, OREG., *January 21, 1927.*

SENATOR RALPH H. CAMERON,

United States Senate:

We are advised that ex-forest officials in Herrick deal. We are active in Burns wiring opposition to investigation.

L. WOLDENBERG,

President Twin City Commercial Club.

PORTLAND, OREG., *January 25, 1927.*

SENATOR RALPH CAMERON

United States Senate, Washington, D. C.:

Think you rendered a service to the people of Grant and Harney Counties in introducing a resolution at their request to have the Forest Service contract with Fred Herrick investigated by a Senate committee, and hope your request receives favorable consideration.

NORMAN N. RUPP.

PORTLAND, OREG., *January 25, 1927.*

HON. RALPH CAMERON
United States Senate Building, Washington, D. C.:

Believe you are doing service for people of eastern Oregon in instituting investigation Herrick contract.

J. G. RAINEY.

PORTLAND, OREG., *January 25, 1927.*
SENATOR RALPH CAMERON,
Washington, D.C.

Press report you have introduced resolution demanding investigation Herrick contract with forest office. Am a heavy taxpayer in Grant County and believe an investigation of this waiter vital to prosperity and development of Grant and Harney Counties in particular and Oregon in general. Average citizen wondering why the forest officials themselves are not demanding this investigation in face of charges made.

O.J. GRAY.

PORTLAND, OREG., *January 25, 1927.*
SENATOR RALPH CAMERON,
United States Senate, Washington, D. C.:

Glad to see you introduced resolution to investigate Herrick contract and hope you are successful in getting Senate to adopt the resolution.

C.E. SHEPHERD.

PORTLAND, OREG., *January 25, 1927.*

HON. RALPH CAMERON,
Unites States Senate Office Building, Washington, D.C.:

Success to you in inducing Senate to investigate Forest Service contract with Fred Herrick. It would certainly be unfortunate for other interests in that country if contract should be modified to permit Herrick operating as private road.

R.C. WASHBURN.

CANYON CITY, OREG., *January 25, 1927.*
RALPH H. CAMERON,
United States Senate:

From all our information we gather the next modification of Herrick contract will be the elimination of common carrier clause. This will defeat the very purpose we have been working for these eight years.

A.A. SOLLINGER,
Postmaster, Canyon City, Oreg.

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CANYON CITY, OREG., *January 25, 1927.*

HON. RALPH H. CAMERON,
United States Senate:

It is only natural for the Herrick interest to block investigation forest officials should welcome it. Go after them and make them come clean.

M. DEXTER, *Dayville, Oreg.*

CANYON CITY, OREG., *January 25, 1927.*
RALPH H. CAMERON,
United States Senate:

I have been in close touch with the workings of the Herrick project and I don't know of a single contractor or merchants with whom they have duke business but what lost many dollars. Herrick would be no good if he did finish, which I don't think he will ever do.

E. I. SOUTHWORTH,
Postmaster at Seneca, Oreg.

CANYON CITY, OREG., *January 25, 1927.*
RALPH H. CAMERON,
United States Senate:

What has become of the $50,000 claimed to have been imposed on Herrick as a fine for violation of contract? Forest officials refuse us records.

GUY DURHAM.

CANYON CITY, OREG., *January 25, 1927.*

RALPH H. CAMERON,
United States Senate:

Does Forest Department intend to keep faith with the people of these two counties or is the Forest Department standing in with Herrick and ex-forest officials now associated with him in some scheme which will defeat the very purpose of this timber sale.

FIRST NATIONAL BANK OF GRANT COUNTY.

CANYON CITY OREG., *January 25, 1927.*

RALPH H. CAMERON
United States Senate:

We desire to know why Herrick was awarded this contract in first place and what interest has the forest officials in this project.

P. F. CHANDLER.

CANYON CITY, OREG., *January 25, 1927.*

HON. RALPH H. CAMERON,
United Sates Senate:

By all means keep the investigation. Have the Forest Department explain the entire deal between them and the Herrick Lumber Co.

HENRY RINGSMYER, *Dayville, Oreg*.

CANYON CITY, OREG., *January 25, 1927.*

RALPH H. CAMERON:

Authorized agent of Grant County recently denied copy of records at district office in Portland Herrick matter. Can get them only by Senate investigation.

E. B. MOORE, *John Day, Oreg.*

CANYON CITY, OREG., *January 25, 1927.*

SENATOR RALPH CAMERON,
United States Senate:

We urge Senate investigation of Forestry Department in connection with Herrick timber deal. Feel facts disclosed warrant suspicion good facts not kept.

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Sentiment Grant County strong. People of district who initiated sale of timber apparently being ignored by departments. County resolution and State Memorial before you state case.

HARRY L. BAILEY.	ROLAND LEMONS.
D. A. YOKOM.	W. R. WINKINSON.
C. L. YOKOM.	HENRY J. GREGG.
F. N. NOBLE.	ADRIAN E. NODING.
FRED WOODS.	*Mount Vernon, Oreg.*

CANYON CITY, OREG., *January 25, 1927.*

SENATOR RALPH H. CAMERON,
United States Senate:

The people of Grant County, Oreg., are strongly in favor of your resolution to investigate the Herrick contract. This project will develop our county and we should not be delayed. Unwarranted extensions have been made by department without notice to us or a chance to be heard. We have been ignored on every application for extension and snubbed by department on all occasions when information demanded. The people should have some rights but as far as this matter is concerned we appear to be up against an autocracy.

GEO. N. CATTENACH.

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CANYON CITY, OREG., *January, 25, 1927.*

RALPH H. CAMERON:

Too many modifications of Herricks {*sic*} original contract already had. We are leary {*sic*} of any more. Please help us to clean house. This has gone too far already.

B. C. HERBERGER, *Seneca, Oreg*.

CANYON CITY, OREG., *January 25, 1927.*

HON. RALPH H. CAMERON,
United States Senate:

The cloud of suspicion of the deals made by the forest officials in the timber deal with Herrick certainly justifies an investigation and that will bring out the truth.

WAYNE STEWART, *Dayville, Oreg.*

CANYON CITY, OREG., *January 25, 1927.*

HON. RALPH H. CAMERON,
United States Senate:

The people of Grant County would like to find out where the Ethiopian is that is in this deal between the Herrick Lumber Co. and the Forest officials.

FLOYD OFFICER, Dayville, Oreg.

CANYON CITY, OREG., *January 25, 1927.*

RALPH H. CAMERON,
United States Senate:
Herrick contends now investigation will hamper him on proposed loan. Why now negotiating loan when it should have been done four years ago. We have been bid to all this time and have not faith in what Herrick, his associate, or Forest Department may say now.

HERB POWELL.

EXTRA BEND {*sic*}, OREG., January 26, 1927.
Hon. RALPH CAMERON.
United States Senator, Washington, D. C.

The investigation of the Herrick contract at Burns should not be postponed. The delay and extensions of time seem unwarranted and the people want to know the reason.

JOHN BESSON, M. D., The Bend Clinic.

(Whereupon, the committee went into executive session, and, after a short dine spent therein, adjourned at 2.50 o'clock p. m., to meet subject to the call of the chairman.)

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HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREGON

FRIDAY, FEBRUARY 11, 1927.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON PUBLIC LANDS AND SURVEYS,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 o'clock a. m. in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (chairman), Cameron, Means, Kendrick, and Walsh of Montana.

Present also: Senator Dill, of Washington; Col. W. B. Greeley, Chief of the Forest Service; D. F. MCGOWAN, attorney representing United States Forest Service; Blaine Hallock attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher; Frederick M. De Neffe, attorney representing Grant County, Oreg.

The CHAIRMAN. The subcommittee will come, to order. We have met to consider Senate Resolution No. 332, which will be made a part of the record:

SENATE RESOLUTION 332

Whereas on June 15, 1923, a contract was entered into by and between the United States Forest Service and one Fred Herrick of Saint Maries, Idaho for the purchase by said Herrick of approximately eight hundred and ninety million feet of timber situate in the United States forest reserve in Grant County, Oregon, known as the Bear Valley Unit of the Malheur National Forest; and

Whereas by the terms of said contract the said purchaser agreed within a period of two years from the date of said contract to construct and complete, ready for operation, approximately eighty miles of common carrier railroad to a designated point within said Grant County, Oregon; and

Whereas by the terms of said contract said Herrick agreed to commence logging operations by April 1, 1925; and

Whereas it is charged by reliable citizens of Grant and Barney Counties, Oregon, that said Herrick has failed and refused to carry out the terms of said contract, as is therein specified; and

Whereas on two different occasions said Forest Service has, since the signing of said contract, granted to said Herrick and to the corporations by means of which he is attempting to develop said project an extension of one year to complete the performance of said contract, making a total of two year's extension which has thus been granted; and

Whereas said Herrick and said corporations are now requesting another extension on said contract from said Forest. Service; and

Whereas said citizens further charge that one James W. Girard, while in the employ of the United States Forest Service, in a responsible position, in its office in Missoula, Montana, was instrumental getting said Herrick to bid on said timber and to enter into said contract; that soon after bids were opened and before said contract was signed, said Girard resigned his position with the Forest Service and entered said Herrick's employ in the development of said project, at an increase in salary of $5,000 per year over what he had been receiving from

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the Government; that soon after said contract was signed one Frank Klobucher, also an employee of the Forest Service in said Missoula office, likewise resigned his position and accepted a position with said Herrick in connection with said project, at a substantial increase in salary; that soon thereafter said Herrick, Girard, and Klobucher acted as incorporators of the Fred H. Herrick Lumber Company and of the Malheur Railroad Company, which are the operating corporations organized by said Herrick to develop said project, and said Girard and Klobucher became and now are officers, directors, and stockholders of and in said corporation; and

Whereas reliable citizens of said counties also state that there are circumstances surrounding said transactions which strongly indicate that there was fraud and collusion between said Herrick and certain officials of the United States Forest Service it the making by said Herrick of said bid and in the execution of said contract, and that said Herrick has told different persons in said counties that he would not have entered into said contract if he had not been assured in advance by officials of the United States Forest Service that he would be granted all the extensions of time he desired to complete said contract; and

Whereas on December 4, 1926, the county court of said Grant County adopted resolutions in which, among other things, it is charged in effect that it is apparent that the unusual privileges extended to said Herrick and said corporations, and the leniency shown to them in regard to the violations of the terms of said contract, have been due to the connection between said Herrick and said former employees of the United States Forest Service, and said resolution requested that the Oregon delegation in Congress demand a complete investigation of the original advertising of said timber for sale by the Forest Service, and of the execution of said contract, and of all such extensions granted, and of the activities of present and former employees of the United States Forest Service, in connection with said matters; and

Whereas said citizens further charge that neither said Herrick nor said corporations ever had, and have not now, sufficient financial resources to perform said contract according to its provisions, and charge that said contract was secured, as aforesaid, as a pure speculation on the part of said Herrick and said Girard; and

Whereas on January 20, 1927, the Legislative Assembly of the State of Oregon, without a dissenting vote, adopted a memorial in which, among other things, it memorialized the Senate of the United States to appoint a special committee to investigate the facts surrounding the execution of said contract and the granting of said extensions of time; that such committee be authorized to recommend to the Department of Justice the institution of proper legal proceedings to fully protect the interests of the citizens of said Grant County, the State of Oregon, and of the United States: Now, therefore, be it

Resolved, That the Committee on Public Lands and Surveys, or any duly authorized subcommittee thereof, is authorized to investigate and inquire into all matters and things surrounding and connected with the advertising and receiving of bids for the sale of said timber, the execution of said contract, and the granting of said extensions of time to perform said contract. For the purpose of this resolution such

committee or subcommittee is authorized to hold hearings, to require by subpoena or otherwise the attendance of such witnesses, and the production of such books, papers, documents, and records, and to administer such oaths and to take such testimony and to make such expenditures therefor, as it may deem advisable. The cost of stenographic service to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of such committee or subcommittee, which shall not exceed the sum of $3,000, shall he paid from the contingent fund of the Senate, and the expenditure of said sum is hereby authorized for the above purpose. The said committee or subcommittee shall make a final report on said matters to the Senate as to its findings on or before the 28th day of February, 1927, together with recommendations for such legislation or action as it may deem necessary and proper.

The CHAIRMAN. Mr. Barnes, will you take the stand? But, first, hold up your right hand and be sworn: You do solemnly swear that the testimony you will dive in the investigation now being made by this subcommittee under Senate Resolution 332, will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. BARNES. I do.

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Mr. HALLOCK. May I interrupt, Mr. Chairman, to ask if the subcommittee cares to announce the procedure that will be followed during these hearings? That is to say, as to whether counsel will be permitted to be present and to interrogate and cross-examine witnesses?

Senator WALSH of Montana. Let us have entered on the record the counsel present and whom they represent.

Mr. DE NEFFE. I believe the shorthand reporter has already secured that information.

Senator WALSH of Montana. I should like to have the list read and see whether there are any others and also for the information of the members of the committee.

The CHAIRMAN. The shorthand reporter will read the list of persons noted as present other than the members of the subcommittee.

(Thereupon the shorthand reporter read the names shown under the heading "Present also," following the notation of the committee membership present.)

The CHAIRMAN. Are there any other parties who, as counsel or otherwise, should be noted on the record? [After no response.] I believe that represents all of them. Now you may proceed, Mr. De Neffe.

Senator WALSH of Montana. Now I suggest that Mr. Hallock might make his inquiry.

Mr. HALLOCK. It occurred to me that the subcommittee might be willing to state whether the persons interested may he represented by counsel, and whether such counsel may examine and cross-examine witnesses, in order that we may have as early information as possible as to the method of procedure you will follow.

Senator WALSH of Montana. I feel very sure that inasmuch as there seems to be a contest between two sides here, and as both sides seem to be represented by counsel, that there can be no reason why they should not be represented on the record, and counsel have an opportunity to examine and cross-examine the witnesses as to the facts as to which they have knowledge and we have not.

The CHAIRMAN. If there is no objection counsel will be permitted to examine and cross-examine the witnesses who appeal before the committee.

Mr. MCGOWAN. Mr. Chairman, before Mr. De Neffe begins examining the witness, may I make a formal tender of papers?

The CHAIRMAN. You may.

Mr. MCGOWAN. I think it would expedite matters. Colonel Greeley has received a subpoena from the subcommittee to bring with him his files in connection with this matter, and we have brought everything. We have brought the files of the Chief Forester, the files of the district forester, and the files of the forest supervisor. We do not stand on any technicalities whatsoever, but submit the record in toto to the subcommittee for its examination.

But what we should like to request is this: That these files, and because of their importance as public records, be permitted to be retained in the custody of the Forest Service subject to examination by the members of the subcommittee, or any person that they may wish to examine them, at any time. In other words, we do not want to turn them over because of the importance of the files, and do not want any of the papers mutilated, but we will be perfectly willing that anybody

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may look at any and all of them, and take any extracts from them that they may desire.

May I make such request, Mr. Chairman?

The CHAIRMAN. If there is no objection the request of the Forest Service will be granted.

Senator WALSH of Montana. While we may be anticipating, yet it may be that we will find occasion to use some of these records, and if so we will call for them, and I take it that copies will be substituted for the originals?

Mr. MCGOWAN. Oh, yes; we will have them at your service all the time.

Mr. HALLOCK. Mr. Chairman, I should like to join Mr. McGowan in that statement, in behalf of the parties for whom I appear; except to qualify it by stating that upon our arrival here in Washington a day or two ago we were for the a first time served with subpoenas, and only two of the gentlemen whom I represent were so served and those subpoenas required that we produce many documents which at that time were in the office of the Fred Herrick Lumber Co. out in Oregon. We have telegraphed for those documents, papers, and records, and they are slow in transit. They should arrive here perhaps to-morrow or the early part of the week. They will be available just as rapidly as we can get them here. We did not anticipate this request when we came to Washington.

Further, I should like to say that we have requested you as the chairman of the subcommittee to subpoena certain books, records, and documents in the possession of Mr. E. W. Barnes who appears here for Grant County, and if Mrs. Barnes has those papers or cares to indicate whether they will be available, it might expedite matters to that extent, for we will then all be pretty well informed as to those documents and papers and their whereabouts and availability.

Mr. DE NEFFE. I suppose it is understood that these various records will be subject to examination during the intermission, I mean the papers in the hands of the Forest Service. They are quite voluminous and we will want to go through them.

Mr. MCGOWAN. Entirely so.

Mr. DE NEFFE: You will leave them with the clerk of the subcommittee?

Mr. MCGOWAN. No; as I understand it they will remain in our possession, but we will give you full and complete opportunity to make examination of everything we have.

Mr. DE NEFFE. We will possibly be pretty busy during the hearings and the only time I would have to examine them would be during the noon hour or following the adjournment.

Mr. MCGOWAN. We will meet your convenience in that respect.

Mr. DE NEFFE. Very well.

Mr. MCGOWAN. Now, Mr. Chairman, if I may offer three letters in connection with the subpoenaing of witnesses at the request of Colonel Greeley. They are very short, but I think they should go into the record.

Senator WALSH of Montana. What are they?

Mr. MCGOWAN. These are requests made by Colonel Greeley upon Senator Stanfield covering the names of witnesses that Colonel Greeley asked to be subpoenaed. But we understand that for reason of lack of funds—was that it, Senator Stanfield?

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The CHAIRMAN. Yes.

Mr. MCGOWAN. For lack of funds some of these witnesses were not called, but we particularly want the record to show that we asked for the presence of these men at this hearing.

The CHAIRMAN. Yes; both sides have asked for the calling of witnesses far beyond the means provided under our resolution, and therefore we have only subpoenaed just such witnesses as we deemed most important and within the funds made available for our purpose.

Senator WALSH of Montana. I was wondering why all this testimony could not be taken out in Oregon instead of bringing these witnesses here. Their depositions could be taken, and such depositions would be just exactly as serviceable to us. In that way anybody could have the testimony of any witnesses either side wants, and there is no reason why the testimony should not be taken before a United States commissioner in the State of Oregon, and thereby save the expense of bringing them on here.

The CHAIRMAN. If there is no objection, the letters referred to by Mr. MCGOWAN will be received for the record. [After a pause.] There is no objection.

Mr. MCGOWAN. Here are the three letters that I should like to have made a part of your record.

The CHAIRMAN. That will be done.

(The three letters referred to, dated February 2, 5, and 9, 1927, are here made a part of the record, as follows:)

FEBRUARY 2, 1927.

HON. ROBERT N. STANFIELD,
United States Senate.

DEAR SENATOR STANFIELD: In accordance with my conference with you on February 1 concerning the hearing before the Public Lands Committee with reference to the Herrick timber sale on the Malheur National Forest, I desire that the following witnesses be subpoenaed: Mr. I. S. Geer, Burns, Oreg.; Mr. R. M. Duncan, Burns, Oreg.; and Mr. Julian Byrd, Burns, Oreg.

These three men are citizens of Burns, Oreg., who will be able to present the history of the case from the standpoint of the effect on the local community, the attitude of the community toward extensions given in the Herrick sale, and the effect of the present agitation on community interests.

In addition, the following forest officers are necessary to present the Forest Service side of the case:

Mr. C. M. Granger, United States Forest Service, Portland, Oreg., who is "district forester" of the district in which thus sale has been made.

Mr. Fred Ames, assistant district forester, United States Forest Service, Portland, Oreg., who is in direct charge of timber sales in the district and has been in close touch with the case throughout its history.

Mr. Bruce E. Hoffman, United States Forest Service, Portland, Oreg., the logging engineer, who was one of the men to make the original appraisal and who has made all of the reports on the progress of construction.

Mr. Walt D. Dutton, forest supervisor, John Day, Oreg., who is in charge of the national forest on which the sale is and who has had direct contact with Mr. Herrick's representatives on the ground.

I am assuming, of course, that you will also subpoena Mr. Herrick, Mr. Girard, and Mr. Herrick's attorney to represent Mr. Herrick's side of the case.

Sincerely yours,

W. B. GREELEY, *Forester.*

FEBRUARY 5, 1927.

HON. ROBERT N. STANFIELD,
United States Senate.

DEAR SENATOR STANFIELD: Supplementing my letter to you of February 2, 1927, I respectfully request that R. J. Williams, county judge; G. N. Jamieson, mayor, and L. E. Hibbard, president Commercial Club, all of Burns, Oreg., be subpoenaed to appear before your committee in connection with the investiga-

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tion of the Fred Herrick timber sale. The views of these gentlemen are expressed in their letter of January 23, 1927, to the Oregon delegation in Congress, which letter was published in the congressional Record at the request of Senator McNary, on February 4, 1927. (See p. 3023 of the Record.)

Senate Resolution 332, which directs the senatorial investigation of the Fred Herrick contract, was induced by the representations made by "reliable citizens." The Forest Service is charged in effect with fraudulent practices, and nothing less than a full investigation of these charges will be satisfactory to me. I do not know the names of these "reliable citizens," but I most earnestly request that you ascertain their names and have these persons present at the hearings to testify before your committee.

If the funds at the disposition of your committee are not sufficient in your judgment to pay the expenses of the witnesses, the Forest Service desires to call, I most earnestly request that you ask Congress for a further appropriation, and I suggest that the appropriation be of sufficient size to cover not only the expenses of the witnesses the Forest Service deems necessary, but likewise the expenses of any and all persons that in your judgment should be called to make a full presentation in support of the allegations which served as the basis of Senate Resolution No. 332.

Sincerely yours,

W. B. GREELEY, Forester.

February 9, 1927.

HON. ROBERT N. STANFIELD,
United States Senate.

DEAR SENATOR STANFIELD: Supplementing my letter to you of February 5, 1927, I respectfully request that Mr. E. W. Barnes and Mr. Fred De Neffe be subpoenaed by your committee in connection with the investigation of the Fred Herrick timber sale.

I am informed that Mr. Barnes was closely connected with the enactment of the memorial of the Oregon Legislature, and our records show that he has sought to have the Herrick contract canceled and the timber resold to himself. I naturally assume that Mr. Barnes will wish to testify before your committee. If, however, I am mistaken in this respect, it is my view that he should be subpoenaed so that your committee may have the full benefit of any and all of the facts with which Mr. Barnes may be familiar in connection with the Herrick sale.

I also respectfully suggest that subpoenas be issued to Mr. Barnes and Mr. De Neffe similar to the subpoena that was issued to me, requiring Mr. Barnes and Mr. De Neffe, respectively, to bring to the committee their complete files in connection with and correspondence they may have had relative to the Herrick timber sale contract.

Very respectfully,

W. B. GREELEY, *Forester.*

Mr. HALLOCK. Apropos that matter and in order to make the record consistent and logical, will the subcommittee allow me to offer letters covering my request for witnesses?

The CHAIRMAN. If there is no objection, they will be similarly received. [After a pause.] There being no objection, they will be made a part of the record.

(A letter dated February 8, 1927, offered by Mr. Hallock is here made a part of the record, as follows:)

FEBRUARY 8, 1927.

HON. R. N. STANFIELD,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Apropos of our brief conference yesterday regarding subpoenas and procedure in the Herrick investigation, I want to incorporate our request in writing in order that our position may be thoroughly understood.

Mr. Herrick and his people have been compelled to cross the continent and defend themselves against charges of conspiracy and fraud of a very serious character, and which involve not only the motives and integrity of these men as well as representatives of the Forest Service, but also Mr. Herrick's Oregon venture, which at this time is well more than a million dollars. Under the subpoena served upon Mr. Girard we are required to produce practically every book, paper, or document constituting any part of the records of Mr. Herrick's

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Oregon corporations. A response to the demand contained in the subpoena necessitates our transporting hundreds of pounds of documents, books, and papers over thousands of miles, and of necessity brings the construction work to a standstill and practically paralyzes our organization while thus hearing is in progress.

Without any desire to appear the least disrespectful, we repeat what we have already several times stated, that the charges contained in the resolution upon which this investigation is predicated result entirely from the antagonism and hostility of Mr. Barnes toward Mr. Herrick and his people, and toward Colonel Greeley and the Forest Service. You will therefore appreciate why we lay so much stress upon the importance of being given an opportunity to confront Mr. Barnes on the witness stand with a lot of pertinent questions which we will expect to propound on cross-examination, and why it is that we feel that unless Mr. Barnes takes the witness stand and undertakes to sustain in this proceeding the charges which he has seen fit to prefer against Mr. Herrick, we will not have been afforded the opportunity of a fair and impartial hearing.

Furthermore, Senator, as I told you yesterday, I feel that the seriousness of the charges which we are required to meet, the important issues involved, and the expense and delay attendant upon this journey across the continent with our witnesses and documents, all pursuant to the direction of your committee, should entitle us to subpoenas for witnesses under which they may be reimbursed in at least the amount of their witness fees and mileage. I am therefore again respectfully requesting that Mr. Barnes be required to testify; that we be afforded the privilege of cross-examining him, and that we be permitted, through the ordinary course of interrogation by counsel and with reasonable latitude in cross-examination, to develop our case as we will be prepared to present it, and to meet Mr. Barnes and his people as would be the case were this matter submitted to a court of general jurisdiction.

I wish to again also respectfully request that subpoenas be issued on behalf of Mr. Herrick to the following-named individuals: Fred Herrick, St. Maries, {*sic*} Idaho; James W. Guard, Burns, Oreg.; Frank Klobucher, Burns, Oreg.; Julian Byrd, Burns, Oreg.; Grover Jamison, Burns, Oreg.; E. E. Flood, Spokane, Wash.; Blaine Hallock, Baker, Oreg.; C. D. Johnson, Portland, Oreg.; W. T. Culver, Chicago, Ill.; George L. Gardner, Spokane, Wash.

I have not had an opportunity to meet the other members of your subcommittee, and in order that they may be acquainted with our position in this matter we are taking the liberty of sending a copy of this letter to Senator Cameron, Senator Means, Senator Kendrick, and Senator Walsh.

Very truly yours,

BLAINE HALLOCK,

Attorney for Fred Herrick, J. W. Guard, and Frank Klobucher.

DEAR SENATOR: The foregoing is self-explanatory.

BLAINE, HALLOCK.

Mr. MCGOWAN. In support of our request for the subpoenaing of certain witnesses, I should now like to offer in the record a communication received by Senator McNary from Messrs. Williams, Jamieson, and Hibbard of Burns, Oreg., in connection with this matter. These gentlemen are, respectively, R. J. Williams, as county judge; G. N. Jamieson, mayor; and L. E. Hibbard, president of the Commercial Club.

The CHAIRMAN. If there is no objection it will be made a part of the record. [After a pause.] The Chair hears none, and therefore it may be included in the record.

(The letter referred to and dated at Burns, Oreg., January 23, 1927 is as follows:)

BURNS, ORE G., *January 23, 1927.*

HON. CHAS. L. MCNARY,
HON. ROBT. N. STANFIELD,
HON. N. J. SINNOTT,
Washington, D. C.

Re Bear Valley-Fred Herrick timber sale.

GENTLEMEN: A telegram was forwarded to each of you gentlemen to-day and we attach a copy of such wire hereto for confirmation.

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Our reason for sending such telegram and for writing this letter is that the facts, as we know them, relating to the above subject may be placed before you for your information. We are not acting for Mr. Herrick, nor against Mr. Barnes and those he represents; we are acting for the good of this community and, as we believe, the State at large.

We are just as anxious as our friends in Grant County that the Herrick development be expedited as much as possible, and we would urge you to use your powerful influence with the Forest Department and with Mr. Herrick toward securing an early completion of this project. Our only fear is that out of the present controversy some action might be taken that would involve the project in litigation or would impair the financial ability of Mr. Herrick, thereby further delaying the completion of the project.

We believe that we are fully informed as to the policy of the Forestry Service and of the Chief Forester, and that such policy is favorable to early development; we know that the Chief Forester has used his great influence in securing for this part of the State a development of its timber resources that will also develop every other resource, and that he has at all times had in mind the best interests of the Government and local communities and has so acted. We therefore resent the charges made through the press, impugning the motive or action of the Chief Forester and his department. We assert that such charges are not founded on fact.

At the time the Bear Valley unit was put up for sale by the Forest Service in January, 1923, the department, against the vigorous protest of Mr. Barnes, made the minimum price of $2.75 per thousand for yellow pine. It is impossible to say whether or not the activities of Mr. E. W. Barnes had anything to do with the first sale, but the fact is that there was not a bid submitted at the first call. Mr. Barnes then insisted on a resubmission of the timber sale and tried to get the minimum requirement at about $1.50 per thousand but the timber was offered at a minimum of $2 and at the second offer Mr. Herrick made the offer of $2.80 and contract was entered into with him. After the bid of Mr. Herrick was submitted Mr. Barnes used every {appears to be missing a word here} of influence he had to prevent the sale at this price and virtually demanded that the sale be to interests, represented by him, at a much lower figure. Since the sale Mr. Barnes has used every effort to hinder the operations of Mr. Herrick and to embarrass the Forestry Service and the Chief Forester. We recite this to show that any statement made by Mr. Barnes may be influenced by his personal interests and should be accepted with caution.

Since the sale Mr. Herrick has built and conditioned the 31 miles of railroad from Crane to Burns and this section has been turned over to the Union Pacific and daily train service is being operated into Burns.

In addition to that section, Mr. Herrick has completed the 50 miles of grade over the mountains from Burns to Seneca, ties are distributed along the entire route, 40 miles of steel has been laid, and the steel crew is now laying from 3,000 to 4,000 feet a day. Only a severe storm will delay steel laying over 15 days. This is not a logging line but a standard 14 to 18 foot grade with heavy steel substantial and numerous sidings.

It is charged that the Forestry Service has authorized striking from the Herrick contract a provision that the Seneca-Burns Railroad should be operated as a common carrier. This is the charge that has aroused the citizens of Grant County; and if true, they would have just cause for complaint, and we would join with them in protest. However, we are not able to find any fact in support of this charge. Mr. Herrick caused this part of his operation to be incorporated at the Malheur Railroad Co. under the laws of Oregon as a common carrier. He has condemned right of way in Harney and Grant Counties as a common carrier and has also secured rights of way over Government land and forest reserve as a common carrier. This action alone, independent of any contract with the Forest Service, would establish the line as a common carrier. Nor could any act short of an act of Congress, together with an act of the Oregon Legislature, relieve him of this status as a common carrier when his line is completed. We also find that he is reporting to the public service commission of Oregon as a common carrier.

An examination of the financial records of Fred Herrick Lumber Co. in Burns discloses that, exclusive of the line from Crane to Burns, they have expended to January 1, 1927, $1,313,000.

The charge has been made through the press "that up to December 19, 1926, no work had been done on the sawmill." This may be "splitting hairs" to obtain a distinction, so permit us to recite the facts and conditions.

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The site selected for the sawmill is approximately 2½ miles south of Burns. The plans for the mill call for a log pond of approximately 40 acres to impound the waters of a warm spring at the site, the construction of a reinforced-concrete boiler house and also power plant, the mill to be of steel construction,

with machinery electrically driven. The dike creating the log pond has been completed and tested. The reinforced-concrete power plant and boiler house were under construction, floor and walls poured to within a few feet of the top when subzero weather closed down the work about December 12. Since that time weather conditions have not been favorable for resumption of work at the mill site. As to the sawmill proper, as distinguished from its power plant, there has been no work done. The mill site and log pond involved a change of approximately 2½ miles of the graded and partly graveled section of the Central Oregon Highway, and this change has also been completed by Mr. Herrick. The financial records show that on this Work at the mill site there bas been expended some $74,119 to January 1.

We have been disappointed that the Herrick project has not, been completed before this; however, the unfavorable lumber market of the past three years and the judicious expenditure of such a large sum in development are elements that undoubtedly have influenced the slow development of the project. We feel, however, that with the present investment in the project that Mr. Herrick can not permit the construction to drag and that it is his desire as well as to his interest to complete the plant this year. We feel that he is entitled to reasonable extensions to permit an early completion.

Another element in this controversy that prompts us to make this lengthy explanation is that we understand that Mr. Herrick is now preparing to float a bond issue to complete the project. Naturally, any action like a congressional investigation will have an unfavorable effect on such an issue, as it would create uncertainty in the minds of the investing public. Thus would be immediately reflected in local improvements at Burns and along the line of the railway, where interests are investing on the promise of an early construction of the Herrick project.

The Oregon Legislature has adopted some kind of a memorial asking congressional investigation of this project. This measure was put over by an active lobby from Grant County without anyone in Harney County being given an opportunity to be heard. We have not been able to secure the text of the memorial, and our only information is taken from Portland papers. We do not criticize such measure, for we do not know that it deserves it, except that legislation without a hearing from all interests affected may be viewed with suspicion.

If a congressional investigation of this transaction could be disposed of within a few days and the blame placed where it belongs for this activity, we would have not the slightest objection; but we fear that such an investigation would involve the entire administration policies of the Forestry Service, grazing fees, etc., and be long drawn out, and this community would suffer.

Thanking you for your consideration, we remain,

Respectfully yours,

R. J. WILLIAMS,
County Judge.
G. N. JAMIESON,
Mayor.
L. E. HIBBARD,
President Commercial Club.

[Telegram]

BURNS, OREG., *January 23, 1927.*

CHARLES L. MCNARY,
United States Senate, Washington, D. C.:

Officials and citizens of Harney County, strongly urge your investigation of facts before taking any action on Barnes demand for congressional investigation Herrick timber sale.

Memorial passed Oregon Legislature without time for us to present facts. Action does not meet our approval.

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Charges that work has stopped on railroad, that no work has been done on sawmill, that common-carrier provision for railroad Burns to Seneca has been deleted from contract are false.

Believe this move fostered to impair Herrick ability to finance.
Urge you to use caution. Letter explanation follows.

R. J. WILLIAMS,
County Judge.
G. N. JAMIESON,
Mayor.
L. E. HIBBARD,
President Commercial Club.

The CHAIRMAN. Now Mr. De Neffe, you might proceed to examine Mr. Barnes.

TESTIMONY OF E. W. BARNES, OF PORTLAND, OREG.

(The witness had been duly sworn by the chairman.)

(Direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Mr. Barnes, where do you live?

Mr. BARNES. Portland, Oreg.

Mr. DE NEFFE. How long have you lived there?

Mr. BARNES. I came there in 1916.

Mr. DE NEFFE. Whom do you represent in this matter?

Mr. BARNES. Grant County.

Mr. DE NEFFE. Grant County, Oreg.?

Mr. BARNES. Yes, sir.

Mr. DE NEFFE. Have you any credentials Showing that to be a fact?

Mr. BARNES. Yes.

Mr. DE NEFFE. What are they? Have you them with you?

Mr. BARNES. They are letters and resolutions.

Mr. DE NEFFE. Will you produce them?

Mr. BARNES. Here they are.

Mr. DE NEFFE. Mr. Chairman, I should like to read this into the record.

The CHAIRMAN. Very well.

Mr. DE NEFFE. But, first, let me ask Mr. Barnes: Were these letters given to you before you came to Washington?

Mr. BARNES. Yes.

Mr. DE NEFFE. Now, if there is no objection I will read them into the record.

The CHAIRMAN. If there is no objection you may do so. [After a pause.] The Chair hearing no objection, it may be done.

Mr. DE NEFFE. The first one is dated December 11, 1926, and is signed by the county judge and county commissioner, and the other one is signed by the president of the Grant County Stock Growers' Association.

(The letters referred to, and as read by counsel, are here made a part of the record, as follows:)

OFFICE OF COUNTY COURT OF GRANT COUNTY,
Canyon City, Oreg., December 11, 1926.

To any one or all of the Oregon Delegation in Congress, Washington, D. C.:

GENTLEMEN: Mr. E. W. Barnes, the bearer of this letter, has this date been delegated to represent Grant County, Oreg., and is authorized to go before you

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and present to you a resolution adopted by the county court of Grant County, Oreg., on December 4, 1926.

We ask you to secure the appointment of a special committee and investigate all matters connected with this timber sale referred to as made to Mr. Fred Herrick in April, 1923.

Mr. Barnes, our representative, is ready and willing to work with you, and will be on hand to give you any and all the information that you desire, as well as the names of all witnesses you may desire to call.

The petition for the sale of the Bear Valley timber unit with a common carrier railroad from Crane, Oreg., to Seneca, Oreg., signed by people of Grant and Harney Counties, was prompted with the idea that such would develop the resources of these counties, vital to each county, and the progress being made on this project, does not indicate that good faith has existed from the very beginning, and the whole proceeding should be investigated. Such action is vital to the future prosperity of Grant County, and we trust that such can be hastened with all possible speed.

Sincerely yours,

ORIN L. PATTERSON,
County Judge.
GEORGE YOKOM,
County Commissioner.

GRANT COUNTY STOCKGROWERS' ASSOCIATION,
John Day, Oreg., December 15, 1926.

To Oregon Delegation in Congress, Washington, D. C.

GENTLEMEN: Mr. E. W. Barnes, the bearer of this letter, has been authorized to present the resolution of our association adopted December 15, for your action.

We ask you to secure the appointment of a special Senate committee to immediately and thoroughly investigate all matters connected with the sale of timber to Fred Herrick, and the construction of a common-carrier railroad to Seneca.

Our people are insistent and demand that this whole matter be investigated. We feel assured that you will find some queer transactions in connection with this project.

We have great faith in Mr. Barnes, and feel sure he will be of much help to you in getting at the bottom of this whole matter.

Very truly yours,

J. E. SNOW,
President Grant County Stockholders' Association.

Mr. DE NEFFE. Mr. Barnes, were there any resolutions accompanying these letters?

Mr. BARNES. I think the subcommittee has the resolution from the stockmen and the county court.

THE CLERK OF THE COMMITTEE (INGHAM G. MACK). Here are the two resolutions filed with the subcommittee.

Mr. DE NEFFE. Mr. Barnes, will you examine these and see if they are the resolutions that you brought with you?

Mr. BARNES. They are.

Mr. DE NEFFE. Mr. Chairman, I should like to read these into the record also.

The CHAIRMAN. If there is no objection you may do so. [After a pause.] There is no objection and you may read them.

Mr. DE NEFFE. I will now read the resolutions.

(The said two resolutions, one addressed to the Oregon delegation in Congress and dated at Canyon City, Oreg., December 15, 1926, and signed by the president, secretary, and executive committee of the Grant County Stockgrowers' Association, and the other being a resolution adopted at a regular meeting of the County Court of

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Grant County, and signed by the county judge and commissioner, are here made a part of the record, as follows:)

CANYON CITY, OREG.,
December 15, 1926.

To the Oregon Delegation in Congress, Washington, D. C.:

Whereas The Grant County Stock Association was organized in Grant County, Oreg., in 1906, for the purpose of representing the livestock industry of the county and all things pertinent and incident thereto; and

Whereas the said association has been directly connected and closely identified with the development and progress of the county and the welfare of its people, and in the administration of the natural resources, which are theirs by Divine gift; and

Whereas this association in 1923, approved the policy, and indorsed the action of the Forest Service, in offering for sale, and selling certain timber units in Bear Valley to Fred Herrick, for the purpose of opening up and developing a vast district of unlimited material wealth; and

Whereas this association believed from official guarantee, and had the right to believe, that this development would be consummated by the construction of a common carrier railroad, with logging and milling operations by April 1, 1925; and

Whereas April 1, 1925, passed with no substantial compliance by said Herrick, with the conditions and requirements that were to develop the great county of Grant, and the stock industry, which we represent; and

Whereas the people of Grant County began to doubt the sincerity and efficiency of a great department of Government, and this association became permeated with fading faith in the Forest Service; and

Whereas this misplaced confidence and faith had a temporary stimulation when the Forest Service found and pronounced Mr. Herrick guilty and announced a fine of $50,000 for the nonperformance of his contract; and

Whereas new conditions and further time limits were given Mr. Herrick, and then another year went by with the same trifling and dilatory tactics; and

Whereas Mr. Herrick was finally given until September 15, 1926, to complete the railroad grade to Seneca, and he again failed, and so far as we have been able to learn was not fined for this dereliction, as was a condition, and that he was given until December 15, 1926, to complete the railroad, and he failed, and so far as we know or can learn has not been fined; as was stipulated in the extension granted; and

Whereas the sawmill at Burns was to be completed by March 1, 1927, and has never yet been started; and

Whereas, since every condition from the beginning has been ignored, and when extensions of time were granted, with new and further conditions, they were still ignored and are still ignored, and all work is now suspended, we no longer have any facts upon which to predicate any belief, faith, or hope in the much-heralded operations of the said Fred Herrick; and

Whereas the action of the said Herrick is governed and controlled entirely by the forest officials, of which Col. W. B. Greely is the chief, and that Herrick's failures are and have been sanctioned by said officials,

Therefore we have lost faith and confidence in both. the master and his servant; and therefore we have

Resolved, That it will be for the best interests of Giant County, the State of Oregon in particular, and the United States at large to remove from the sanctity of office all officials who have sanctioned, condoned, or approved all the broken pledges of said Fred Herrick, and to cancel, annul, and forfeit the Herrick contract, and with the appointment of a new chief forester and new district officers restore to the people a well-founded faith in the Forest Service, which is now mired in a verbal swamp of useless warrantees and forgotten covenants; and that the facts surrounding this entire transaction justify the Senate of the United States in demanding an investigation that they might publicly reprimand any and all who have contributed to the long list of unfulfilled, pledges, and that it is just as essential for men like Mr. Fred, Herrick and the Hon. Chief Forester to keep his word and comply with contracts and agreements as it is a struggling stockman in Grant County endeavoring to make a livelihood working with and for the Forest Service; and we therefore finally

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Resolve, That if the "word" of the Forest Service is as valueless in all things as it has been in connection with this matter, then the stockmen of the United Sates are dealing with a department of Government that should be abolished.

J. E. SNOW, *President*.
H. F. HERBURGER, *Secretary*.
HERMAN OLIVER,
GEORGE YOKOM,
JOHN CARTER,
W. C. STEWART,
Executive Committee.

RESOLUTION

At a regular meeting of the county court, Grant County, Oreg., sitting as a court for the transaction of county business and duly called, and held at Canyon City, Grant County, Oreg., on Saturday, the 4th day of December, 1926, at 10 o'clock a. m., at which meeting there were present Orin L. Patterson, county judge, and George Yokom, county commissioner, being a quorum of the said county court, the following resolution was unanimously adopted:

Whereas, on the 15th day of June, 1923, a contract was made and entered into by and between the United States Forestry Service and Fred Herrick, of St. Maries, Idaho, for the purchase by said Fred Herrick of certain timber situate in United States forest reserve in Grant County, Oreg., and

Whereas, it was provided in and by said contract that the purchaser oil or before 2 years from the date of said contract, to wit, on or before June, 15, 1925, should, in addition to a railroad from Crane, Oreg., to Burns, Oreg., construct and complete ready for operation a railroad from Burns, Oreg., to Seneca, Grant County, Oreg., and should also complete ready for operation a sawmill at Burns, Oreg., all according to the detailed specifications set forth in said contract; and

Whereas the purchaser was, by the terms of said contract, required to deposit a bond in the penal sum of $50,000 conditioned upon the faithful and strict performance by said purchaser of the terms of said contract; and

Whereas prior to June 15, 1925, the time of the performance of said contract was extended for one year, to wit, until June 15, 1926, and said contract was in other respects amended and modified, among other things to provide; that the terminus of said railroad so to be constructed was not required to be at Seneca, where said railroad would connect with an established highway from Canyon City, built by Grant County and beauro {*sic*} of public roads at great expense for a connection with said railroad; but at a point 1 mile southwest thereof, and said modifications were made without any notice to the citizens of Grant County, and

Whereas the purchaser wholly failed to perform the terms and conditions of said contract of June 15, 1923, as extended, and wholly failed to complete said railroad or sawmill prior to June 15, 1926, and

Whereas by all agreement made and entered into June 19, 1926 an extension of time was granted to the purchaser as follows: For the completion of the grade from Burns to Seneca, September 15, 1926; for the completion of the railroad in operating condition from Burns to the timber, December 15, 1926; for the completion of the entire sawmill plant at Burns, Harney County, Oreg., ready for operation, March 1, 1927; for beginning cutting and removing of timber January 1, 1927, and

Whereas it was further provided by said agreement of June 19, 1926 that the bond of $50,000 deposited with the original contract of June 15, 1923, should be forfeited and the amount thereof retained by the United States Forestry Service as liquidated damages; that $50,000 in Liberty bonds should be forthwith deposited as guaranty of the performance of the terms and conditions of said extension agreement of June 19, 1926, and

Whereas the said purchaser has failed to complete the grade from Burns to Seneca by September 15, 1926, or at the time of the adoption of this resolution, and has not progressed with said work in such manner as to make it possible that said railroad will be in operating condition on December 15, 1926, and has wholly failed to proceed with the construction in good faith of the sawmill at Burns, Harney County, Oreg., so as to render it possible that said sawmill will be completed on March 1, 1927, or at any time prior to March 1, 1928, if active construction on said sawmill were commenced forthwith, and

Whereas more than three years and eight months have elapsed since the execution of the original contract and the purchaser has Wholly failed to comply with the terms and conditions thereof in good faith, and

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Whereas Fred Herrick Lumber Co. was thereafter organized under the laws of the State of Oregon for the purpose of conducting operations under the said contract of June 15, 1923, and the incorporators and present officers of the said Fred Herrick Lumber Co. are Fred Herrick and Messrs. Girard and Globucher, {*sic*} employees of the United States Forestry Service at the time the timber included in said contract was offered for sale, and it is apparent that the unusual privileges extended to the purchaser and the leniency shown in reference to the violation of the terms of said contract have been due to the connection with the purchaser of said former employees of the United States Forestry Service, and

Whereas the prosperity of Grant County, Oreg., is in a large measure dependent upon the cutting of said timber and the operations which will be incidental thereto, and

Whereas the said Grant County and all property owners therein are seriously damaged by the existing conditions, now Therefore, be it

Resolved, That the representatives of the State of Oregon, in the Senate and House of Representatives of Congress, be requested to demand a complete investigation of the original advertising of said timber for sale by the United States Forestry Service in August, 1922, the contract of June 15, 1923, and any and all extensions thereof, and of the activities of the United States Forestry Service, and any and all present or former employees thereof, in connection with this matter, and that a copy of thin resolution be sent to Oregon's delegation in Congress.

ORIN L. PATTERSON,
County Judge.
GEORGE YOKOM,
Commissioner.

STATE OF OREGON, *County of Grant, ss:*

I, Bessie Powell, county clerk for Grant County, State of Oregon, ex-officio recorder and clerk of the county court for said county and State, do hereby certify that the foregoing copy of resolution of the county court for request to demand investigation of sale of timber to Fred Herrick Lumber Co.; etc., has been by me compared with the original resolution and that it is a true and correct transcript of said original and of the whole thereof, as the same appears on file at my office and in my official custody.

In testimony whereof I have hereunto set my hand and affixed my official seal this 6th day of December, 1926.

[SEAL.] BESSIE POWELL, *Clerk*.
BY HILDA MCCULLOCH, *Deputy*.

Mr. DE NEFFE. Mr. Barnes, did any of the citizens of Grant or Harney County ever send any telegrams to any of the members of the Oregon delegation in Congress in which they mentioned that you were representing the people out there?

Mr. BARNES. Yes, sir; I guess they did.

Mr. DE NEFFE. I will ask you to examine these and say whether or not they are the telegrams that you have, reference to.

Mr. BARNES. Well, I have never seen these, but they are from these men.

Mr. DE NEFFE. I will ask to offer them in evidence. Do you wish to see them first, Mr. Hallock?

Mr. HALLOCK. Yes, if you please.

(After Mr. Hallock had examined the four telegrams.)

The CHAIRMAN. If there is no objection they will be entered upon the record. [After a pause.] The Chair hears none.

Mr. DE NEFFE. It is understood that they will be spread on the record, but here is one that I should like to call attention to. It is dated January 27, 1925, and that was about the time the first extension was being asked for.

Mr. HALLOCK. Mr. Chairman, we do not want to interpose any technical objections, but we do think that any

authority that this gentleman now has, so far as these telegrams of two years ago are concerned, they are a little remote.

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Senator Walsh of Montana. It is expressing the view that they had.

Mr. DE NEFFE. It Says "Barnes represents the people here."

Senator WALSH of Montana. Suppose you just read the telegrams.
The CHAIRMAN. Who are they addressed to?

Mr. DE NEFFE. They are addressed to Senator McNary, and are as follows:

[Western Union telegram]

BURNS, OREG., *January 27, 1925*.

SENATOR C. L. MCNARY,
442 Senate Office Building, Washington, D. C.:

We object to Greeley authorizing extension one year Fred Herrick and expect you and the delegation to see that Herrick does not get this extension. Barnes represents people here, and you should wire him here at Burns the present status of matter.

MARY GRIFFIN, *County School Superintendent*.

[Western Union telegram]

BURNS, OREG., *January 27, 1925.*

SENATOR C. L. MCNARY,
442 Senate Office Building, Washington, D. C.:

We object to Greeley authorizing extension one year Fred Herrick and expect you and delegation to see that Herrick does not get this extension. Barnes represents people here, and you should wire him here at Burns the present status of matter.

BURNS GARAGE,
By WILLARD LAYTHE.

[Western Union telegram]

BURNS, OREG., *January 27, 1925.*

SENATOR CHAS. L. MCNARY,
Washington, D. C.:

Ninety per cent of people here object to any further extension being granted. Herrick has not done enough work in past to justify any further consideration. Another extension will probably do the same in the past. Barnes represents people here. You should wire him status of this business.

R. F. COLE, *Cole Hotel.*

[Western Union telegram]

BURNS, OREG., *January 27, 1925.*

SENATOR CHAS. L. MCNARY,
442 Senate Office Building, Washington, D. C.:

Oregonian reports Greeley has authorized extension to Herrick. I for one think it an outrage,

considering he has not shown good faith in work so far. Barnes represented people and complaints against him not truthful. I am against this extension.

ROBERT SINCLAIR.

Mr. HALLOCK. Those were all January 27, 1925, I understand.
Mr. DE NEFFE. Yes; January 27, 1925.

The CHAIRMAN. You may proceed.

Mr. .DE NEFFE. Mr. Barnes, before this timber was offered for sale did you represent the people out there in this matter?

Mr. BARNES. I came here with petitions in 1922 representing the people of both counties, Harney and Grant.

Mr. DE NEFFE. About how many people signed that petition?

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Mr. BARNES. Oh, I do not remember. They sent the petition out and it was sent all over the country, here and there, and I don't remember just how many names were on it.

Mr. DE NEFFE. Mr. MCGOWAN, you, probably have that petition in your record?

Mr. MCGOWAN. No doubt we have.

Mr. DE NEFFE. Will you try to find it before this session is over and present it here for the benefit of the committee?

Mr. MCGOWAN. I will try to do that. Here it is.

Mr. HALLOCK. This was before the contract was signed?

Mr. DE NEFFE. Yes; but I want the members of the subcommittee to follow Mr. Barnes's connection from the beginning.

Mr. HALLOCK. All right.

Mr. DE NEFFE. Mr. Barnes, did you represent the people in bringing this petition to Washington?

Mr. BARNES. Yes, sir.

Mr. DE NEFFE. And that was about what time?

Mr. BARNES. Well, I think it was in January, 1922. Let me see— no; it was in 1921.

Mr. DE NEFFE. When was the timber first advertised?

Mr. BARNES. The timber was advertised the first time on the 15th of August, 1923, and it was in January, 1923, that I brought this petition here.

Mr. MCGOWAN. Mr. De Neffe, I have the petition here which seems to be dated February 2, 1922.

Mr. BARNES. I had forgotten that.

Mr. DE NEFFE. I just wanted to firm the date. There is no objection to offering that in evidence, I take it?

The CHAIRMAN. No.

(The petition referred to, dated February 2, 1922, and addressed to the Honorable the Secretary of Agriculture,

is here made a pact of the record, as follows:)

FEBRUARY 2, 1922.

THE SECRETARY OF AGRICULTURE:

Through laws relating to the national forest reserves Congress has vested in you the control, in a large measure, of the development of Harvey and Grant Counties in Oregon. The undersigned residents of those counties, believing that such power carries with it an equal responsibility which must be discharged wisely and diligently if the forest reserve system is not to become an unbearable burden upon such communities, desire your assistance in the solution of problems confronting them.

In Harvey County the forest reserves include about 476,760 acres of land, as against 52,660 of privately owned timberland scattered through and inextricably mixed with the forest reserve timber, while the farm lands now in cultivation amount to 100,000 acres. In the south end of Grant County the acreage in forest reserves is about 678,260 acres, while the privately owned timberlands in the same district, all scattered through the forest reserves, amount to 106,160 acres. The farm lands in the south end of Grant County amount to about 8,500 acres. The forest reserve timber in Harvey County and the south end of Grant County, if appraised conservatively on the basis of present conditions, is worth not less than $17,325,300, and if privately owned would yield an annual revenue in taxes to the two counties of $227,711, while the present taxable property in Harvey County and the south end of Grant County, according to the last assessment roll, amounts to $12,247,562.

The only railroad touching Harvey County ends at Crane, 28½ miles from Burns. It is not in any sense adequate as an inlet for supplies or as an outlet for products. It leaves most of Harvey County in an isolation from markets, which cripples every industry except the raising of livestock. Great areas

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capable of settlement and cultivation are unoccupied because there is no means of moving to market the crops which they are capable of producing.

The owners of property in Harney Valley have formed an irrigation district, authorized bonds to the amount of $2,200,000, and propose to construct a storage and irrigation system which will result in the reclamation of about 83,000 acres of land now unproductive, or only partially developed. The cost of this project will be at least 25 per cent greater than it should be by reason of the present difficulties of transportation, and after completion, settlement and development of the land will be delayed and hindered because markets will not be accessible.

The history of the Pacific Northwest shows that its timber resources have invited and justified the building of railroad lines before other industries would afford the requisite traffic. Logging camps and lumber mills supply such heavy tonnage, both locally and for the long haul oil main lines, that they warrant the building of railroads ahead of other development. It is not too much to add that without such tonnage being available this community can not hope for a railroad for years to come. Logging and milling activities which follow the building of railroads serve as the basis for the rapid development of agriculture and other industries and the building up of communities.

A notable example is the central Oregon region served by the lines along the Deschutes River. We have no doubt but that if all the timber resources of this community had been privately owned, we would have had a railroad in here 10 years ago and would now be a thriving community with diversified products and industries.

In the northern part of Harney County and the southern part of Grant County there is about 10,000,000,000 feet of marketable timber in forest reserves. A large part of this timber is mature and is declining in quality and value, both from age and from the attacks of insects. The private holdings intermingled with it are so small in the individual tracts and so scattered that they do not warrant a heavy railway investment. No railway can be or will be built to that timber until the way is opened by sale at a fair price of a reasonable amount of the forest reserve holdings, with provisions for exchange which will permit the blocking up of privately owned tracts in feasible operating units.

This condition is presented and urged upon your attention, because an opportunity is now offered which, if accepted promptly, will result in the immediate building of a railroad from Crane to the upper end of Bear Valley via Burns, thus furnishing a main line for the opening up of all forest reserve lands hereinabove described, with resultant large sawmills and pay rolls at Burns. This line would pass through the heart of the agricultural district and afford an outlet for its products. A total construction of about 100 miles of railroad would be involved. The necessary capital is available. and the people of the community will be sorely disappointed if this opportunity, should be permitted to get away. Two conditions are imposed by the people who are to supply the money. The first is that 800,000,000 feet of forest reserve timber in the vicinity of Bear Valley, Grant County, which will be accessible to such a road, be offered for sale. Proper assurance will be offered that if such timber can be purchased at a price of $1.50 per thousand

the road will be built promptly. The second condition is that the Way be opened, under conditions which will safeguard all interests for exchanges which will consolidate private holdings.

Recognizing that the persons who make this offer can not limit the price to be bid, it is suggested that an upset or minimum price of $1.50 per thousand be named and coupled with the condition that the purchaser build a railroad such as is herein above described.

This proposal has been presented to your department both in Washington and at Portland, but no decision has been announced, and apparently no action has been taken. It seems impossible to get beyond the stage of discussion of administrative details and difficulties. In the meantime this region remains without a railroad, and the opportunity to obtain one is slipping away.

We are, of course, indifferent as to who purchases this timber and builds this railroad—whether the people who have made the offer or some one else—but we do want this timber offered for sale at once on the basis outlined and know that if done it will result in the development of our country.

We submit, most respectfully, that the Government of the United States ought not to assume the role of an absentee landlord. It ought to have due regard for the welfare of the communities dependent for their development upon the resources which it has taken permanently into its hands. It ought not to ref use to sell timber at its present value, in view of existing transportation

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conditions, when such sale is of vital importance to the people of this Community who, after all, are under the law, partners with the Federal Government, to the extent of 25 per cent of any sum for which this timber may be sold. The true spirit of the laws which committed such vast forest resources to permanent Federal control demands that the Government be a party to and assist in the opening up and development of such resources. Not only is it the duty of the Government, it is good business, for when a railroad and lumbering concerns are induced to enter the field, the remaining timber in the reserves is greatly enhanced in value and afforded an immediate market. We therefore respectfully ask that our situation have prompt and serious consideration and that immediate action be taken in order that out long deferred hopes of transportation and development may be realized.

Mr. E. W. Barnes, our accredited representative, will present this petition to you and will cheerfully furnish you any additional information which you may desire and which will expedite action hereon to the end that he may return to us with your assurance that our petition has been granted.

A. C. WELCOME,
Vice President First National Bank, Burns, Oreg.

Hundreds and hundreds of other names.

Mr. MCGOWAN. Might I suggest, if you do not think me presumptuous, when you come to these calls about putting the timber up, for sale, at $1.50 par thousand feet, would you mind calling that to Mr. Barnes's attention?

Mr. DE NEFFE. I had no intention of reading this petition at this time, but just wanted to fix the date, to see that it is the right people.

Senator Walsh Of Montana. Will you state for the benefit of the subcommittee what the petition is?

Mr. DE NEFFE. I have never read it.

Senator WALSH of Montana. Perhaps Mr. McGowan can tell us.

Mr. MCGOWAN. It was a petition that Mr. Barnes brought to the Secretary of Agriculture in connection with the putting on of a sale of this body of timber that is involved in the Herrick contract: Mr. Barnes desired that the timber be opened up, and in connection with this petition he stated that he thought it should be put on the market at $1.50 per thousand.

Mr. BARNES. That was the minimum.

Mr. MCGOWAN. Yes; that was the minimum.

Mr. BARNES. And to bid as high as they liked.

Mr. DE NEFFE. Whom did you see when you came to Washington, to meet anyone here?

Mr. BARNES. I met with the Oregon delegation.

Mr. DE NEFFE. And then afterwards did you see Colonel Greeley?

Mr. BARNES. Yes; I met with the Oregon delegation one day, and the next day we met with Colonel Greeley.

Mr. DE NEFFE. Than as a result of your conference here, was the timber advertised for sale?

Mr. BARNES. Yes; Colonel Greeley promised to put his cruisers in the field the 1st of March of that coming spring, which he did.

Mr. DE NEFFE. Then it was advertised for what period first—for how long a time?

Mr. BARNES. Six months.

Mr. DE NEFFE. Beginning what date?

Mr. BARNES. August 15, 1922.

Mr. DE NEFFE. The six months would be up February 15, 1923, would it?

Mr. BARNES. Yes.

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Mr. DE NEFFE. What was the minimum price fixed in the advertisement at which bids would be received?

Mr. BARNES. $2.75 per thousand.
Mr. DE NEFFE. After the six months were up, were any bids received?

Mr. BARNES. No.

Mr. DE NEFFE. What happened next?

Mr. BARNES. Well, I was in Chicago at the time that no bids were received, and I got a wire from Portland saying there were no bids.

Mi. DE NEFFE. Just before you go any farther on that let me ask: Did Colonel Greeley make any statement at the time that you had a meeting in Portland, when a minimum price was discussed?

Mr. BARNES. After the cruisers went into the field and cruised I found out in the Portland office that the timber was appraised at $3 a thousand. The people sent me back to Washington —in fact, George Cecil, who was the district forester at that time, told me that if I wanted anything done I better go to Washington. So I went back and told the people that, and they sent me back to Washington, and I got in here on the 1st of July.

Mr. DE NEFFE. What I was going to ask you was: Before the timber was advertised for the six months did Colonel Greeley make any statement as to what would be done if no bids were received?

Mr. BARNES. Well, he did not up to that time.

Mr. DE NEFFE. Did he ever make any statement before the six months were up?

Mr. BARNES. I will get to that in a moment.

Mr. DE NEFFE. All right; go ahead.

Mr. BARNES. I came to Washington, and Colonel Greeley was in Montana as near as I can now remember. I took it up with the delegation in Congress, and Senator McNary met with Secretary Wallace and me here one day about it, and then Congressman Sinnott went down there with me one day, but Secretary Wallace could not do

anything, and he said he would wire Colonel Greeley to meet me in Portland on the 26th of July.

Mr. DE NEFFE. What year was that?

Mr. BARNES. 1922.

M r. DE NEFFE. And after the six months expired and no bids had been received, what was done next?

Mr. BARNES. Well, I meet with Colonel Greeley on the 26th of July, according to the request of Secretary Wallace. He told me to meet with him there. There was a delegation that met with them there, and there were about 15 of us. Governor Alcott was with us, and President Dodson of the Portland Chamber of Commerce, and seven or eight members of the Portland chamber were there, and a couple of men from Burns, one man named Farre and Mr. Geer. And we met with Colonel Greeley and talked the thing over. He said that he had made up his mind to advertise the timber, and to cut the appraised price a quarter, and to advertise it at $2.75 a thousand.

Mr. DE NEFFE. And that in case no bids were received what was to be done?

Mr. BARNES. I told him that he would not get any bids at a price of $2.75 a thousand, and the party have to build 80 miles of railroad and a sawmill in order to manufacture the timber. I told him that it would cost about $3,000,000 to do all this, and that he would not

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get any bids for timber at that distance, at a price of $2.75 a thousand. He made me the proposition that if he did not get any bids—well, he says, "If we get no bids at the end of six months you bring in the best offer you can get and I will advertise it for 30 days."

Mr. DE NEFFE. When the six months were up what happened next?

Mr. BARNES. At the time the six months were up I was in Chicago. I got a wire from Portland, that there were no bids on the timber. I had some business in Chicago, and had just about got through, and I went up to Stillwater, Minn., to visit my folks on the way home to
Portland. When I got there, if I remember rightly, there was a telegram there from Mr. Ames.

Mr. DE NEFFE. Who is Mr. Ames?

Mr. BARNES. Mr. Ames of the Portland forest office.

Mr. DE NEFFE. Did he have anything to do with selling this timber?

Mr. BARNES. Yes.

Mr. DE NEFFE, All right, go ahead with your statement.

Mr. BARNES. There was a telegram there, or if I remember rightly that is where I got the telegram, asking if I knew of anybody who was interested. That I think was on the 17th of February, 1923. I got on the street car and went over to Minneapolis, and went to Dr. Brooks's office.

Senator WALSH of Montana. Let him explain who Doctor Brooks was.

Mr. DE NEFFE. Just tell the subcommittee who Doctor Brooks represented.

Mr. BARNES. That was Doctor Brooks, of the Brooks-Scanlon Lumber Co.

Mr. DE NEFFE. All right. What was said or done there?

Mr. BARNES. I went in there and asked him, I says, "Doctor Brooks, you people have looked that timber over, and some other people have looked at it too, but I get word that there are no bids." And then I says, "Doctor, supposing I owned that bunch of timber myself, what could you pay me for it?" Then he says, "Well Barnes, what is the use of talking about that, for you don't own it." "Well," I says, "I know I don't own it, but I would like for you to make an offer to me on it. Just take it for granted that I do own it." "Well," he says, "I don't know what use there

would be to do that." Well, I says, "you just make me an offer and I will tell you why." He went out into the other office and talked to his brother, or at least I think it was his brother he talked to, for Joe Scanlon was in the South. But, anyhow, he came back and said, "Barnes, I don't know what you are driving at, but we could pay $2 for that timber and build that road and operate it." I said, "Will you write a letter to Colonel Greeley at Washington making him that offer?" He says, "What good will that do?" Then I told him the proposition as it was, as Colonel Greeley had told me it was, and Doctor Brooks says, "Well, what good will it do if he did say that?" And I says, "If you will write that letter, I will go to Washington and get it readvertised, and he will do just as he told me he would." He said he would, and he did write a letter that afternoon, and he gave me a copy of the letter. So I went on to Washington.

Mr. DE NEFFE. And that letter contained what as you remember it?

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Mr. BARNES. That letter contained an offer to the forest department of $2 per thousand for the timber in this unit.

Mr. DE NEFFE, All right. Then what was done next? Was the timber readvertised?

Mr. BARNES. Well, I came to Washington with the letter, and Colonel Greeley said he would have to take it up with the Portland office, and he did, by wire, I guess. Anyhow, the next morning I got word from Congressman Sinnott to come up to his office, and when I got there there[4] was a telegram for me. And there was one to Congressman Sinnott too. It was from the people at Burns saying the Portland office wires it was asking us to eliminate the common carrier clause as to the railroad, and says wire quick. That was the message to me, and pretty nearly, I guess, the same thing to Congressman Sinnott.

Well, they wanted to know what to do. I wired back to the Burns people telling them to insist on the common carrier clause, and to demand that the timber be advertised according to the offer that I had brought in; that we had to keep the faith with the Grant County citizens.

Mr. DE NEFFE. Was the timber advertised again?

Mr. BARNES. Yes, after two weeks.

Mr. DE NEFFE. For how long a period?

Mr. BARNES. For 30 days.

Mr. DE NEFFE. Were you present when the bids were opened in Portland?

Mr. BARNES. Yes.

Mr. DE NEFFE. What was the date?

Mr. BARNES. I think it was the 7th of April.

Mr. DE NEFFE. Then April 6 was the last day on which bids could be received, is that right?

Mr. BARNES. Yes.

Mr. DE NEFFE. About what time were you there? It was in the office of the Forest Service there, was it not?

Mr. BARNES. Yes; it was in Mr. Ames's office.

Mr. DE NEFFE. About what time were you there?

Mr. BARNES. Well, I think I got in there about 9:30 that morning.

[4]Use of "double words" is prevalent throughout the document. This way of speaking is usually not suitable for printed works but since this is a transcript no attempt is made to make corrections.

Mr. DE NEFFE. Who was with you?

Mr. BARNES. Mr. McGowan.

Mr. DE NEFFE. Did anybody else come in while you were there and before the bids were opened?

Mr. BARNES. Yes.

Mr. MCGOWAN. Will you pardon me, Mr. Barnes; but in order that the record may be clear, was that Mr. Archie McGowan?

Mr. BARNES. Yes; it was Archie McGowan.

Mr. MCGOWAN. It did not chance to be me, of course?

Mr. BARNES. No.

Senator WALSH of Montana. Suppose you just have the witness explain who he was.

Mr. DE NEFFE. Where does Mr. Archie McGowan live?

Mr. BARNES. At Burns.

Mr. DE NEFFE. How long has he lived there?

Mr. BARNES. Well, I guess he was born there, and am pretty sure of it. His father established the town, and I guess Archie McGowan was born there.

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Mr. DE NEFFE. Did anybody else come in before the bids were opened?

Mr. BARNES. Yes.

Mr. DE NEFFE. Who was it?

Mr. BARNES. We had just got in and the door opened a little piece, about that far [indicating something like a foot] and a gentleman shoved his head in, and Mr. Ames got up and went out and met this fellow and was out, I would say, about 7 or 8 or 10 minutes.

Mr. DE NEFFE. In the hall?

Mr. BARNES. Outside the door, I do not know whether in the hall or not, but outside that door. So, then, they both came in, and he introduced Mr. Flood to me.

Mr. HALLOCK. That is the gentleman sitting in the end of the room there dressed in a brown suit is it?

Mr. BARNES. Yes; over here [indicating].

Mr. DE NEFFE. All right; you may continue.

Mr. BARNES. He introduced Mr. Flood to me and to Archie McGowan. He looked at the clock and says "It isn't quite 10 o'clock but I guess we might as well open these bids."

Mr. DE NEFFE. That was Mr. Ames?

Mr. BARNES. Yes; and he opened the bids.

Mr. DE NEFFE. How many bids were received.[5]

[5]In numerous instances either the reporter or the printer places incorrect punctuation at the end of sentences. Those

Mr. BARNES. Two.

Mr. DE NEFFE. And whose were they?

Mr. BARNES. The Brooks-Scanlon Lumber Co. and Fred Herrick.

Mr. DE NEFFE. What were the amounts bid?

Mr. BARNES. The Brooks-Scanlon Lumber Co. bid was $2 a thousand feet and the Herrick bid was $2.80 a thousand.

Mr. DE NEFFE. Were there any certified checks accompanying the bids?

Mr. BARNES. I did not see any checks at all. There were no checks with the bids that I could see; not right there, anyhow.

Mr. DE NEFFE. What was said then by anybody present there?

Mr. BARNES. There wasn't anything said much, only Mr. Flood said—well, we talked, and I forget just what we did say, but Mr. Flood asked me if he could meet me that afternoon.

Mr. DE NEFFE. Where does Mr. Flood live?

Mr. BARNES. At Spokane; but I had never seen Mr. Flood until that morning.

Mr. DE NEFFE. What is his business?

Mr. BARNES. He is a banker.

Mr. DE NEFFE. After the bids were opened did you learn anything about Fred Herrick's financial condition?

Senator WALSH of Montana. Suppose you ask the witness whether he did meet Mr. Flood that day.

Mr. DE NEFFE. I have that memorandum here and intended to ask it later on.

Senator WALSH of Montana. All right; never mind now, then.

Mr. DE NEFFE. I will ask the reporter to read the last foregoing question to you.

(Whereupon the reporter read the question, as follows:)

Mr. DE NEFFE. After the bids were opened did you learn anything about Fred Herrick's financial condition.

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Mr. BARNES. Yes. Mr. Archie McGowan and myself went uptown, and we went to Mr. Gray's office in Portland, and I had never heard tell of Mr. Herrick, and he went over to the bank in Portland, Mr. Gray did, and had them wire to the bank in Spokane in regard to Mr. Herrick's finances, and what they knew about it.

Mr. DE NEFFE. And did that bank wire back anything?

Mr. BARNES. About an hour afterwards they, got a wire back, yes.

Mr. HALLOCK. Pardon me, and I do not want to object, and am not going to, but it seems to me, Mr. Chairman, that these document that have been referred to should be the best evidence of their contents. There is a good deal of hearsay testimony going in, and while I do not know what the procedure of the subcommittee is, and do not want to complain, yet I wish to direct attention to that at this time, as it takes us somewhat at a disadvantage.

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errors have been preserved (because it was easier than changing them).

Mr. BARNES. Where have I put in any hearsay evidence?

Mr. DE NEFFE. Do you refer to the communications from bank to bank?
Mr. HALLOCK. Yes, and pretty generally the conversations that have been related here between the witness and other persons.

Mr. DE NEFFE. Have you the telegram, Mr. Barnes, from the Portland bank?

Mr. BARNES. No.

Mr. DE NEFFE. Where is it?

Mr. BARNES. I wanted to subpoena the man, but the chairman of the subcommittee said he did not have enough money to subpoena him.

Mr. DE NEFFE. Has Mr. Gray the telegram?

Mr. BARNES. Yes.

The CHAIRMAN. If there is no objection on the part of the subcommittee the witness may proceed.

Mr. DE NEFFE. Do you remember what the purport of that telegram was?

Mr. BARNES. Well, it was to the effect that any dealings you may have with Mr. Herrick they had better be in black and white, as near as I can remember it now. I can not say all that was in the telegram.

Senator WALSH of Montana. Mr. Chairman, it seems to me that that is a part of the files of the bank, and that a letter addressed to the bank would actually produce the telegram or a copy of it. I think we had not better rely on the recollections of this witness as to the contents of that message and the reply thereto.

Mr. DE NEFFE. Yes; I would rather have the telegram here, and it was for that purpose that we asked that Mr. Gray be subpoenaed.

Senator WALSH of Montana. It is not necessary to subpoena him. He can send it by mail.
Senator MEANS. The chairman can wire to him, and I feel sure he will send it.

The CHAIRMAN. We will send a telegram asking for it.

Mr. DE NEFFE. Anyway, Mr. Barnes, did the telegram satisfy you that Mr. Herrick's condition financially was good or bad?

Mr. BARNES. Well, it did not satisfy me or the bank that got it.

Mr. DE NEFFE. How about Mr. MCGOWAN—did he learn about the contents of it?

Mr. BARNES. Yes; he was there.

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Mr. DE NEFFE. Did you see Mr. Ames after you secured this information?

Mr. BARNES. We went right down to the forest office, after we got this word. It was about an hour or an hour and a quarter that we were gone, and when we got word back we went down to the forest office. I went in, and Mr. McGowan was with me. I said to Mr. Ames, not to award to Mr. Herrick this contract for the timber until he looked up his financial affairs, that I had some stuff that was not very good, that I had just got word it was not very good, and for him to look it up. He turned right around and said that Herrick had plenty of money to do this job, and to complete it on time. He says "Don't worry about Herrick, Barnes." I told him then that we did not want anybody in there except who would complete it, and that that was the reason we had asked for the timber to be put on the market, in order to open up the country.

Mr. DE NEFFE. And you did not want it tied up?

Mr. BARNES. No; we did not care who had it only we wanted responsible people in there.

Mr. DE NEFFE. When the timber was advertised the second time, for the 30-day period, was the same prospectus used by the Forest Service as when it was advertised the first time?

Mr. BARNES. Yes. They did not have any other one, just the same thing.

Mr. DE NEFFE. Mr. MCGOWAN, have you a copy of that prospectus?

Mr. MCGOWAN. I think so.

Mr. DE NEFFE. I should like to get a copy and put it in the record if I can.

Mr. MCGOWAN. We will supply a copy to the shorthand reporter.

(The copy entitled "Sale Prospectus, 890,000,000 board feet, national forest timber, 87 per cent western yellow pine, Bear Valley Unit, Malheur National Forest, Oreg." as furnished to the reporter, was identified by him by being marked "Exhibit No. 8," and is made a part of the record, as follows:)

EXHIBIT No. 8

SALE PROSPECTUS-890,000,000 BOARD FEET NATIONAL FOREST TIMBER

INTRODUCTION

It is the policy of the Forest Service to make the timber resources of the national forests available for use and to have the sale of the timber aid in the development of the neighboring agricultural territory. In accordance with these policies the service is now offering the opportunity to open up one of the finest large compact bodies of yellow-pine timber in the West. It offers a 20-year contract covering a body of timber estimated to cut 800,000,000 board feet, and further announces its intention to handle the remaining timber resource of the region so that there will be opportunity to continue the business indefinitely, through subsequent sales of national forest stumpage. The establishing of this lumber manufacturing business, based on the contract now offered, will bring much-needed railroad transportation into a region of large possibilities for agricultural development.

The project is an unusual opportunity for establishing a new permanent unit of pine-lumber production, to meet the demand caused by the rapid exhaustion of the pine timber in the Lake States and the South.

The pine timber on the south side of the Blue Mountain region, in east-central Oregon, has never been operated except in insignificant amounts for local use. Railroad development has stopped just short of the point where it would tap the timber and just short of opening up fertile irrigable valleys which offer

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promise of a large permanent traffic based on agriculture. Harney Valley, along the lower reaches of the Silvies River and north of Malheur and Harney Lakes, is a large area of nearly level, tillable land now awaiting railroad extension and the completion of an irrigation system for which bonds have been voted. A large-scale lumbering operation, based on the national forest timber to the north of the valley, will necessarily involve the construction of a railroad 30 miles in length traversing this valley. The time is ripe to bring about this development and to begin the use of the timber. Seldom, if ever again, will such a business opportunity in national forest virgin pine timber be offered. The initial outlay for fixed investments will be large, but the business risk is minimized by the unusual features of the case.

General information covering the specific tract offered for sale, the proposed operation, and other pertinent factors are as follows:

AREA, LOCATION, AND ACCESSIBILITY

The tract comprises an area of about 67,400 acres lying at the headwaters of the Silvies River, in a broad basin known as Bear Valley, within the Malheur National Forest, Oreg. It is almost entirely between 4,500 and 6,000 feet above sea level.

From the standpoint of its natural and most feasible outlet the tract lies 50 miles north of the town of Burns and about 80 miles from Crane, the present terminus of a branch of the Union Pacific (Oregon Short Line Railroad). Crane is 127 miles from Ontario, Oreg., the junction point with the main artery of the Union Pacific System to Portland. Ontario is 434 miles by rail from Portland and 316 miles from Ogden, Utah. Burns, with a population of about 1,200, is the county seat and largest town in Harney County. Detailed information in regard to Harney Valley and surrounding territory is given in a later section of this prospectus.

DESCRIPTION OF TIMBER

The total stand of national forest timber offered for sale is estimated as follows:

	Million feet board measure	Per cent
Western yellow pine	770,000	87
Douglas fir	78,000	9
Western larch	30,000	3
White fir	10,000	1
Lodgepole pine	2,000	
	890,000	100

Average stand per acre, pine, 11,400 board feet, all species, 13,260 board feet.

The cutting of other species than yellow pine will be optional with the purchaser.

The western yellow pine is sound, largely mature, and of good quality, comparing very favorably with the better class of timber of this species now being cut by the mills of eastern Oregon. The trees will average about, 4½ sixteen-foot logs in merchantable length, and will run about 5 logs per thousand feet log scale. It is estimated that the pine will yield between 25 and 30 per cent of shop and better lumber, and over 20 per cent of No. 2 common.

The timber of other species is of smaller size than yellow pine, and comparable in quality to the fir and larch being cut by the mills of eastern Oregon.

On account of the small size of the trees and the occurrence of numerous knots, but very little high-grade lumber can be secured from these species. The timber is most suitable for dimension stock, small timbers, ties, and inch lumber for ordinary building purposes.

ADDITIONAL GOVERNMENT TIMBER

The entire timbered area tributary to Burns, as shown on the accompanying map, is estimated to have a stand of 6,725,000 feet b. m. Of this the proposed railroad development north of Burns will tap a total of about 4,000,000,000 feet.

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The other units are very similar to the proposed sale unit in percentage of pine, stand per acre, quality, and togging conditions. Only short taplines from 3 to 10 miles long will be necessary to reach these units from the proposed trunk line. The Emigrant-Silver Creek watersheds with an estimated stand of 2,700,000,000 feet will require a separate tap line from Burns.

MANAGEMENT PLAN

It is the intention of the Forest Service to place the timber naturally tributary to Burns under a plan of management with the purpose of maintaining a continuous production and thereby prolonging indefinitely the life of the lumber industry in this region. It is tentatively estimated that this working circle, with its estimated stand of 6,725,000,000 feet b. m., can be managed to produce a continuous yield of approximately 68,000,000 feet annually. The stabilizing effect which this policy will have upon the industries of the community can readily be appreciated.

ADJACENT PRIVATE TIMBER

Lying within the boundaries or adjacent to the proposed sale area there is approximately 210,000,000 feet of privately owned umber, making a total operating unit of 1,100,000,000 feet. It is understood that this private timber can be purchased at a reasonable price.

LAND EXCHANGES

Recently enacted Federal laws authorize the exchange, when in the public interest, of privately owned lands within the exterior boundaries of the national forests for equal values of Government land within the forests or of national forest timber. Exchanges under these laws will not be made when offered land is susceptible of agricultural development or is best suited for development by private enterprise. To be acceptable, offered lands must be chiefly valuable for forest production or watershed protection. Each offer to exchange private land for Government land or for government timber is considered on its merits. The contract for this timber sale provides for the exclusion of timber, by mutual consent, for use in effecting exchange.

NECESSARY RAILROAD DEVELOPMENT

The railroad development necessary in conjunction with the proposed lumbering operation is as follows:

1. A 30-mile extension from the Oregon Short Line at Crane to the mill site at Burns. Due to the unusually favorable topography and grading conditions, this line can be built at a very low cost. The estimated cost of grading, drainage, laying steel and ties, ballasting, engineering, and ties is placed at $7,460 per mile, or a total of $223,800. The right of way can be secured at a low cost. The maximum gradient on this line would be about three-tenths of 1 per cent.

In view of the large amount of tonnage from the local timber and agricultural resources that this railroad extension will reach, it will have an indefinite life as a common carrier. Considering the low cost of construction, maintenance, and operation, and the fact that the present road into Crane carries but little tonnage, the extension would obviously be a desirable undertaking for the Union Pacific system.

2. A 50-mile tap line from Burns to Seneca. The character of the route for this tap line will permit of the construction of a high-class road at a low cost per mile. The greater portion of the line would have less than a 1 per cent adverse grade for empty log cars. The heaviest grades would consist of about 6 miles of 1½ per cent grade against loaded cars of logs and about 3 miles with a 2 per cent grade against empty cars.

This line taps at least 4,000,000,000 feet of merchantable timber. The complete cost of this line, exclusive of steel and fastenings, is estimated at $13,260 per mile. The contract requires that it be a common carrier, and considerable traffic other than logs should be secured.

3. Short main-line branches from 5 to 10 miles in length, leading from Seneca to timber. Conditions

are ideal for cheap construction operation, and maintenance of practically all branch lines and spurs used in the logging operations.

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LOGGING CONDITIONS AND LOGGING METHODS

One of the most striking features to be considered in viewing the proposition from an operating standpoint is the easy logging conditions prevalent over practically all of the tract. Gentle topography predominates over all but very small portions of the area, underbrush is light, the ground surface is smooth and free from and numerous streams with easy gradients to within short distances of the main divides make both railroading and skidding a comparatively simple problem. It is considered that the most feasible plan for logging this tract would involve the construction of numerous spurs and skidding with horses and tongs, horses and drag sleds, and caterpillar tractors. On the greater portion of the private lands high wheels can be used most profitably.

The logging season will vary from 8 to 10 months, depending upon the character of the winter season. It is believed that the snow conditions of winter will make sleigh and drag-sled operations practicable.

MANUFACTURING

Burns is considered to be the most logical place for the manufacturing plant. This town is the largest local settlement, is built on a very good site, has a more moderate climate than the higher valleys of the Silvies River, and has in addition many advantages favoring its selection as a permanent manufacturing center. Stands of approximately 7,000,000,000 feet b. m. of saw timber are tributary to this location. An excellent mill site is available on the Silvies River, about 1½ miles north of the town. Climatic conditions will permit operating a sawmill practically every month in the year.

INVESTMENTS

Logging.—For the first year's operations, the estimated initial outlay in railroad, railroad and logging equipment, and improvements, but exclusive of the line from Crane to Burns, is as follows:

1. Railroad from Burns to Seneca, complete		$980,000
2. Main line from Seneca to timber, 11 miles, complete		100,000
3. Railroad spurs under rails		45,000
		1,125,000
Equipment :		
1. Railroad steel and fastenings	$46,000	
2. Locomotives	97,000	
3. Cars	120,000	
4. Loaders	20,000	
5. Camps	37,500	
6. Horses	15,000	
7. Caterpillar tractors	35,000	
8. Miscellaneous equipment	40,000	
		410,500
Grand total		1,535,500

Manufacturing.—For the manufacturing plant it is considered that the modern type of band mill with

two head rigs and one or more resaws would be most efficient for the class of timber involved. It is estimated that such a plant operating on a double shift basis would give a total yearly cut of 60,000,000 feet of lumber.

The planing mill should have a capacity of at least 90 per cent of the cut of the rough mill.

A box factory is recognized as an essential adjunct to an operation in western yellow pine. This species is an excellent box material, the finished product ranking very high for many kinds of containers. Considering the percentage of lumber from this timber which will go into No. 3 common and poorer, the box factory should have a capacity of from 25 to 40 per cent of the cut of the main mill.

Yard space and climatic conditions are excellent for air-seasoning lumber. However, a battery of dry kilns is considered an essential investment.

The cost of the sawmill, exclusive of box factory and dwellings, is placed at $525,000. With the downward tendency of equipment prices it is probable that both the mill and logging investments will be actually made at lower figures.

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PRODUCTION COSTS

Logging.—On the basis of present wage scales and supply costs, and assuming the railroad from Burns to Seneca as a part of the logging plant, the total cost of delivering logs to Burns, including depreciation (and exclusive of stumpage) is placed at $10 per thousand feet lumber tally.

Manufacturing shipping, and selling.—The estimated cost of manufacturing, shipping, and selling is $10 per thousand feet lumber tally.

The above costs are for operating pine only. Should a considerable portion of the fir and larch be cut, the costs would be perceptibly lowered.

MARKET

The major portion of the finished product will go into the general market cast of the Rocky Mountains, common to the mills of eastern Oregon, via the Union Pacific gateway. Under a normal demand, this additional cut in the region would be readily absorbed in the above markets.

A good local market may be considered as assured with the agricultural development in Harney Valley which will take place upon the introduction of transportation and irrigation. This market, particularly during the first few years after the railroad extension is made, will absorb considerable quantities of fir and larch timbers, ties, and common boards.

FREIGHT RATES

It is believed that the terminal rate to territory east of Ogden, now applying to the eastern Oregon group of mills, can be secured for the Burns shipping point.

IMPORTANT FACTORS WHICH MAKE THIS PROPOSITION ATTRACTIVE

1. The purchaser of this unit will establish his operation in an undeveloped stand of pine timber greater than any to be found anywhere in the Northwest. Under Government management, the policy of sustained production assures the industry the opportunity to get practically a continuous supply of raw material.

2. The experience of the lumbering industry has shown that western yellow pine is a very desirable species from an operating viewpoint. It is an excellent wood to manufacture, and the finished products rank high in competition with other softwoods in the general market.

3. The pine timber in this sale is of very good duality and of desirable size to handle.

4. The cutting of other species than yellow pine will be optional with the purchaser.

5. The fire hazard in this type of timber is unusually low. The danger of loss of timber, with the consequent endangering of the investment in plant, common in other types is negligible.

6. The stumpage price is considered reasonable. The operator in national forest timber has no appreciable investment in stumpage and avoids the burden of carrying costs in interest and taxes.

7. The region opened up by the railroad offers rich opportunities for development of agricultural and other industries furnishing freight traffic.

GENERAL CONDITIONS OF SALE

The stumpage alone is offered for sale, the title to the land being retained by the Government. Following the period of advertisement, the timber will be awarded to the highest acceptable bidder showing sufficient financial ability to fulfill the terms of the contract. No bids will be considered for less than $2.75 per thousand feet for western yellow pine or 50 cents per thousand feet for other species removed at the

option of the purchaser. The right to reject any or all bids is reserved.

The initial contract price will apply until April 1, 1928, at which time, and at three-year intervals thereafter, the Forest Service has the option of readjusting the rates to conform with the general stumpage values and current prices being received for similar timber. Basic information for readjustments is carefully prepared by experienced valuation engineers thoroughly familiar with the lumbering business. Full consideration is given to the necessity of allowing the opera-

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tor a liberal margin for profit and risk. Timber will be paid for in advance installments of $25,000 to $50,000 each as cutting proceeds and on the basis of the Government log scale. The contract expires on November 30, 1945.

The purchaser is allowed until April 1, 1925, to begin actual logging operations on the unit. This gives time for preparatory construction and organizing the business. Cutting in the Government timber must begin not later than October 1, 1925.

The contract has been drawn up on the assumption that the privately owned timber in the logging unit will be cut as reached in building spurs into the Government timber. Most of it is so located that it should logically be cut during the next five years. The expectation is that the operator will cut annually from 20,000,000 to 56,000,000 feet of logs (33,000,000 to 62,000,000 feet of lumber), and the contract for the Government timber fixes limits on the rate of cutting by three-year periods on this basis.

The western yellow pine will be cut under a selection system, practically all mature trees being cut, and not to exceed 15 per cent by volume in trees 12 inches and over in diameter breast height being reserved.

Brush and debris will be piled and burned at the expense of the purchaser. This operation costs, in other sales in the region, from 25 to 35 cents per thousand feet of timber cut.

The contract stipulates that a common-carrier railroad must be built from main line connection to Seneca.

As a guaranty of faithful performance of the contract the purchaser is required to furnish a bond of $50,000.

For more detailed conditions of sale, see form of contract, pages 12 to 19.

REQUIREMENTS PRELIMINARY TO AWARD

Before the timber is awarded and the contract submitted to the successful applicant for execution, he will be required to file evidence of financial standing as follows:

"1. The purchaser will be required to show assets in hand of $850,000, estimated to be about 30 per cent of the initial investment in fixed and working capital as shown by the appraisal. Such assets must be clear of liabilities, which include bonds, mortgages, or notes, but not stock subscribed or paid in. Assets may be in the form of cash, improvements, equipment, or, in the case of corporations, subscribed stock, the last not to exceed one-half of the amount required for a satisfactory financial showing. Stock subscriptions must be by solvent subscribers satisfactory to the approving officer and in the amount specified, whether the stock be subscribed at par or not. Assets equivalent to subscribed stock may be accepted in the case of firms, partnerships, limited corporations, or personal or family arrangements. These may include written promises or agreements to furnish stated amounts of money for the enterprise from persons found to have ample resources to make them good. Not less than one-half of the amount required for a satisfactory financial showing should be available in cash, improvements, or equipment before the timber is awarded, and satisfactory guaranties from subscribers should be furnished that any balance in subscribed stock or promises to furnish capital, making up the 30 per cent, will be paid in not later than the beginning of the cutting period.

"2. Bond issues and other forms of indebtedness are thus restricted to a maximum of 70 per cent of the capital needed.

"3. In any case, not less than 20 per cent of the fixed and working capital required must be furnished in some form by responsible men who will be actively identified with the management of the company as directors or executive officers.

"4. The plan which will be followed in securing the remainder of the capital required, by sales of stock, bond issues, mortgages, etc., should also be set forth in the financial statement.

"5. In the case of new companies, or those of unknown standing, a written statement satisfactory to the approving officer of the completed organization of the company will also be required. It must he accompanied by certified copier of all documents and corporate records showing the steps taken in completing the organization."

Maps may be inspected and further information obtained at the office of the district forester, Forest

Service, Portland, Oreg., or the forest supervisor, John Day, Oreg.

Prospective purchasers desiring to examine the tract, should first visit either of the above offices. John Day is most readily reached via the Union Pacific

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Railway to Baker, Oreg., and thence by the Sumpter Valley Railway to Prairie City and John Day.

Since the practicability of logging operations in national forest timber may be questioned by those who have not had actual experience, it may be stated that the Forest Service has been selling stumpage for over 10 years under contracts embodying the essential features of the one offered in this case. Those interested are invited to make inquiry of the numerous purchasers who are now cutting national forest timber of the same type in eastern Oregon, California, Arizona, and other western States. The names and addresses of such operators can be obtained from the district forester.

The following form of advertisement is now appearing in numerous publications:

890,000,000 FEET NATIONAL FOREST TIMBER FOR SALE

The first unit of one of the largest undeveloped tracts of yellow pine in the United States.

Location and amount.—All the merchantable dead timber standing or down and all the live timber marked or designated for cutting on an area embracing about 67,400 acres in township 15 south, ranges 29, 30, and 31 east, township 16 south, ranges 29, 30, 31, and 32 east, and township 17 south, ranges 29, 30, and 31 east, Willamette meridian, Silvies River watershed, Malheur National Forest, Oreg., estimated to be 770,000,000 feet b. m., more or less, of western yellow pine and 120,000,000 feet b. m., more or less, of Douglas fir, western larch, white fir, lodgepole pine, and other species of timber. The cutting of other species them western yellow pine to be optional with the purchaser.

Stumpage prices.—Lowest rates considered, $2.75 per thousand for western yellow pine and $0.50 per thousand for other species. Rates to be readjusted April 1, 1928 and at three-year intervals thereafter.

Deposit.—Twenty-five thousand dollars must be deposited with each bid to be applied on the purchase price, refunded, or, retained in part as liquidated damages, according to conditions of sale.

Final date for bids.—Sealed bids will be received by the district forester, Portland, Oreg., up to and including February 15, 1923.

The right to reject any and all bids reserved.

Before bids are submitted full information concerning the character of the timber, conditions of sale, deposits, and the submission of bids should be obtained from the district forester, Portland, Oreg., or the forest supervisor, John Day, Oreg.

FORM OF CONTRACT

The form of contract the purchaser will be required to execute is as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE—FOREST SERVICE
TIMBER SALE AGREEMENT

Description of timber.— 1. _(I or we)___, _____a corporation organized and existing under the laws of the State of _____, hereby agree to purchase from an area of about 67,400 acres to be definitely designated on the ground by a forest officer prior to cutting, in township 15 south, ranges 29, 30, and 31 east; township 16 south, ranges 29, 30, 31, and 32 east; township 17 south, ranges 29, 30, and 31 east, western meridian, in the Silvies River watershed, as designated on the attached map, which is hereby made a part of this agreement, within the Malheur National Forest, at the rate or rates, and in strict conformity with all and singular the requirements and conditions hereinafter set forth, all the dead timber standing or down and all the live timber marked or designated for cutting by a forest officer, merchantable as hereinafter defined for saw logs. The estimated amount to be cut under the methods of marking described in section 5 is 770,000,000 feet b. m. of western yellow pine, live and dead saw timber, more or less, and an unestimated amount of saw timber of Douglas fir, western larch, white fir, lodgepole pine, and other species. The cutting of other species than western yellow pine shall be optional with the purchaser.

Payments.—2. (a) _(I or we) _ _ _ do hereby, in consideration of the sale of this timber to _(Me or us)_ _ _ _ _, promise to pay to the Portland Branch, Federal Reserve

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Bank at Portland, Oreg. (United States depository), or such other depository or officer as shall hereafter be

designated, to be placed to the credit of the United States, for the timber at the following rates:

For all timber cut prior to April 1, 1928, at the following rates:

$ _____ per thousand feet b. m. for western yellow pine.

$ _____ per thousand feet b. in. for all other species.

For all timber cut on or after April 1, 1928, and prior to April 1, 1931, at such rates as shall be designated by the forester within 30 days preceding April 1, 1928.

For all timber cut on or after April 1, 1931, and prior to April 1, 1934, at such rates as shall be designated by the forester within 30 days preceding April 1, 1931.

For all timber cut on or before April 1, 1934, and prior to April 1, 1937, at such rates as shall be designated by the forester within 30 days preceding April 1, 1934.

For all timber cut on or after April 1, 1937, and prior to April 1, 1940, at such rates as shall be designated by the forester within 30 days preceding April 1, 1937.

For all timber cut on or after April 1, 1940, and prior to April 1, 1943, at such rates as shall be designated by the forester within 30 days preceding April 1, 1940. And for all timber cut on or after April 1, 1943, at such rates as shall be designated by the forester within 30 days preceding that date.

(b) .The forester shall reappraise, and, within 30 days before each of the foregoing dates, designate the value of each species in consideration of current operating conditions and markets in the eastern Oregon region, including the operation of the purchaser, such reappraisals to include the timber on the entire tract, and to be based upon an equitable margin for profit and risk to the purchaser under the operating conditions prevailing throughout the region.

(c). If any material cut under this agreement and merchantable under its terms is manufactured or sold by the purchaser in other forms than saw logs, the forester may upon the next reappraisal date establish a special stumpage rate for each class of material so manufactured or sold during the succeeding period, which rate, in accordance with the ratio per thousand board feet currently used by the Forest Service, shall be not less than the initial stumpage price fixed herein and shall allow the purchaser an equitable margin for profit and risk under current selling prices and costs of production in the region defined above.

(d). It is further agreed that the Secretary of Agriculture will, upon written application from the purchaser showing good and sufficient reasons therefor and specifically the existence of a serious emergency arising from changes in market conditions since the last reappraisal, at his option, when action of either character is necessary to relieve the purchaser from hardship, either —

(1) Redetermine and establish the stumpage rates and designate a date when the rates as redetermined shall be effective, which date shall be within six months the date of application; or

(2) Grant an extension of time within which the respective amounts of timber specified in section 3 shall be removed, not to exceed the total period allowed fir cutting all the timber.

Any stumpage rates redetermined upon application to the Secretary shall be determined in accordance with the methods and under the terms above set forth and shall apply only during the remainder of the three-year period then current, when the rates shall be regularly designated after reappraisal.

(e) In no event, however, shall the stumpage rates for products from material whose utilization is required by this agreement as established upon any date above named, or upon application from the purchaser, be less than those specified herein to be paid for timber cut prior to April 1, 1928.

(f) It is further agreed that at the date of any reappraisal of stumpage prices the Forester may require such modifications in the sections numbered 5, 11, 13, 14, 15, 17, 19, 22, 23, 30, and 31 in this agreement as are necessary, in his judgment, to protect the interests of the United States. Such modifications shall be limited to requirements contained in the then current timber sale contracts in eastern Oregon and shall be practicable under the existing equipment and organization of the purchaser. Any additional operating costs entailed by such modifications, as ascertained by the Forester, shall be taken into consideration as factor in reappraisals.

(G) Payments shall be made in advance installments of not less than $25,000 and not more than $50,000 each when called for by the forest officer in charge, except just before the completion of the sale or a period when cutting operations are to be suspended for at least three months, when the amount of the payment shall be designated in writing by the Forest Supervisor, credit being given for the sums, if any, heretofore deposited with the said United States depository or wear inn connection with this sale.

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3. The cutting and removal of timber from the tract included in this agreement, or from the adjacent private lands within the same operating unit, shall begin not later than April 1, 1925: *Provided*, That the cutting and removal of timber under this agreement shall begin not later than October 1, 1925; and, unless an extension of time is granted, all timber shall be cut and removed and the requirements of this agreement satisfied on or before November 30, 1945.

Unless such amounts are changed in writing by the district forester, at least 60,000,000 feet b. m., and not more than 110,000,000 feet b. m., shall be cut prior to April 1, 1928; at least 120,000,000 feet b. m.,

and not more than 220,000,000 feet b. m., shall be cut prior to April 1, 1931; and not less than 100,000,000 feet b. m., and not more than 175,000,000 feet b. m., shall be cut during each three-year period thereafter until all the timber designated for cutting on the sale area is cut and removed, or until the agreement has expired.

4. The title to all timber included in this agreement shall remain in the United States until it has been paid for, and scaled, measured, or counted as herein provided.

Timber upon valid claims and all timber to which there exists valid claim under contract with the Forest Service is exempted from this sale.

5. Live timber shall be marked for cutting as follows: Not less than 85 per cent by volume of the total stand of merchantable live western yellow pine timber in trees 12 inches and over in diameter at a point 4½ feet above the ground on the areas designated for cutting by the forest officers shall be marked for cutting by blazing below stump height and by stamping "U. S." on the blaze, or by such other method as may be found to be most practicable by the forest officer in charge. Merchantable dead timber on such designated areas shall be cut whether, marked or not marked. Timber of other species than western yellow pine, to be cut at the option of the purchaser, shall be marked or designated for cutting in the manner considered most practicable by the forest officer in charge.

Any tree which in the judgment of the forest officer contains one or more logs merchantable as hereinafter defined, and having a net total sale of 25 per cent or more of the total volume of the tree, shall be considered merchantable under the terms of this agreement and may be marked or designated for cutting by the forest officer.

6. *Logging*.—As far as may be deemed necessary for the protection of national forest interests, the plan of logging operations on the respective portions of the sale area shall be approved by the forest officer in charge. When operations are begun on any natural logging area, the cutting on that area shall be fully completed to the satisfaction of the forest officer in charge before cutting may begin on other areas, unless such cutting is authorized in writing with the requirement that cutting shall be completed on the area left unfinished as soon as practicable. After decision in writing by the forest officer in charge that the purchaser has complied satisfactorily with the contract requirements as to specified areas, the purchaser shall not be required to do additional work on such areas.

7. Any method of logging other than by means of horses and caterpillar tractors may be employed only with the advance approval in writing of the forest officer approving this agreement and under such conditions and restrictions as he may require.

8. All and only marked or designated live trees shall be cut. No timber shall be cut until paid for, nor removed from the place or places agreed upon for scaling until scaled, measured, or counted by a forest officer.

9. No unnecessary damage shall be done to young growth or to trees left standing, and no trees will be left lodged in the process of felling. Unmarked or undesignated trees which are badly damaged in logging shall be cut if required by the forest officer in charge.

10. Unmarked or undesignated live trees which are cut, or injured through carelessness, and marked or designated trees left uncut, shall be paid for at double the current price for the class of material which they contain, fixed in accordance with the terms of this agreement.

Timber wasted in tops or stumps, marked or designated timber broken by careless felling, and any timber merchantable according to the terms of this agreement, which is out and not removed from any portion of the cutting area when operations on such portion are completed, or before this agreement expires or is otherwise terminated, shall be paid for at the current price for such material.

The amounts herein specified shall be regarded as liquidated damages and may be waived in tile discretion of the forest officer in charge in accidental or exceptional cases which involve small amounts of material. Any timber remain-

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ing on the sale area at the expiration or termination of this agreement, for which payment as herein specified has been made to the United States, may be removed within six months from such date of expiration.

11. All cutting shall be done with a saw when practicable; stumps shall be cut so as to cause the least practicable waste, and not higher than 18 inches on the side adjacent to the highest ground, except in unusual cases when, in the discretion of the forest officer in charge, this height is not considered practicable; all trees shall be utilized to as low a diameter in the tops as practicable and to a minimum diameter of 7 inches when merchantable in the judgment of the forest officer in charge. The log lengths shall be varied so as to secure the greatest possible utilization of merchantable material.

12. *Scaling and merchantability*.—Material shall be piled or skidded for scaling, measurement, or count if required by the forest officer in charge and in such manner as he shall direct.

Sawlogs shall be scaled by the Scribner Decimal C log rule, at the small end on the average diameter inside bark taken to the nearest inch.

Logging operations shall be so conducted as to permit scaling to be done economically, and timber or logs from private or State land shall not be mixed at the point of scaling with timber or logs from Government land.

On request, copies or abstracts of the scale reports will be furnished to the purchaser after they have been approved by the supervisor.

13. The maximum scaling length of sawlogs shall be 16 feet; greater lengths will be scaled as two or more logs. Upon all logs 4 inches shall be allowed for trimming. Logs overrunning the specified trimming allowance shall be scaled not to exceed the next foot in length.

14. All western yellow pine logs are merchantable under the terms of this agreement which are not less than 10 feet long, at least 7 inches in diameter inside bark at the small end, and after deductions for visible indications of defect scale 33-1/3 per cent of their gross scale; and logs of other species not less than 12 feet long, 7 inches in diameter inside bark at small end, and scaling 50 per cent of their gross scale.

Material unmerchantable on account of defects may be removed without charge in the discretion of the district forester.

15. *Brush disposal*.—Slash shall be disposed of as follows: The tops of all trees felled, whether merchantable or unmerchantable, shall be lopped and all brush and slash piled compactly as required by the forest officer in charge. The brush piles shall be so placed that they may be burned with the least possible damage to standing trees and young growth.

16. As far as practicable all branches of logging shall keep pace with one another, and in no instance shall brush piling be allowed to fall behind skidding operations more than 30 days, except when in the judgment of the forest officer in charge snow conditions make proper piling impracticable.

17. *Fire protection*.—During the time that this agreement remains in force the purchaser shall independently do all in his power to prevent and suppress forest fires on the sale area and in its vicinity, and shall require his employees, contractors, and employees of contractors to do likewise. Unless prevented by circumstances over which he has no control, the purchaser shall place his employees, contractors, and employees of contractors at the disposal of any authorized forest officer for the purpose of fighting forest fires, with the understanding that unless the fire-fighting services are rendered on the area embraced in this agreement or on adjacent areas within 1 mile of the exterior boundaries of the sale area, payment for such services shall be made at rates to be determined by the forest officer in charge, which rates shall not be less than the current rates of pay prevailing in the said national forest for services of a similar character: *Provided*, That the maximum expenditure for fire fighting without remuneration in any one calendar year, at rates of pay determined as above, shall not exceed $21,000, including the furnishing of special trains or other special service, and further provided, that if the purchaser, his employees, contractors, or employees of contractors are directly or indirectly responsible for the origin of the fire, no payment shall be made for services so rendered, nor shall the cost of such service be included in determining said maximum expenditure for any calendar year.

It is further agreed that except in serious emergencies as determined by the forest supervisor the purchaser shall not be required to furnish more than 100 men for fighting fires outside of the area above specified, and that any employees furnished shall be relieved from fire fighting on such outside areas as soon as it is practicable for the forest supervisor to obtain other labor adequate for the protection of the national forest.

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18. *Occupancy and improvements*.—The purchaser is authorized to build, on national forest land, sawmills, camps, railroads, roads, and other improvements necessary in the logging or the manufacturing of the timber included in this agreement: *Provided*, That all such structures and improvements shall be located and operated subject to such regulation by the forest officer in charge as may be necessary for the protection of national forest interests. The continuance or operation of such improvements on national forest land after this agreement has terminated shall be subject to authorization by permit or easement under United States laws, and unless such authorization is secured all improvements not removed shall become the property of the United States at the expiration of six months from the termination of this agreement.

19. All merchantable western yellow pine timber used in the construction of buildings, roads, and other structures, necessary in connection with the cutting and removal of the timber covered by this agreement shall be paid for at the current rates for such material under this agreement. Merchantable material of other species, cull material, and unmerchantable tops of any species may be used for such purposes without charge and shall be left in place where used.

20. Logging camps, mills, stables, and other structures, and the ground in their vicinity, shall he kept in a clean, sanitary condition, and rubbish shall be removed and burned or buried. When camps or other

establishments are moved from one location to another or abandoned, all debris shall be burned or otherwise disposed of as the forest officer in charge shall direct.

21. All telephone lines and fences crossing the sale area shall be protected as far as possible in logging operations, and if injured shall be repaired immediately by the purchaser; all roads and trails in the national forests within the sale area or used by the purchaser in connection with the sale shall be kept free from obstruction from logs, brush, or debris resulting from his operations, and if damaged or injured beyond ordinary wear and tear shall be repaired by him as the forest officer shall require.

22. *Brush or slash burning*.—The purchaser agrees to furnish a sufficient number of men, not to exceed 100, without cost to the Government, at such times as the forest officer in charge shall specify, to be placed under his direction and control to burn the brush and debris resulting from this sale: *Provided*, That the purchaser shall not be held responsible for damage resulting from fires started to dispose of brush under the supervision of the forest officer in charge if all precautions required by him were taken.

If required by the forest supervisor, instead of furnishing men for brush-burning work, and in addition to making advance payments as herein provided for the stumpage value of the timber covered by this agreement, we further promise and agree to deposit in the above-designated depository, when called for by the forest supervisor, such sum or sums, not to exceed 6 cents per thousand feet b. m., for the total cut as determined by the forest officer in charge, as may be necessary in his judgment to cover the cost to the United States of burning such of the brush and other debris on the sale area as may be required by the forest officer in charge, it being understood and agreed that such sum or sums shall be paid out in accordance with the fiscal regulations of the Department, of Agriculture for the payment of the cost of such disposal, and that any excess over such costs shall be refunded to the depositor. It is further understood and agreed that all labor, transportation, and supplies shall be hired or procured by the forest supervisor and that the work shall be done under the direction of a forest officer. The purchaser hereby agrees to furnish board and lodging, when requested by the forest supervisor, to Forest Service employees engaged in brush disposal under the provisions of this agreement, for which payment shall be made at the prevailing rates charged his own employees: *Provided*, That his cookhouse and bunk houses are open at the time the brush disposal work is being done.

23. *Cutting of snags and diseased trees*.—In addition to such living and dead trees as may be cut under the provisions of section 30, all marked living diseased trees and all standing unmerchantable dead trees over 20 feet in height on the sale area shall be cut: *Provided*, That the number of living diseased trees so cut shall not exceed an average of two per acre on the sale area as a whole.

24. *Long-butting larch*.—Western larch may be long butted sufficiently to eliminate material unmerchantable in the judgment of the forest officer in charge. If required by the forest officer in charge, cuts shall be made in lengths of 7 feet.

25. *Wood used as fuel*.—Wood taken from tops or unmerchantable timber for use as fuel in connection with logging operations shall be allowed free of charge.

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26. *Definition of "brush."*—The term "brush" as used in this agreement means all slash and debris resulting from logging operations, including stems, limbs, and parts thereof not exceeding 4 inches in diameter.

27. *Suspension of logging when fire danger excessive*.—Whenever in the judgment of the forest supervisor climatic conditions are such as to make the danger from forest fires excessive, the purchaser shall cease logging operations on the sale; area after five days' notice from the forest supervisor and shall suspend such operations until released by further notice: *Provided*, however, That logging operations shall not be so suspended for more than 30 days in any one calendar year.

28. *Transportation on logging trains*.—Officers of the Forest Service, fire fighters, and other regular and temporary employees shall be transported free of charge over logging roads operated in connection with this sale not common carriers, and shall be permitted to ride upon logging trains and engines or to operate speeders when traveling upon official business. Forest officers and other employees riding on logging trains, engines, or speeders shall do so at their own risk, and the owner of the railroad expressly reserves the right to enter into an agreement with such persons before entering upon said trains or engines, or before operating a speeder, releasing the said owner from liability for any injury sustained by them m riding on said trains, engines, or speeders arising from any cause whatsoever. In emergencies arising from forest fires special trains shall be furnished to officers and employees of the Forest Service.

29. *Burning of refuse*.—During the period from May 1 to October 1 of each year no refuse, brush, slash, or debris shall be burned without the written consent of the forest officer in charge.

30. *Clearing rights of way*.—Whenever necessary in the judgment of the forest officer in charge the purchaser shall clear and keep clear the railroad rights of way by cutting all dead trees and brush and by burning all inflammable material for a distance of not to exceed 100 feet on each side of the center of main

and spur tracks in such manner and at such times as may be designated by the forest officer in charge. During the months of May to September, inclusive, the purchaser may be required, in the discretion of the forest supervisor, to patrol all railroad tracks after the passage of each locomotive.

31. *Equipment of locomotives and donkeys*.—During the period from May 1 to October 1 of each year either oil shall be used exclusively as fuel in locomotives and other steam-power engines, or such engines shall be equipped with adequate spark arresters kept in constant use and repair and satisfactory to the forest officer in charge. All such engines shall be equipped with a connected steam force pump of not less than 1-inch discharge, 100 feet of serviceable fire hose, 6 large pails, 6 shovels, 6 axes, and a constant supply of not less than the equivalent of 12 barrels of water. This equipment shall be suitable for fire-fighting purposes, shall be kept in serviceable condition, and at all times readily available for fighting fire.

32. *Use of wood in oil burners*.—If wood is used to start or to maintain over-night fire in any oil-burning locomotive, that locomotive shall not be moved until it is under steam with oil as fuel, and the quantity of wood used shall be kept to the minimum necessary for the purpose.

33. *Representative of purchaser in camp*.—At all times when lagging operations are in progress the purchaser shall have at the main camp for his employees working on the sale area a representative who shall be authorized to receive, on behalf of the purchaser, any or all notices and instructions in regard to work under this agreement given by the forest officer in charge and to take such action thereon as is required by the terms of this agreement.

34. *Sale of other products from the same area*.—The United States reserves the right to sell other products than saw timber from the sale area during the life of this agreement: *Provided*, That the removal of such material will not in the judgment of the forest officer in charge interfere with the operations of the purchaser.

35. *Sale of naval products*.—The right to extract naval stores from any of the timber included in this agreement is reserved by the United States. Naval store rights may be leased by the United States during the contract period: *Provided*, That operations under such leases will not, in the judgment of the forest officer in charge, interfere with the operations of the purchaser and that any lease made by the United States shah not permit the boxing of timber or the deterioration of the lumber values of the trees.

36. *Land exchanges*.—At any time prior to the date fixed fir completing the cutting and removal of the timber covered by this agreement, any of said timber may, by mutual agreement expressed in writing, be eliminated from the sale, in order that it may be given by the United States in exchange for privately

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owned land or land and timber in accordance with any law authorizing such exchange.

37. *Marketing of products*.—The purchaser further agrees, as a consideration under this agreement, that he will not sell, pool, or otherwise dispose of any products manufactured from the timber included in this sale in combination or cooperation with other manufacturers of similar products, or otherwise, by or through methods of marketing such products or marketing organizations which are found by the Secretary of Agriculture to constitute a substantial control of the supply of such products sufficient in extent and of such a nature as to be injurious to the interest of the public; that upon such finding he will desist from such disposition of such products, and that failure so to desist will constitute sufficient cause for the termination of this agreement: *Provided*, That no finding will be made hereunder by the Secretary of Agriculture until the purchaser hay had notice and an opportunity to be heard on the matters involved. *And provided further*, That the agreement shall not be terminated hereunder in less than 60, days from the date of such finding.

38. It is further agreed, as a part of the consideration of this agreement, that a common carrier railroad for freight and passengers, in accordance with the laws of the State of Oregon; shall be constructed from main line connection to Seneca.

39. Complaints by the purchaser arising from any action taken 'by a forest officer under the terms of this agreement, shall not be considered unless made in writing to the forest supervisor having jurisdiction, within 30 days of the alleged unsatisfactory action. The decision of the Secretary of Agriculture shall be final in the interpretation of the regulations and provisions governing the same, cutting, and removal of the timber covered by this agreement.

40. All operations on the sale area including the removal of scaled timber may be suspended by the forest officer in charge, in writing, if the conditions and requirements contained in this agreement are disregarded; and failure to comply with any one of said conditions and requirements, if persisted in, shall be sufficient pause for the termination of this agreement: *Provided*, That the forester may, upon reconsideration of the conditions existing at, the date of sale and in accordance with which the terms of this agreement were fixed, and with the consent of the purchaser, terminate this agreement, but in the event of such termination the purchaser shall be liable for any damages sustained by the United States arising from the purchaser's operations hereunder.

41. All the books pertaining to the purchaser's logging operation and milling business shall be open to

inspection at any time by a forest officer authorized by the district forester to make such inspection with the understanding that the information obtained shall be regarded as confidential.

42. The term "officer in charge," wherever used in this agreement, signifies the officer of the Forest Service who shall be designated by the proper supervisor or by the district forester to supervise the timber operations in this sale.

43. No Member of or Delegate to Congress, or Resident Commissioner, after his electron or appointment, and either before or after he has qualified, and during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company. (Sec. 3741, Revised Statutes, and secs. 114-116, act of March 4, 1909.)

44. This agreement shall not he assigned in whole or in part.

45. The conditions of the sale are completely set forth in this agreement, and none of its terms can be varied or modified except in writing by the forest officer approving the agreement or his successor or superior officer, and in accordance with the regulations of the Secretary of Agriculture. No other forest officer has been or will be given authority for this purpose.

46. And as a further guaranty of a faithful performance of the conditions of this agreement _ _(I or we)_ _ deliver herewith a bond in true sure of $50,000, and do further agree that all moneys paid under this agreement shall, upon failure on __(My or our) __ part to fulfill all and singular the conditions and requirements herein set forth, or made a part hereof, be retained by the United States to be applied as far as may be to the satisfaction of, _ _ (My or our)_ _ obligations assumed hereunder.

_ _(I or we)__ do further agree that should the sureties on the bond delivered herewith or

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on any bond delivered hereafter in connection with this sale become unsatisfactory to the officer approving this agreement, __(I or we) __will within 30 days of receipt of demand furnish a new bond with sureties solvent and satisfactory to the approving officer. Signed in duplicate this _____ day of _____, 1922.

{Corporate signature block not inserted.}

THE HARNEY VALLEY REGION

The following information in regard to the territory which will be developed by the prospective railroad is furnished and vouched for by the president of the Burns Chamber of Commerce and other responsible citizens:

The northern portion of Harney, southern Grant, and a portion of Crook County, an area of more than 10,000 square miles—greater than the combined area of the States of Rhode Island, Delaware, and Connecticut, with the District of Columbia added; greater than either New Jersey, Massachusetts, New Hampshire, or Vermont—will be directly tributary to a railroad from Crane, Oreg., through Burns to Bear Valley.

The agricultural possibilities of this region are very great, but to-day and for the past 50 years its resources are devoted exclusively to the production of cattle, sheep, and horses. It has justly earned the title of the "meat platter" of Oregon. This territory brought under the plow will mean the passing of the last frontier in the United States.

The Union Pacific, when it controlled the Southern and Central Pacific Railroads, outlined a program for the development of central Oregon and constructed a railroad up the Deschutes River to Bend and up the Malheur River to Crane, but with the dissolution of these lines in 1913 construction stopped at these points. Both lines had reached the edge of the great plateau that makes up the central Oregon empire.

The vast agricultural possibilities of this region can not be developed without the aid of transportation to markets. Those interested have begged for transportation for years but have met with the answer "develop the tonnage and we will bring a railroad to it," and when the prospective settler or investor has been approached he has said, "Why grow 60 bushels of wheat or 25 tons of sugar beets to the acre when you have no way of getting it to market?" So it is apparent that the key to the development is transportation.

AGRICULTURE

Directly tributary to the railroad mentioned there are several large fertile valleys. In Grant County the John Day Valley for a distance of 60 miles will be; a heavy contributor to traffic at the end of the line in Bear Valley. In Harney County proper such a line would traverse Harvey Valley, containing 500,000 acres, and would bring to its lines the products of the valley of the Donder and Blitzen, comprising 140,000 acres,

and Silver Creek Valley of 40,000 acres. In addition there are numerous smaller valleys and settlements that in the aggregate would bring under cultivation many thousands of acres.

Agricultural pursuits in this region are not generally successful without the aid of irrigation. To this end several notable irrigation projects, under irrigation district laws of the State, are in various stages of development, namely:

Harney Valley irrigation district.—Eighty-three thousand acres. Extends from Burns or the northern portion of Harvey Valley to Malheur Lake. Of this area 63 000 acres are now partially irrigated under the flood system that utilizes the spring run-off. Irrigation plan: Store the Waters of Silvies River to extent of 140,000 acre-feet, and develop 63,000 acres now partially irrigated as

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First unit. Surplus waters to bring in new lands under its system will probably increase the irrigated area to 100,000 acres Estimated cost of dams, distributing system, lands inundated, rights of way, etc., $2,200,000. Bonds in sun of $2,200,000 have been voted and plans approved by the State engineer.

Blitzen River reclamation district.—Fifty thousand acres. South of Malheur Lake in the Blitzen River Valley, 34,650 acres have been reclaimed from swamp by drainage and it is now proposed to complete reclamation by building a storage reservoir on Blitzen River and to regulate irrigation of this 34,650 acres. Plans have been prepared and approved and bonds in the sum of $1,970,000 have been authorized.

Silver Creek irrigation district.—Silver Creek Valley, 30 miles west from Burns, contains in all about 37,000 acres. Of this area some 4,000 acres are well irrigated under the natural flood conditions from the flow of Silver Creek. Plan: store waters of Silver Creek and develop 16,000 acres of choicest land as fruit unit. Plans have been prepared and approved by the State engineer. District bonds have been voted, legally approved and provided for in the sum of $600,000 to cover the estimated cost of the project of $485,000 and $115,000 for the payment of the interest for the first four nears. These bonds will be issued and placed on the market this fall, as it i5 desired to complete the construction work next year so that the system may be fully available for the season of 1924.

GENERAL CONDITIONS

These three projects lie between the 4,100 and 4,200 foot level. The soil as generally of an alluvial deposit or silt brought down from the surrounding mountains, though there is a percentage of volcanic ash. These soils are very rich, comparatively little waste or alkaline lands.

CROPS

At present these lands are chiefly used for the production of native grass-hay, consisting of timothy, blue joint, red top, native clover, wild vetch, etc. Average production, one ton of cured hay per acre. The total annual production follows:

	Tons
Silvies River (Harvey Valley irrigation district)	60,000
Blitzen River (Blitzen River reclamation district)	35,000
Silver Creek (Silver Creek irrigation district)	18, 000

Owing to the lack of market, grain production hits been limited to local consumption. The Burns Milling Co. ground 2,400 barrels of flour from the 1921 crop of wheat, and this is a fair annual average.

Climatic and soil conditions are ideal for the production of forage crops and root plants, and with transportation, production of grain and food cereals will become an important factor. Extensive tests have been made by the Oregon Experimental Station, Harvey Branch, 6 miles east from Burns, and these, tests with the actual experience of farmers prove that the following yields per acre may be had from irrigated lands:

Wheat	bushels	50 to 80
Oats	do	50 to 130

Barley	do	50 to 105
Sugar beets	tons	2½ to 10
Mangle beets		
Sunflower	tons	25 to 54

Alfalfa, 3½ to 7.35, 2 cuttings

Potatoes, from failure to 205 bushels

Fruit is an uncertain crop and will not be produced in a commercial way. Gardens do exceptionally well, and tomatoes, sweet corn, cucumbers, squash, and other garden vegetables are raised annually. Killing frosts seldom occur between May 15 and September 15, and frost is not here a controlling factor in the production of ordinary crops.

In a bearing on freight and passenger conditions on the Oregon Short Line branch line from Ontario to Crane—the public service commission of Oregon made the following finding in its decision of March 28, 1922:

"For some reasons not disclosed by the record in the constriction of these branch-line railroads consisting of 165 miles of standard road construction, Ontario to Crane and Brogan, no attempt was made to secure the vast tonnage that would

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be afforded by the construction of a 30-mile line of railroad from Crane to Burns, over practically a water-level grade. Such construction would be the means of development of one of the largest and most promising undeveloped territories in the United States. Harney Valley alone is 550,000 acres in extent, 450,000 acres of which is suitable for agriculture and stock growing. Thousands of acres are now in natural meadows which afford feed for thousands of cattle, horses, and Sheep. The record shows that 200,000 acres of the valley are suitable for grain growing, which is only awaiting adequate transportation facilities to be brought into production."

Freight handled on the Crane Branch, practically all handled at Crane, is as follows:

		Tons
1920	November	3,837
	December	2,860
1921	November	2,684
	December	2,140

The decrease noted for 1921 can be attributed to the increase in freight, rates on livestock, resulting in much of our stock being driven to California and other distant markets.

The agricultural future of this country lies in dairy products and diversified farming, although stock feeding and meat production will always remain an important factor.

Special attention is invited to the advantages Harney County offers for the production of sugar beets. Extensive tests prove that our soil and climate will produce a beet that is large in size, containing more than the average saccharine matter, and that the per acre tonnage is not to be exceeded anywhere. However, a cooperative movement is required that will assure a sufficient acreage to justify a local refinery.

VALUES

The average value of irrigated lands in Harney Valley is between $40 and $50 per acre. These same lands with an additional investment of $30 per acre to control the flood waters so as to employ proper methods of irrigation will make these lands worth from $100 to $150 per acre.

TAXES

Harvey County is riot bonded for any purpose and the local government is economically administered.

Assessments are about 60 per cent of cash values, and our tax rate is one of the lowest in the State.

JOHN DAY VALLEY

A railroad to Bear Valley would serve a large portion of the famous John Day Valley, one of the most fertile spots in the West. This valley lies at an elevation of 3,000 feet, a veritable gem, protected by the Blue Mountains. Its production is unlimited and the quality and flavor of its fruits are unsurpassed. Without transportation the valley is now devoted to raising thousands of tons of alfalfa and other hay, and the production of mutton and beef. With a standard gauge railroad within 15 miles of that valley it will in a short time contribute heavily of the higher priced agricultural and horticultural products. This valley is now sending its livestock to market froze many points, notably Prineville, Shaniko, Condon, Pendleton, Heppner, and Baker. A large portion of all shipments and all livestock for eastern markets would probably be shipped from Bear Valley.

THE TOWN OF BURNS, OREG.

Burns, 40 years old, county seat of Harvey County, is located on Silvies River in the northwestern art of the great Harvey Valley, 157 miles from the main track of the Oregon part Line at Ontario; it affords splendid and natural mill sites; it has a population of 1,022; a public library; two banks with footings aggregating more than $1,200,000; high standard public and county high schools; a United States land office; several denominational churches and fraternal organizations. The Sisters of St. Joseph operate a strictly modern hospital.

Mr. DE NEFFE. Do you know whether Mr. Herrick had any trouble in obtaining a surety bond?

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Mr. BARNES. Yes. I was in Portland with him and Mr. Crane and Mr. Girard, and Mr. Crane, who ran the bank at Coeur d'Alene, said at that time, and he told me, that he went to their surety company with Mr. Herrick, and that they wanted something—Oh, I think it was, but am not sure about it like $16,000 a year to give him this bond.

Mr. DE NEFFE. Do you know the reason for their hesitating about going on his bond?

Mr. BARNES. Well, nothing only that they wanted that amount to take care of this $50,000 bond, that would continue for about 17 years while he was cutting the timber, about $16,000 a year. That is what Mr. Crane told me.

Mr. DE NEFFE. You spoke about Mr. Flood wanting you to meet him. Did you meet him?

Mr. BARNES. Yes.

Mr. DE NEFFE. When?

Mr. BARNES. At 2 o'clock that afternoon at the Portland Hotel, after the bids were opened up in the morning.

Mr. DE NEFFE. What did he say?

Mr. BARNES. He took me up to his room and said, "Mr. Barnes, I would like for you to tell me how there comes about so much of a difference in these two bids?" I told him I did not know. He says, "You know, we understood that the Shevlin-Hixon people were going to bid on this timber. " I says, "Who told you that they were going to bid?" He says, "Girard."

Mr. DE NEFFE. That is James W. Girard, who is mentioned here?

Mr. BARNES. Yes.

Mr. DE NEFFE., Who is the Shevlin-Hixon Company?

Mr. BARNES. They have a mill at Bend, and they are the Shevlin-Clarke-Carpenter outfit.

Mr. DE NEFFE. Are they a big outfit or a small one?

Mr. BARNES. A big outfit.

Mr. DE NEFFE. And Bend is in central Oregon?

Mr. BARNES. Yes.

Mr. DE NEFFE. Was there any delay in signing the contract? I believe the bids were opened on the 7th of April, 1923, and when was the contract signed?

Mr. BARNES. The bids were opened on the 7th of April, and the contract was not signed until the 15th of June.

Mr. DE NEFFE. 1923?

Mr. BARNES. Yes.

Mr. DE NEFFE. Have you the contract, Mr. McGowan?

Mr. MCGOWAN. Yes; we have the contract here.

Mr. DE NEFFE. May we have the contract in the record?

Mr. MCGOWAN. Here is the copy.

Mr. BARNES. Where is the original?

Mr. MCGOWAN. I think it would be well for Mr. De Neffe to compare this with the original contract, and with the modifications; compare these copies that we have made so that there may be no mistake as to whether or not the copies are correct copies of the originals.

Senator WALSH of Montana. That is understood. Mr. De Neffe has access to all the files. You might put the copy in and then let it be compared later.

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Mr. DE NEFFE. And can we put, this in.?

Mr. MCGOWAN. Suppose we offer that at noon, and put in just what you want?

Mr. DE NEFFE. I want the contract of date June 15, 1923, with Herrick.

(A copy of the said contract and modifications as furnished by the Forest Service was marked by the shorthand reporter "Exhibit No. 9" and is inserted, as follows:)

EXHIBIT NO. 9

TIMBER SALE AGREEMENT AND BOND—ADVERTISEMENTS—STIPULATIONS GOVERNING WORK—STATUS OF WORK—RELATED CORRESPONDENCE

[Form 202.—Page 1 (Revised August, 1919)]

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE—TIMBER SALE AGREEMENT

Description of timber.—I, Fred Herrick, of St. Maries, State of Idaho, hereby agree to purchase from an area of about 67,400 acres to be definitely designated on the ground by a forest officer prior to cutting, in township 15 south, ranges 29, 30, and 31 east; township 16 south, ranges 29, 30, 31, and 32 east; township 17 south, ranges 29, 30, and 31 east, Willamette meridian, in the Silvies River watershed, as designated on the attached map which is hereby made a part of this agreement, within the Malheur National Forest, at the rate or rates, and in strict conformity with all and singular the requirements and conditions hereinafter set forth, all the dead timber standing or down and all the live timber marked. or designated for

cutting by a forest officer, merchantable as hereinafter defined, for saw logs. The estimated amount to be cut under the methods of marking described in section 5 is 770,000,000 feet b. m. of western yellow pine, live and dead saw timber, more or less, and an unestimated amount of sawtimber of Douglas fir, western larch, white fir, lodgepole pine, and other species. The cutting of other species than western yellow pine shall be optional with the purchaser.

Payments.—2. (a) I do hereby, in consideration of the sale of this timber to me, promise to pay to the Portland Branch, Federal Reserve Bank at Portland, Oreg. (United States depository), or such other depository or officer as shall hereafter be designated, to be placed to the credit of the United States, for the timber at the following rates:

For all timber scaled prior to June 1, 1928, at the following rates:

INITIAL RATES

$2.80 per M. feet b. m. for western yellow pine; $1.05 per M. feet b. m. for Douglas fir; and $0.55 per M. feet b. m. for western larch, white fir, lodgepole pine, and other species.

READJUSTMENTS

For all timber scaled on or after June 1, 1928, and prior to June 1, 1931, at such rates as shall be designated by the forester within thirty (30) days preceding June 1, 1928.

For all timber scaled on or after Julie 1, 1931, and prior to June 1, 1934, at such rates as shall be designated by the forester within thirty (30) days preceding June 1, 1931.

For all timber scaled on or after Julie 1, 1934, and prior to June 1, 1937, at such rates as shall be designated by the forester within thirty (30) days preceding June 1, 1934.

For all timber scaled on or after June 1, 1937, and prior to June 1, 1940, at such rates as shall be designated by the forester within thirty (30) days preceding June 1, 1937.

For all timber scaled on or after June 1, 1940, and prior to June 1, 1943, at such rates as shall be designated by the forester within thirty (30) days preceding June 1, 1940.

And for all timber scaled on or after June 1, 1943, at such rates as shall be designated by the forester within thirty (30) days preceding that date.

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(b) The forester shall reappraise and within thirty (30) days before each of the foregoing dates, designate the value of each species in consideration of current operating conditions and markets in the eastern Oregon region, including the operation of the purchaser, such reappraisals to include the timber of the entire tract, and to be based upon an equitable margin for profit and risk to the purchaser under the operating conditions prevailing throughout the region.

(c) If any material cut under this agreement and merchantable under its terms is manufactured or sold by the purchaser in other forms than sawlogs, the forester may upon the next reappraisal date establish a special stumpage rate for each class of material, so manufactured or sold during the succeeding period, which rate, in accordance with the ratio per thousand board feet currently used by the Forest Service shall be not less than the initial stumpage price fixed herein, and shall allow the purchaser an equitable margin for profit and risk under current selling prices and costs of production in the region defined above.

(d) It is further agreed that the Secretary of Agriculture will, upon written application from the purchaser showing good and sufficient reasons therefor and specifically the existence of a serious emergency arising from changes in market conditions since the last reappraisal; at his option, when action of either character is necessary to relieve the purchaser from hardship, either—

(1) Redetermine and establish the stumpage rates and designate a date when the rates as redetermined shall be effective, which date shall be within six (6) months of the date of application; or

(2) Grant and extension of time within which the respective amounts of timber specified in section 3 shall be removed, not to exceed the total period allowed for cutting all the timber.

Any stumpage rates redetermined upon application to the Secretary shall be determined in accordance with the methods and under the terms above set forth and shall apply only during the remainder of the three-year period then current, when the rates shall be regularly designated after reappraisal.

(e) In no event, however, shall the stumpage rates for products from material whose utilization is required by this agreement as established upon any date above named, or upon application from the purchaser, be less than those specified herein to be paid for timber cut prior to June 1, 1928.

(f) It is further agreed that at the date of any reappraisal of stumpage price's the forester may require such modifications in the sections numbered 5, 11, 13, 14, 15, 17, 19, 22, 23, 30, and 31 in this agreement as are necessary, in his judgment, to protect the interests of the United States. Such modifications shall be limited to requirements contained in the then current timber sale contracts in eastern Oregon and shall be

practicable under the existing equipment and organization of the purchaser. Any additional operating costs entailed by such modifications, as ascertained by the forester, shall be taken into consideration as a factor in reappraisals.

(g) *Payments*.—Payments shall be made in advance installments of not less than twenty-five thousand dollars ($25,000) and not more than fifty thousand dollars ($50,000) each when called for by the forest officer in charge, except just before the completion of the sale or a period when cutting operations are to be suspended for at least three (3) months, when the amount of the payment shall be designated in writing by the forest supervisor, credit being given for the sums, if any, heretofore deposited with the said United States depository or officer in connection with this sale.

Sec. 3. *Beginning of cutting*.—The cutting and removal of timber from the tract included in this agreement, or from the adjacent private lands within the same operating unit, shall begin not later than April 1, 1925: Provided that the cutting and removal of timber under this agreement shall begin not later than October 1, 1925, and, unless an extension of time is granted, all timber shall be cut and removed and the requirements of this agreement satisfied on or before November 30, 1945.

Unless such amounts are changed in writing by the district forester, at least 60,000,000 feet, board measure, and not more than 150,000,000 feet, board measure, shall be cut prior to June 1, 1928; at least 120,000,000 feet, board measure, and not more than 300,000,000 feet, board measure, shall be cut prior to June 1, 1931; at least 220,000,000 feet, board measure, and not more than 450,000, 000 feet, board measure shall be cut prior to June 1, 1934; at least 320,000,000 feet, board measure, and not more than 600,000,000 feet, board measure, shall be cut prior to June 1, 1937; at least 420,000,000 feet, board measure, and not more than 750,000,000 feet, board measure, shall be cut prior to June 1, 1940; and at

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least 520,000,000 feet, board measure, shall be cut prior to June 1, 1943; *Provided*, That, whenever the district forester is satisfied that the cut from this sale area will exceed 890,000,000 feet, board measure, log scale, he shall increase the maximum amounts which may be cut prior to each of the above named dates. Which have not previously passed, by such amounts as will permit the purchaser to cut thereafter an average annual amount sufficient to complete the cutting of the remaining timber covered by this sale, as the remaining cut may be estimated at that date, by June 1, 1945.

Sec. 4. *Title to timber*.—The title to all timber included in this agreement shall remain in the United States until it has been paid for, and scaled, measured, or counted as herein provided.

Timber upon valid claims and all timber to which there exists valid claim under contract with the Forest Service is exempted from this sale.

Sec. 5. *Designation of timber*.—Live timber shall be marked for cutting as follows; Not less than eighty-five per cent (85 %) by volume of the total stand of merchantable live western yellow pine timber in trees twelve (12) inches and over in diameter at a point 4½ feet above the ground on the areas designated for cutting by the forest officers shall be marked for cutting by blazing below stump height and by stamping "U. S." on the blaze, or by such other method as may be found to be most practicable by the Forest officer in charge. Merchantable dead timber on such designated areas shall be cut whether marked or not marked. Timber of other species than western yellow pine, to be cut at the option of the purchaser, shall be marked or designated for cutting in the manner considered most practicable by the forest officer in charge.

Any tree which in the judgment of the forest officer contains one or more logs merchantable as hereinafter defined, and having a net total scale of 25 per cent for more of the total volume of the tree, shall be considered merchantable under the terms of this agreement and may be marked or designated for cutting by the forest officer.

Sec. 6. *Plan of logging operations*.—*Acceptance of cutover areas*.—As far as may be deemed necessary for the protection of national forest interests, the plan of logging operations on the respective portions of the sale area shall be approved by the forest officer in charge. When operations are begun on any natural logging area, the cutting on that area shall be fully completed to the satisfaction of the forest officer in charge before cutting may begin on other areas, unless such cutting is, authorized in writing with the requirement that cutting shall be completed on the area left unfinished as soon as practicable. After decision in writing by the forest officer in charge that the purchaser has complied satisfactorily with the contract requirements as to specified areas, the purchaser shall not be required to do additional work on such areas.

Sec. 7. *Method of logging*.—Any method of logging other than by means of horses and caterpillar tractors may be employed only with the advance approval in writing of the forest officer approving this agreement and under such conditions and restrictions as he may require.

Sec. 8. *No cutting before payment*.—All and only marked or designated live tees shall be cut. No timber shall be cut until paid for, nor removed from the place or places agreed upon for scaling until scaled, measured, or counted by a Forest officer.

Sec. 9. *Damage to young growth*.—No unnecessary damage shall be done to young growth or to trees left standing, and no trees will be left lodged in the process of felling. Unmarked or undesignated trees which are badly damaged in logging shall be cut if required by the forest officer in charge.

Sec. 10. *Penalty for carelessness and waste*.—Unmarked or undesignated live trees which are cut, or injured through carelessness, and marked or designated trees left uncut, shall be paid for at double the current price for the class of material which they contain fixed in accordance with the terms of this agreement.

Timber wasted in tops or stumps, marked or designated timber broken by careless felling, and any timber merchantable, according to the terms of this agreement, which is cut and not removed from any portion of the cutting area when operations on such portion are completed, or before this agreement expires or is otherwise terminated, shall be paid for at the current price for such material.

The amounts herein specified shall be regarded as liquidated damages and may be waived in the discretion of the forest officer in charge in accidental or exceptional cases which involve small amounts of material. Any timber remaining on the sale area at the expiration or termination of this agreement, for which payment as herein specified has been made to the United States, may be removed within six (6) months from such date of expiration.

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Sec. 11. *Stump height and top diameter*.—All cutting shall be done with a saw when practicable; stumps shall be cut so as to cause the least practicable waste, and not higher than eighteen (18) inches on the side adjacent to the highest ground except in unusual cases when, in the discretion of the forest officer in charge, this height is not considered practicable; all trees shall be utilized to as low a diameter in the tips as practicable and to a minimum diameter of seven (7) inches when merchantable in the judgment of the forest officer in charge. The log lengths shall be varied so as to secure the greatest possible utilization of merchantable material.

Sec. 12. *Measurement*.—Material shall be piled or skidded for scaling, measurement, or count if required by the Forest officer in charge and in such manner as he shall direct.

Sawlogs shall be scaled by the Scribner decimal C log rule, at the small end on the average diameter inside bark taken to the nearest inch.

Logging operations shall be so conducted as to permit scaling to be done economically, and timber or logs from private or State land shall not be mixed at the point of scaling with timber or logs from Government land.

On request, copies or abstracts of the scale reports will be furnished to the purchaser after they have been approved by the supervisor.

Sec. 13. *Scaling length*.—The maximum scaling length of sawlogs shall be sixteen (16) feet; greater lengths will be scaled as two or more logs. Upon a11 logs four (4) inches shall be allowed for trimming. Logs over-running the specified trimming allowance shall be scaled not to exceed the next foot in length.

Sec. 14. *Merchantability defined*.—All western yellow pine logs are merchantable under the terms of this agreement which are not less than ten (10) feet long, at least seven (7) inches in diameter inside bark at the small end, and after deductions for visible indications of defect scale 33-1/3 per cent of their gross scale; and logs of other species not less than twelve (12) feet long, seven (7) inches in diameter inside bark at the small end, and scaling 50 per cent of their gross scale.

Material unmerchantable on account of defects may be removed without charge in the discretion of the district forester.

Sec. 15. *Brush disposal*.—Slash shall be disposed of as follows: The tops of all trees felled, whether merchantable or unmerchantable, shall be lopped and all brush and slash piled compactly as required by the forest officer in charge. The brush piles shall be so placed that they may be burned with the least possible damage to standing trees and young growth.

Sec. 16. As far as practicable all branches of logging shall keep pace with one another, and in no instance shall brush piling be allowed to fall behind skidding operations more than thirty (30) days, except when in the judgment of the forest officer in charge snow conditions make proper piling impracticable.

Sec. 17. *Assistance in fighting fires*.—During the time that this agreement remains in force the purchaser shall independently do all in his power to prevent and suppress forest fires on the sale area and in its vicinity, and shall require his employees, contractors, and employees of contractors to do likewise. Unless prevented by circumstances over which he has no control, the purchaser shall place his employees, contractors, and employees of contractors at the disposal of any authorized forest officer for the purpose of fighting forest fires, with the understanding that unless the fire-fighting services are rendered on the area embraced in this agreement or on adjacent areas within one mile of the exterior boundaries of the sale area, payment for such services shall be made at rates to be, determined by the forest officer in charge, which rates shall not be less than the current rates of pay prevailing in the said national forest for services of a similar character: *Provided*, That the maximum expenditure for fire fighting without remuneration in any

one calendar year, at rates of pay determined as above, shall not exceed $21,000, including the furnishing of special trains or other special service as required: *And further provided*, That if the purchaser, his employees, contractors, or employees of contractors are directly or indirectly responsible for the origin of the fire, no payment shall be made for services so rendered, nor shall the cost of such services be included in determining said maximum expenditure for any calendar year.

It is further agreed that except in serious emergencies as determined by the forest supervisor the purchaser shall not be required to furnish more than one hundred (100) men for fighting fires outside of the area above specified, and that any employees furnished shall be relieved from fire fighting on such outside areas as soon as it is practicable for the forest supervisor to obtain other labor adequate for the protection of the national forest.

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Sec. 18. *Occupancy and improvements*.—The purchaser is authorized to build, in national forest land, sawmills, camps, railroads, roads, and other improvements necessary in the logging or the manufacturing of the timber included in this agreement. *Provided*, That all such structures and improvements shall be located and operated subject to such regulation by the forest officer in charge as may be necessary for the protection of national forest interests. The continuance or operation of such improvements on national forest land after this agreement has terminated shall be subject to authorization by permit or easement under United States laws, and unless such authorization is secured all improvements not removed shall become the property of the United States at the expiration of six (6) months from the termination of this agreement.

Sec. 19. *Construction timber*.—All merchantable western yellow pine timber used in the construction of buildings, roads, and other structures, necessary in connection with the cutting and removal of the timber covered by this agreement, shall be paid for at the current rates for such material under this agreement. Merchantable material of other species, cull material, and unmerchantable tops of any species may be used for such purposes without charge and shall be left in place where used.

Sec. 20. *Sanitation of camps*.—Logging camps, mills, stables, and other structures, and the ground in their vicinity, shall be kept in a clean, sanitary condition, and rubbish shall be removed and burned or buried. When camps or other, establishments are moved from one location to another or abandoned, all debris shall be burned or otherwise disposed of as the forest officer in charge shall direct.

Sec. 21. All telephone lines, ditches, and fences, located within or immediately outside the exterior boundaries of the sale area, shall be protected as far as possible in logging operations and, if injured, shall be repaired immediately by the purchaser, and the forest supervisor may, when in his judgment it is necessary, require the purchaser to move any such telephone line or fence from one location to another. Roads and trails shall at all times be kept free of logs, brush, and debris resulting from the purchaser's operations hereunder, and any road or trail used by the purchaser in connection with this sale that is damaged or injured beyond ordinary wear and tear, through such use, shall promptly be repaired by him in accordance with the directions of the forest officer in charge.

Sec. 22. *Brush or slash burning*.—The purchaser agrees to furnish a sufficient number of men not to exceed one hundred (100), without cost to the Government, at such times as the forest officer in charge shall specify, to be placed under his direction and control to burn the brush and debris resulting from this sale; *Provided*, That the purchaser shall not be held responsible for damage resulting from fires started to dispose of brush under the supervision of the forest officer in charge if all precautions required by him were taken.

If required by the forest supervisor, instead of furnishing men for brush-burning work, and in addition to making advance payments as herein provided for the stumpage value of the timber covered by thus agreement, we further promise and agree to deposit in the above-designated depository, when, called for by the forest supervisor, such sum or sums, not to exceed six (6) cents per thousand feet b. m., for the total cut as determined by the forest officer in charge, as maybe necessary in his judgment to cover the cost to the United States of burning such of the brush and other d6bris on the sale area as may be required by the forest officer in charge, it being understood and agreed that such sum or sums shall be paid out in accordance with the fiscal regulations of the Department of Agriculture for the payment of the cost of such disposal, and that any excess over such costs shall be refunded to the depositor. It is further understood and agreed that all labor, transportation and supplies shall be hired or procured by the forest supervisor, and that the work shall be done under the direction of a forest officer. The purchaser hereby agrees to furnish board and lodging, when requested by the forest supervisor, to Forest Service employees engaged in brush disposal under the provisions of this agreement, for which payment shall be made at the prevailing rates charged his own employees; *Provided*, That his cookhouse and bunk houses are open at the time the brush disposal work is being done.

Sec. 23. *Cutting of snags and diseased trees*.—In addition to such living and dead trees as may be cut under the provisions of section 30, all marked living diseased trees and all standing unmerchantable dead trees over twenty (20) feet in height, on the sale area shall be cut; *Provided*, That the number of living

diseased trees so cut shall not exceed an average of two (2) per acre on the sale area as a whole.

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Sec. 24. *Long-butting larch*.—Western larch may be long butted sufficiently to eliminate material unmerchantable in the judgment of the forest officer in charge. If required by the forest officer in charge, cuts shall be made in lengths of seven feet (7 ft.).

Sec. 25.—*Wood used as fuel*.—Wood taken from tops or unmerchantable timber for use as fuel in connection with logging operations shall be allowed free of charge.

Sec. 26. *Definition of "brush."*—The term "brush" as used in this agreement means all slash and debris resulting from logging operations, including stems, limbs, and parts thereof not exceeding four (4) inches in diameter.

Sec. 27. *Suspension of logging when fire danger excessive*.—Whenever in the judgment of the forest supervisor climatic conditions are such as to make the danger from forest fires, excessive, the purchaser shall cease logging operations on the sale area after five (5) days' notice from the forest supervisor and shall suspend such operations until released by further notice: *Provided*, however, That logging operations shall not be so suspended for more than thirty (30) days in any one calendar year.

Sec. 28. *Transportation on logging trains*.—Officers of the Forest Service, fire fighters, and other regular and temporary employees shall be transported free of charge over logging roads operated in connection with this sale not common carries, and shall be permitted to ride upon logging trains and engines or to operate speeders when traveling upon official business. Forest officers and other employees riding on logging trains, engines, or speeders shall do so at their own risk, and the owner of the railroad expressly reserves the right to enter, into an agreement with such persons before entering upon said trains or engines or before operating a speeder, releasing the said owner from liability for any injury sustained by them in riding on said trains, engines, or speeders, arising from any cause whatsoever. In emergencies arising from forest fires special trains shall be furnished to officers and employees of the Forest Service.

Sec. 29. *Burning of refuse*.—During the period from May 1 to October 1 of each year, no refuse, brush, slash or debris shall be burned without the written consent of the forest officer in charge.

Sec. 30. *Clearing rights of way*.—Whenever necessary in the judgment of the forest officer in charge the purchaser shall clear and keep clear the railroad rights of way by cutting all dead trees and brush and by burning all inflammable material for a distance of not to exceed one hundred (100) feet on each side of the center of main and spur tracks in such manner and at such times as may be -designated by the forest officer in charge. During the months of May to September, inclusive, the purchaser may be required in the discretion of the forest supervisor to patrol all railroad tracks after the passage of each locomotive.

Sec. 31. *Equipment of locomotives*.—During the period from May 1 to October 1 of each year either oil shall be used exclusively as fuel in locomotives and other steam-power engines, or such engines shall be equipped with adequate spark arresters kept in constant use and repair and satisfactory to the forest officer in charge. All such engines shall be equipped with a connected steam force pump of not less than 1-inch discharge, one hundred (100) feet of serviceable fire hose, six (6) large pails, six (6) shovels, six (6) axes, and a constant supply of not less than the equivalent of twelve (12) barrels of water. This equipment shall be suitable for fire-fighting purposes, shall be kept in serviceable condition, and at all times readily available for fighting fire. Pails, shovels, and axes shall be kept in a sealed tool box satisfactory to the forest officer in charge.

Sec. 32. *Use of wood in oil burners*.—If wood is used to start or to maintain overnight fire in any oil-burning locomotive, that locomotive shall not be moved until it is under steam with oil as fuel, and the quantity of wood used shall be kept to the minimum necessary for the purpose.

Sec.33. *Representative of purchaser in camp*.—At all times when logging operations are in progress the purchaser shall have at the main camp for his employees working on the sale area a representative who shall be authorized to receive, on behalf of the purchaser, any or all notices and instructions in regard to work under this agreement given by the forest officer in charge, and to take such action thereon as is required by the terms of this agreement.

Sec. 34. *Sale of other products from the same area*.—The United States reserves the right to sell other products than saw timber from the sale area during the life of this agreement: *Provided*, That the removal of such material will not in the judgment of the forest officer in charge interfere with the operations of the purchaser.

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Sec. 35. *Sale of naval products*.—The right to extract naval stores from any of the timber included in this agreement is reserved by the United States. Naval store rights may be leased by the United States during the contract period: *Provided*, That operations under such leases will not, in the judgment of the forest officer in charge, interfere with the operations of the purchaser and that any lease made by the United States shall not permit the boxing of timber or the deterioration of the lumber values of the trees.

Sec. 36. *Land exchanges*.—At any time prior to the date fixed for completing the cutting and removal

of the timber covered by this agreement, any of said timber may, by mutual agreement expressed in writing, be eliminated from the sale area, in order that it may be given by the United States in exchange for privately owned land or land and timber in accordance with any law authorizing such exchanges.

Sec. 37. *Marketing of products*.—The purchaser further agrees, as a consideration under this agreement, that he will not sell, pool, or otherwise dispose of any products manufactured from the timber included in this sale in combination or cooperation with other manufacturers of similar products, or otherwise, by or through methods of marketing such products or marketing organizations which are found by the Secretary of Agriculture to constitute a substantial control of the supply of such products sufficient in extent and of such a nature as to be injurious to the interests of the public; that upon such finding he will desist from such disposition of such products, and that failure so to desist will constitute sufficient cause for the termination of this agreement: *Provided*, That no finding will be made hereunder by the Secretary of Agriculture until the purchaser has had notice and an opportunity to be heard on the matters involved: *And provided further*, That the agreement shall not be terminated hereunder in less than sixty (60) days from the date of such finding.

Sec. 38. It is further agreed, as a part of the consideration of this agreement, that a common carrier railroad for freight and passengers, in accordance with the laws of the State of Oregon, shall be constructed from main line connection at Crane, Oregon, to Seneca, Oregon.

Sec. 39. This agreement shall be binding on the heirs, devisees, administrators, executors, and successors of the parties hereto.

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(In the following sections, continue the numbering serially from the last number used on the preceding page)

39. Complaints by the purchaser arising from any action taken by a forest officer under the terms of this agreement shall not be considered unless made in writing to the forest supervisor having jurisdiction, within thirty (30) days of the alleged unsatisfactory action. The decision of the Secretary of Agriculture shall be final in the interpretation of the regulations and provisions governing the sale, cutting, and removal of the timber covered by this agreement.

40. All operations on the sale area including the removal of scaled timber may be suspended by the forest officer in charge, in writing, if the conditions and requirements contained in this agreement are disregarded, and failure to comply with any one of said conditions and requirements, if persisted in, shall be sufficient cause for the termination of this agreement: *Provided*, That the forester may, upon reconsideration of the conditions existing at the date of sale and in accordance with which the terms of this agreement were fixed, and with the consent of the purchaser, terminate this agreement, but in the event of such termination purchaser shall be liable for any damages sustained by the United States arising from the purchaser's operations hereunder.

41. All the books pertaining to the purchaser's logging operation and milling business shall be open to inspection at any time by a forest officer authorized by the district forester to make such inspection with the understanding that the information obtained shall be regarded as confidential.

42. The term "officer in charge," wherever used in this agreement, signifies the officer of the Forest Service who shall be designated by the proper supervisor or by the district forester to supervise the timber operations in this sale.

43. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, and either before or after he has qualified, and during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein

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contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company. (Sec. 3741, Revised Statutes, and secs. 114-116, act of March 4, 1909.)

44. This agreement shall not be assigned in whole or in part.

45. The conditions of the sale are completely set forth in this agreement, and none of its terms can be varied or modified except in writing by the forest officer approving the agreement or his successor or superior officer, and in accordance with the regulations of the Secretary of Agriculture. No other forest officer has been or will be given authority for this purpose.

46. And as a further guarantee of a faithful performance of the conditions off, this agreement I deliver herewith a bond in the sum of fifty thousand dollars: ($50,000), and do further agree that all moneys paid under this agreement shall, upon failure on my part to fulfill all and singular the conditions and requirements herein set forth, or made a part thereof, be retained by the United States to be applied as far as may be to the satisfaction of my obligations assumed hereunder: I do further agree that should security on

the bond delivered herewith or on any bond delivered hereafter in connection with this sale become unsatisfactory to the officer approving this agreement, I will within thirty days of receipt of demand furnish a new bond with security satisfactory to the approving officer.

Signed in duplicate this 15th day of June, 1923.

FRED HERRICK.

Witness: (Signature of two witnesses required if sale is over $100.)

FRED AMES.
J JUNE H. WERTZ.

Approved at Portland, Oreg., under the above conditions, June 15, 1923.

GEO. H. CECIL,
District Forester.

If contracting party is a copartnership, form of signature should be X Y Z Company, by John Doe, a *Member of Firm*. If contracting party is a corporation, form of signature should be X Y Z Company, by John Doe, *President* (*or other officer or agent*), and the seal of the corporation must be impressed as indicated.

BOND

Know all men by these present, That I, Fred Herrick of the city of St. Maries, and State of Idaho, as obligor, {*sic*} am held and firmly bound unto the United States of America, in the penal sum of fifty thousand dollars (50,000), lawful money of the United States, for the payment of which sum, well and truly to be made to the United States, without relief from valuation or appraisement laws, I bind myself, my heirs, executors, administrators, successors, and assigns, firmly by, these presents.

The condition of the above obligation is such that if I, my heirs, executors, administrators, successors, and assigns, shall well and truly perform all and singular the promises contained in that certain timber sale agreement executed by me on the 15th day of June, 1923, and hereto attached, then this obligation shall be void; otherwise to remain in full force and effect.

The above-bounden obligor, {*sic*} in order the more fully to secure the United States in the payment of the aforementioned sum, hereby pledges as security therefor bonds of the United States in the principal sum of fifty thousand dollars ($50,000) which said bonds are numbered serially and are in the denominations and amount and are otherwise more particularly described as follows:

Title of bonds	Coupon or registered	Total face amount	Serial number	Interest dates
First Liberty converted 4¼	Coupon	$10,000	B-00011202	June 15-Dec. 15.
do.	do.	10,000	E00009725	do.
do.	do.	10,000	E-00011200	do.
do.	do.	10,000	E-00005650	do.
do.	do.	5,000	E-00010455	do.
do.	do.	5,000	C-00010433	do.
Total amount		50,000		

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Which said bonds have this day been deposited with George H. Cecil, district forester at Portland, Oreg., and his receipt taken therefor.

Contemporaneously herewith the undersigned has also executed and delivered a power of attorney and agreement in favor of George H. Cecil, district forester At Portland, Oreg., authorizing and empowering said officer as such attorney to collect or sell the above-described bonds so deposited, or any part thereof,

in case of any default in the performance of any of the above-named conditions or stipulations.

In witness whereof this bond has been signed, sealed, and delivered by the above-named obligor, this 15th day of June, 1923.

FRED HERRICK. [SEAL]

Signed, sealed, and delivered in the presence of—

FRED AMES.
JUNE H. WERTZ.

ACKNOWLEDGMENT

STATE OF OREGON,
County of Multnomah, ss:

On this day of June, 1923, before me, F. D. Strause, a notary public in and for the State of Oregon, residing therein, duly sworn and acting under a commission expiring September 4, 1926, personally appeared Fred Herrick, known to me to be the person who executed the above instrument, and he acknowledged to me that he executed the above instrument, voluntarily, for the uses therein specified.

F. D. STRAUSE,
Notary Public.

[SEAL.]

Approved at Portland, Oreg., June 15, 1923.

GEO. H. CECIL,
District Forester.

ADVERTISEMENT OF BEAR VALLEY SALE

In addition to local advertising in Oregon from August, 1922, to February, 1923, the Bear Valley unit was advertised in lumber journals as follows:

American Lumberman: August 19, September 2 and 23, October 14, and November 4, 1922.
Lumber: August 25, September 22, and October 27, 1922.
Lumber World Review: August 25, September 25, and October 25, 1922.
Southern Lumberman: August 26, September 30, November 4, and December 23, 1922.
The Timberman: August, September, and October, 1922.
West Coast Lumberman: September 1 and October 1, 1922.

No bids were received in response to this advertisement and in March, 1923, it was again advertised locally and in the following lumber journals:

American Lumberman: March 10, 1923.
Lumber: March 16, 1923.
Southern Lumberman: March 17, 1923.
The Timberman: March, 1923.
West Coast Lumberman: March 15, 1923.

Additional publicity was given through a prospectus of which an edition of 600 was widely distributed to prominent lumbermen throughout the United States. Lumber journals and newspapers also carried a number of articles about it.

Copies of the two advertisements are attached.

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AUGUST 5, 1922.

890,000,000 FEET NATIONAL FOREST TIMBER FOR SALE

THE FIRST UNIT OF ONE OF THE LARGEST UNDEVELOPED TRACTS OF YELLOW PINE IN THE UNITED STATES

Location and amount: All the merchantable dead timber standing or down and all the live timber

marked or designated for cutting on an area embracing about 67,400 acres in township 15 south, ranges 29, 30, and 31 east, township 16 south, ranges 29, 30, 31, and 32 east, and township 17 south, ranges 29, 30, and 31 east, Willamette meridian, Silvies River watershed, Malheur National Forest, Oreg., estimated to be 770,000,000 feet b. m., more or less, of western yellow pine, and 120,000,000 feet b. m., more or less, of Douglas fir, western larch, white fir, lodgepole pine, and other species of timber. The cutting of other species than western yellow pine to be optional with the purchaser.

Stumpage prices: Lowest rates considered, $2.75 per M for western yellow pine and 50 cents per M for other species. Rates to be readjusted April 1, 1928, and at three-year intervals thereafter.

Deposit: $25,000 must be deposited with each bid to be applied on the purchase price, refunded, or retained in part as liquidated damages, according to conditions of sale.

Final date for bids: Sealed bids will be received by the district forester, Portland, Oreg., up to and including February 15, 1923.

The right to reject any and all bids reserved.

Before bids are submitted full information concerning the character of the timber, conditions of sale, deposits, and the submission of bids should be obtained from the district forester, Portland, Oreg., or the forest supervisor, John Day, Oregon.

MARCH 5, 1923.

890,000,000 FEET NATIONAL FOREST TIMBER FOR SALE

THE FIRST UNIT OF ONE OF THE LARGEST UNDEVELOPED TRACTS OF YELLOW PINE IN THE UNITED STATES

Location and amount: All the merchantable dead timber standing or down and all the live timber marked or designated for cutting on an area embracing about 67,400 acres in township 15 south, ranges 29, 30, and 31 east; township 16 South, ranges 29, 30, 31, and 32 east; and township 17 south, ranges 29, 30, and 31 east, Willamette meridian, Silvies River watershed, Malheur National Forest, Oreg., estimated to be 770,000,000 feet b. m., more or less, of western yellow pine and 120,000,000 feet b. m., more or less, of Douglas fir, western larch, white fir, lodgepole pine, and other species of timber. The cutting of other species than western yellow pine to be optional with the purchaser. The contract will permit the cutting of Government timber at an average rate f 50,000,000 feet, log scale, annually.

Stumpage price: Lowest rates considered, $2 per M for western yellow pine and $0.50 per M for other species. Rates to be readjusted April 1, 1928, and at three-year intervals thereafter.

Deposit: $25,000 must be deposited with each bid to be applied on the purchase price, refunded, or retained in part as liquidated damages, according to conditions of sale.

Final date for bids: Sealed bids will be received by the district forester, Portland, Oreg., up to and including April 4, 1923.

The right to reject any and all bids is reserved.

Before bids are submitted, full information concerning the character of the timber, conditions of sale, deposits, and the submission of bids should be obtained from the district forester, Portland, Oreg., or the forest supervisor, John Day, Oregon.

SEPTEMBER 17, 1924.

MR. FRED HERRICK,
St. Maries, Idaho.

DEAR MR. DERRICK: On September 15 I sent you the following telegram:

"Forest Service strongly urges increased activity in construction Bear Valley sale. Hope work will be pushed to early completion. Your contract requires

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cutting begin not later than April 1, 1925, and cut and remove 60,000,000 feet Government timber prior to June 1, 1928. Substantial compliance with contract on your part confidently expected by this office and will be required."

This action is the result of a great many reports which have reached this office of what is considered by the local people to be insufficient activity in the construction work preparatory to cutting and removal of the timber involved in, the Bear Valley sale. These reports have been confirmed through regular employees of the Forest Service, so that there seems to be no question concerning the fact that construction work is not proceeding as rapidly as the conditions of the contract would seem to warrant. As you know, this

development has attracted a great deal of public attention, and all those interested are watching the development rather critically. For this reason the Forest Service is particularly anxious that construction work be carried out in good faith, so that Gutting operations can begin on schedule.

I think that you also appreciate that delay in construction of the railroad at a time when weather conditions are apparently favorable will put you in an indefensible position should you ask for an extension of time for the beginning of cutting operations next spring. This same lack of activity at this season of the year will likewise deprive the Forest Service of any justification for granting an extension of time under the contract. The Forest Service does not, of course, wish to interfere in any way with your business arrangements and my purpose is merely to call this situation to your attention in order that there may be a full understanding on your part that the Forest Service expects and will require full compliance with the terms of the contract as written. If you permit any delay in necessary construction work you do so upon your own responsibility and at your own peril.

Very sincerely yours,

E. A. SHERMAN, *Acting Forester.*

MILWAUKEE LUMBER CO.,
ST. MARIES, IDAHO, SEPTEMBER 30, 1924.

COL. WM. GREELY,
Washington, D. C.

DEAR SIR: Enclosed find telegram received from your office.

Will say we have the road completed to Burns, which with sidings and depot grounds amounts to 36 miles. We have 13 miles graded and bridges built beyond Burns and Girard is going to complete 18 miles on the Seneca and within the next 90 days and then we expect, right after the first of the year, to put in steam shovel and push along the work as fast as reasonably possible and there need be no question but what we will get the sixty million cut prior to July 1, 1928.

I am going to ask you for one years extension of time on this contract and I know you will consider that this is a big proposition to work out getting the cash by your right hand out of your left-hand pocket. Pleased to say we are building a main line railroad the best that can be built. We have our mill sight secured at the big spring and about all rights of way for entire line to Seneca. At the present moment, we have had no settlement with the Union Pacific for the 36 miles they are running trains over. President Grey has promised me he will be in position to settle the first part of October.

Yours respectfully,

FRED HERRICK.

ST. MARIES, IDAHO, *October 3, 1924.*

DISTRICT 'FORESTER,
Portland, Oreg.

DEAR SIR: Reference is made to your letter of October 24.

The reasons why we are justified in asking for an extension of one year's time is as follows:

1. Construction of line from Crane to Burns, a distance of approximately 35 miles, including the sidings and station layout.

2. Owners of land from whom we lead to secure rights of way were scattered over large portions of the United States.

3. Upper Silvies River Reservoir site.

4. General conditions of the lumber market during 1924.

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The reasons which I have given above are discussed in considerable detail in the order given:

1. When the Forest Service appraised the Bear Valley unit, the appraisal was based on the assumption that the Union Pacific Railroad Co. would construct the line from Crane to Burns. This they refused to do. It was then up to me to make the best deal with them that I could. After much discussion and delay of time, I finally succeeded in getting them to agree to take this portion of the line over and operate it, if I would furnish the money for the construction, they in turn agreeing to reimburse me after the mill started to operate. Anyone who has had any dealings with a railroad company realizes how long it takes to execute a contract with them. After the contract had been signed by the rail road company, it was then necessary for them to secure a certificate of convenience and necessity from the Interstate Commerce Commission, authorizing then to construct said line. This required about six months' time.

2. The owners of land in Harney Valley were scattered over a large portion of the United States. Before going ahead with the work, it was necessary to make every effort possible to locate the owners and secure from them a right of way. It was also necessary to secure from the Public Service Commission authority to cross all highways. Girard went ahead on his own responsibility, constructed the grade, and crossed highways before authority was granted from the Public Service Commission of Oregon. It was necessary to do this or delay the work for an unreasonable period.

3. The upper Silvies River Reservoir site, which is at the lower end of Silvie Valley, held up the work for a long time. As you know, a withdrawal was mad from this valley several years ago and it was necessary for us to determine the status of this case before going ahead with the grading of the railroad. The location of the railroad up Poison Creek and over the hill was largely determined by whether or not we went through Silvies Valley, or stayed above the reservoir site. The appraisal was based on going through the valley. However, I did not want to construct the line through Silvies Valley if doing so would bloc logical agricultural development of Harney Valley. Girard and Klobucher tried for some time to get an expression from the people concerning the desirability of my cooperating with them in the construction of the upper Silvies River dam. The sentiment seemed to be generally in favor of the lower dam just below Emigrant Creek, so we decided to go through Silvies Valley as contemplated in the appraisal report. You, of course, realize that much time was necessarily taken because of the conditions and circumstances which I have outlined. If the railroad company had constructed the line from Crane to Burns as contemplated in the stumpage appraisal report, the reasons for granting an extension of time would not be so obvious.

4. I feel sure that you fully appreciate the general condition of the lumber market during 1924. This has made it very difficult for operators to finance big development projects like the Bear Valley unit. The development of this chance is a great proposition, particularly so during the present market conditions. A comparison of the time allowed on this chance with the other sales with which I am familiar indicates that two years for development work is entirely too short a period. The amount of money which has been spent on the railroad construction, timber acquisition, general overhead and other obligations is approximately as follows up to October 1, 1924. I feel sure that you will consider that my request is reasonable and should be granted:

Construction of line, Crane to Burns	$436,000
Construction of Malheur R. R.	89,000
Work under contract	30,000
Current bills and October salaries	10,000
Fred Herrick Lumber Co.	103,000
Steel on hand	38,000
Check with bid	25,000
Bond to United States Forest Service	50,000
Total	781,000

Very truly yours,

FRED HERRICK

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FEBRUARY 25, 1925.

Stipulations governing construction work to be performed prior to October 1, 1925, under the timber sale agreement signed by Fred Herrick on June 15, 1923, and approved by Geo. H. Cecil, district forester, on June 15, 1923, as modified by an application executed on March 3, 1925, and approved by C. M. Granger, district forester, on March 12, 1925, which stipulations shall be considered a part of said agreement as modified:

1. Construction work on the railroad shall be resumed at the earliest practicable date and on a scale which will require expenditures, to be evidenced by paid vouchers or paid and canceled checks, for railroad construction between Burns and Seneca, exclusive of equipment purchases, purchases of unapplied {*sic*} construction material, and engineering and overhead, all as defined by the Interstate Commerce Commission in its instructions for railroad accounting, to the amount of at least $100,000 between April 1, 1925, and July 1, 1925; and on July 1, 1925, the purchaser shall make a complete statement of his expenditures, as defined in this paragraph, to the Forest Supervisor and will give him, or any other officer of the Forest Service authorized by the District Forester for the purpose, free access to all books, records and accounts as may be necessary to determine whether this requirement has been met.

2. On October 1, 1925, at least the following work shall have been done:

(a) The construction of railroad grade, to the point of being ready for the laying of ties and steel for the permanent line, except for bridges and trestles and except for minor ditching or other work best done, in the judgment of the Forest Supervisor, after permanent steel has been laid, on the following portions of the line: From a point at or near the town of Burns to a point in the NW. ¼ SW. ¼ sec. 29, T. 20 S., R. 31 E., W. M., being approximately station 955 of the survey for the railroad; also from a point in the SW. ¼ sec. 22 T. 20 S., R. 31 E., being station 1112 of said survey to a point in the SE. ¼ NE ¼ sec. 1, T. 20 S., R. 31 E:, being approximately station 1360 of said survey; also, from a point on or near the north line of sec. 25, T. 19 S., R. 31 E., W. M., being station 1506 of said survey, to approximately the center of sec. 26, T. 17 S., R. 31 E., W.M., being station 2154 of said survey.

(b) The necessary excavations for the foundations of the purchaser's main sawmill and power plant, and 25 per cent of the excavation for the log pond at that mill, compliance or noncompliance with this requirement to be determined by the forest supervisor or other officer authorized by the district forester for the purpose, on the basis of the detailed plans of the purchaser for the construction of his main sawmill and appurtenances, which plans shall be made available to said forest supervisor or other authorized officer upon request.

3. On December 31, 1925, at least the following work shall have been done in addition to that required to have been finished on October 1, 1925:

(a) The construction of railroad grade, as specified in the requirements to be met on October 1, 1925, from the point previously mentioned near the center of sec. 26, T. 17 S., R. 31 E., W. M., being station 2154 of the survey for the railroad to a point near the south line of sec. 34, T. 16 S., R. 31 E., W. M., being station 2520 of said survey; also, the construction of railroad grade from Burns to the purchaser's main sawmill, with any construction or reconstruction of highways that dray have been required or approved by the Highway Commission of the State of Oregon as a replacement of any highway injured or rendered less usable by the construction of the purchaser's railroad from Burns to said sawmill site; *Provided*, That the construction of railroad grade from Burns to the said sawmill site may be waived by the district forester if the purchaser shall exhibit to him an agreement providing for the use of an existing railroad for the transportation of logs from Burns to the sawmill site.

(b) The excavation for the mill pond and installation of the foundations for the main sawmill and power plant.

4. On April 1, 1926, the railroad grade from Burns to the point near the south line of sec. 34, T. 16 S., R. 31 E., W. M., being station 2520 of the railroad survey, including all cuts, fills, tunnels, bridges, trestles, or other structures, excavations, or movements of earth or rock necessary for the laying of ties and steel for a permanent standard-gauge railroad track suitable for use in hauling logs in trains, shall have been completed: *Provided*, That this requirement shall not be construed to require completion of the widening of cuts or fills or other minor work which, in the judgment of the forest supervisor, may be done most economically after permanent steel has been laid and can be used for transportation t purposes.

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5. On October 1, 1926, the railroad from the mill to the timber and the sawmill plant shall be ready for operation.

C. M. GRANGER, *District Forester,*

Signed in duplicate this 3d day of March, 1925.

FRED HERRICK.

Witnesses:
M. P. FREDRICKS.
G. E. DAHLSTROM.

APPLICATION FOR MODIFICATION OF AGREEMENT

I, Fred Herrick, of St. Maries, Idaho, purchaser of timber in the above-designated case, Malheur National Forest, request that the agreement, signed in duplicate by me on the 15th day of June, 1923, and approved by Geo. H. Cecil, district forester, on the 15th day of June, 1923, be modified as follows, by changing the first paragraph of section 3 to read:

"The cutting and removal of timber under this agreement shall begin not later than October 1, 1926. Construction work prior to that date shall be carried on and completed in accordance with the accompanying stipulations dated February 25, 1925, which are attached hereto and made a part of this agreement, and failure to comply with any of said stipulations in whole or in part shall be sufficient cause for cancellation of this agreement. Unless an extension of time is granted, all timber shall be cut and removed and the requirements of this agreement satisfied on or before November 30, 1945."

If this application is approved, I do hereby agree to cut and remove said timber in strict accordance with all and singular the terms and provisions of the aforesaid contract, except as herein modified.

I further agree that if this application is approved my certain bond in amount of $50,000 secured by the deposit of United States Liberty bonds is said amount, to wit:

Title of bonds	Coupon or registered	Total face amount	Serial number	Interest dates

First Liberty converted 4¼	Coupon	$10,000	B-00011202	June 15-Dec. 15.
do.	do.	10,000	E-00009725	do.
do.	do.	10,000	E-00011200	do.
do.	do.	10,000	E-00005650	do.
do.	do.	5,000	E-00010455	do.
do.	do.	5,000	C-00010433	do.
Total amount		50,000		

Executed by me at Portland, Oreg., on the 15th day of June, 1923, and approved by the district forester on the 15th day of June, 1923, which was given to the United States of America to insure faithful compliance with the terms of the aforesaid contract, shall bind me, my heirs, executors, administrators, successors, and assigns in the same manner as if said modifications had been included in the original contract to insure compliance with which said bond was given.

Signed in duplicate this 3d day of March, 1925.

FRED HERRICK. [SEAL.]

Witnesses:
M. P. FREDRICKS.
G. E. DAHLSTROM.

Approved at Portland, Oreg., under the above conditions March, 12, 1925.

C. M. GRANGER, *District Forester.*

STATUS OF WORK ON JULY 1, 1925

Railroad: Crane to Burns completed in 1924; 31 miles grade Burns to Seneca practically complete; grade between Burns and mill site, nothing done.

Mill site: No work done.

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Expenditures: Between April 1 and July 1 of $100,000 required for labor and applied construction material under first modification. Actually spent only $75,290.83. (See Hoffman's report of July 2.)

Acceptance of requirements: Not accepted.

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, NORTH PACIFIC DISTRICT,

PORTLAND, OREGON, *July 24, 1925*.

THE FORESTER,
Washington, D. C.

DEAR SIR: On July 1 Logging Engineer Hoffman made an examination of the company's books at Burns to determine the degree of compliance with stipulation 1 regarding construction work. A copy of Mr. Hoffman's report is inclosed. Since it was plain that the company had fallen short over 50 per cent of the amount required to be expended by July 1, immediate steps were taken to have a conference with Mr. Herrick. This conference was held at Spokane July 13, and Mr. Ames, Mr. Carter, and I were present. Mr. Carter will be able to give you full details in regard to it. Mr. Herrick was informed that the purpose of the conference was to give him an opportunity to show cause why the contract should not be canceled in view of the marked failure of the company to comply with the first of the stipulations agreed to by him last March.

It is difficult to give a clear presentation of Mr. Herrick's arguments because he did not make them at all clear himself. He made a strong point that the essence of the contract, according to his interpretation, is the cutting of 60,000,000 feet by June 1, 1928. He claims that the construction work has been going

forward actively this season, and that therefore the Government should be satisfied even if the stipulation has not literally been complied with.

We endeavored to recall to Mr. Herrick's mind that even as long ago as in the spring of 1924 he was informed in this office that the terms of the contract were to be complied with, that when the contract was modified this spring the terms of the modification made it clear that non-compliance with any one of the stipulations would be cause for the cancellation of the agreement, that when the stipulations were forwarded to him it was again pointed out, and that in reply he had written that he would guarantee to get within requirements by July 1. All this he waved aside as immaterial, claiming that the wording of the contract throughout implies a liberal construction, and that he had assumed a liberal interpretation of the stipulations as well.

When asked what guarantee or assurances he could give that the remaining stipulations would be complied with, he had nothing to offer. It seemed impossible for him to grasp our repeated statements that we were faced with a violation of the terms of the contract and were endeavoring to ascertain whether we must recommend cancellation or whether he was prepared to take some action in the future which would justify us in not doing so.

After the discussion with Mr. Herrick, Mr. Ames, Mr. Carter, and I conferred and finally agreed that we would inform Mr. Herrick that we could not see our way clear, considering his attitude, to do otherwise than to recommend a cancellation of the agreement. Upon being so informed, Mr. Herrick asked for a further opportunity to confer with Mr. Girard and to go over the situation on the ground. He asked for a conference in Burns, which was refused, but I did agree to defer action until the 23d.

Yesterday Mr. Herrick, Mr. Girard, and Mr. Klobucher were here and had a conference with Mr. Ames and me. Mr. Herrick had actually nothing new to offer, and attempted to review the same ground that he went over in Spokane. In reply to our demand as to what assurances he could give that the October 1 and subsequent requirements would be met, he finally said he would see that Mr. Girard had the necessary money to comply with the requirements, but that he would not accept the requirement as to the building of the mill foundations this fall.

The situation, as you can see, is rather difficult. Here is a purchaser who has consistently refused to regard the contract stipulations seriously. It is a question what assurances can be given under the circumstances that would give us ally confidence that future requirements will be met any better than those in the past.

The contract could legally, it is believed, be canceled according to the terms of the modification and stipulations. The question is whether the Government

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would really be the gainer by taking such a step; and on the whole I think our disposition has been to favor giving Mr. Herrick one more opportunity if any course could be contrived to assure a change of attitude on his part.

There are a number of considerations to be weighed. First, a cancellation would involve readvertisement and the necessary delay in the resumption of construction work by a new purchaser. If the cancellation is to be made, we would in a way be in almost the same position on October 1 that we are now. Cancellation now would be followed by readvertisement of perhaps three months, which would end about November 15. Little, if any, construction work would be done by a new purchaser until the following spring. By cancellation on October 1 followed by advertisement, we would be in almost the same position as to the date for the really active construction work.

Secondly, while it is believed that the timber could be resold for not less than the present rates, it is still conceivable that it might not be, and in that event the Government would certainly be in an unenviable position.

Thirdly, without holding any brief for Mr. Herrick, it is possible that his previous experience with Government contracts has been in a measure responsible for his attitude in this one. He reiterates that during a long experience he has never been confronted with the strict interpretation of stipulations which we are now insisting upon. Mr. Girard tells me that it is his impression that in the sales he has previously had, which have not of course had the background which this one has, there has not been the necessity for the same attitude on the part of the Government.

Lastly, it may be that to an unprejudiced observer it would be difficult to see how the Government could show sufficient damage to justify cancellation, particularly in view of the work which is now being done, even if the latter does not measure up to the requirements of the stipulations.

These considerations led us to make a proposition to Mr. Herrick which seems to offer the greatest assurance which we can devise that there will be a change in his methods, and we feel that this line of action is preferable to cancellation. Unless the proposed action meets your approval, the only alternative in our judgment is cancellation, and I strongly urge no less drastic action than the following:

The proposal is:

The July 1, 1925, requirement will be waived in consideration of—

(1) The contract to be modified to provide a bond in the sum of $50,000, which bond would be automatically forfeited and become the property of the United States as liquidated damages and not as penalty, in the event of failure to fully meet the October 1, 1925, and other periodic requirements.

(2) the forester will be the final judge of compliance with the terms of the stipulations.

(3) The forester may accept other equivalent work in lieu of minor failures to comply with the detailed requirements, except that the present requirement as to the mill pond and mill foundations shall not be waived nor equivalent work accepted in lieu thereof.

This requirement of some liquidated damages bond is unique so far as I am aware, and it is not suggested because it is thought that any particular advantage would accrue to the United States if such bond should be forfeited, but because it is believed that only the certainty of some very material loss will be effective in impressing upon Mr. Herrick the necessity for prosecuting construction work in a really satisfactory manner. Subsequently we decided that instead of requiring a new bond the same purpose would be served by making the present one available as liquidated damages.

Mr. Herrick's reaction to these proposals was that he did not object emphatically to the posting of such a bond, although he attempted to have the amount reduced to $25,000 and tried to have us accept a bond from the Fred Herrick: Lumber Co. He did, however, object strongly to retaining in the stipulations the requirement as to the building of the mill pond and mill foundations, particularly the latter. He argued this point to the end of the discussion, and finally went away leaving the matter in Mr. Girard's hands. Our final word to Mr. Girard, however, was that we did not feel it advisable to recommend any modification in the stipulations.

The argument put forth by Mr. Herrick and Mr. Girard as to the mill foundations was that it is illogical to require the building of the foundations this year and then allow them to remain over winter before the resumption of mill construction work, when as a businesslike procedure it is preferable to have the same contractor construct the foundations and proceed with the erection of the

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mill. In reply to this, we contended that it is quite apparent that Mr. Herrick's plans for the mill are as yet entirely undeveloped. Ha states that he wishes to investigate. the latest types of mill construction before deciding upon the final plan. If, however, there is nothing in the agreement requiring him to complete his plans this year, there is every indication that he will do nothing until next spring. Also, the original reason for requiring the work on the mill pond and foundations this year was to remove the possible excuse that climatic conditions during the spring would not permit this work early enough so that the mill could be completed by October 1.

It is, moreover, probable that any change in the stipulations as to the mill work would be very unwelcome to the people of Burns, and while the stipulations are not framed in those particulars for that reason, it is nevertheless true that the definite location of the mill at Burns has a real importance in the minds of the people there.

These reasons seem to us sufficient to offset the argument that the requirement as to the mill foundations is not reasonable or businesslike.

We considered automatic cancellation in case of violation of the stipulations, but decided against it as being perhaps undesirable from the standpoint of the Government. The proposed modification leaves the Government in the same position that we now are as to cancellation for failure to meet the terms of the remaining stipulations. If the bond should be forfeited October 1 and the contract not canceled, the Government would be in a position to require a new one by the terms of the necessary modification. Inclosed are copies of the application for modification of agreement. If you are favorable to the action as outlined, I should appreciate it if you will wire to that effect and copies will be sent to Mr. Herrick for execution.

Since the above was written, Mr. Girard has returned from Seattle where he went with Mr. Herrick. From what he tells me now I am led to believe that there is really a change of attitude on Mr. Herrick's part toward his obligations under the contract and the necessity for a vigorous prosecution of the work resulting from the interviews which we have had. He says that Mr. Herrick is willing to accept the line-up as above proposed, though he does still feel that the requirement as to the mill foundations is unreasonable and that we should be willing to accept other equivalent work in lieu of it. Mr. Girard says that he himself feels this more strongly even than Mr. Herrick. I finally told him that while Lam unwilling to make this concession at this time, I would agree that in ease the requirements as of October 1 are fully met, thus evidencing a change of policy on the part of the purchaser, we will agree to reconsider at that time the requirement as to the mill foundations. I feel that this is reasonable, and we would certainly be in a much better position then to make such a concession without causing dissatisfaction to anyone than we are at this time.

Very truly yours,

C. M. GRANGER, *District Forester.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
September 8, 1925.

APPLICATION FOR MODIFICATION OF AGREEMENT

I, Fred Herrick, of St. Maries, Idaho, purchaser of timber in the above-designated case, Malheur National Forest, by an agreement signed in duplicate by me on the 15th day of June, 1923, and approved by George H. Cecil, district forester, on the 15th day of June, 1923, request that said agreement and the modification of said agreement signed in duplicate by me on the 3d day of March, 1925, and approved by the district forester on the 12th day of March, 1925, together with the accompanying stipulations governing construction work, be further modified as follows:

By changing section 46 of the agreement by adding to this section:

"Whereas it is essential to the proper execution of the plans of the United States Government for the development of the Malheur National Forest and for the fullest and most economical utilization of the natural resources thereof, including the mature timber, that work be completed by the dates specified in the modification of agreement executed by me on March 3, 1925, and approved by the district forester on March 12, 1925, and the stipulations governing construction work forming a part thereof as hereby modified, and

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"Whereas the United States will suffer damages lay reasons of failure on my part to meet any of such requirements respecting the completion of work by the said specific dates, and it is impossible to estimate in advance or to determine, in the event of any such failure, accurately the amount of such damages:

"Now, therefore, it is agreed that the damages which the United States will suffer by reason of any such failure will amount to the sum of $50,000, which sum I, the said Fred Herrick, agree to pay to the United States as liquidated damages and not as a penalty in the event of any such failure; and it is further agreed that if I, the said Fred Herrick, shall fail to pay the said $50,000 within 10 days after demand therefor, the United States shall have the right to apply the proceeds of the bonds heretofore and hereby pledged as security for compliance with this agreement in satisfaction of said damages; and I do further agree that if the proceeds of said bonds or any portion thereof are used to satisfy said liquidated y damages, because of any such failure, I will within 30 days of receipt of demand furnish new security for the bond executed by me on June 15, 1923, and approved by George H. Cecil, district forester, on June 15, 1923, or will furnish a new bond with a satisfactory security or sureties solvent and satisfactory to the superior officer."

By waiving the requirements of stipulation 1 and the requirements of stipulation 2-b relating to the excavation for the log pond of the said stipulations governing construction work.

By adding to the said stipulations governing construction work, as No. 6:

"The Secretary of Agriculture shall be the final judge as to the compliance with all of the above stipulations. He may, in his discretion, accept other equivalent work in lieu of failures to comply with the detailed requirements, except as to the requirements that the excavation for the log pond at the purchaser's sawmill, and also the construction of railroad grade from Burns to the purchaser's main sawmill, with any construction or reconstruction of highways that may have been required or approved by the Highway Commission of the State of Oregon, as stated in said stipulations, shall be completed by December 31, 1925, which requirements shall not be waived nor shall other equivalent work be accepted in lieu thereof; *Provided*, That the completion of the grade for a distance of 3 miles from the mouth of Lost Creek in a southerly direction on April 1, 1926, as covered by the specifications of stipulation 4, may be waived and the time extended until July 1, 1926, in the discretion of the Secretary of Agriculture."

If this application is approved, I do hereby agree to cut and remove said timber in strict accordance with all and singular the terms and provisions of the aforesaid contract, as herein and heretofore modified.

I further agree that if this application is approved my certain bond in amount of $50,000, secured by the deposit of United States Liberty bonds in said amount, to wit:

Title of bonds	Coupon or registered	Total face amount	Serial number	Interest dates

First Liberty converted 4¼	Coupon	$10,000	B-00011202	June 15-Dec. 15.
do.	do.	10,000	E-00009725	do.
do.	do.	10,000	E-00011200	do.
do.	do.	10,000	E-00005650	do.
do.	do.	5,000	E-00010455	do.
do.	do.	5,000	C-00010433	do.
Total amount		50,000		

Executed by me at Portland, Oreg., on the 15th day of June, 1923, and approved by the district forester on tile 15th day of June, 192 3, which was given to the United States of America to insure faithful compliance with the terms of the aforesaid contract, shall bind ins, my heirs, executors, administrators, successors, and assigns in the same manner as if said modifications had been included in the original contract, to insure compliance with which said bond was given.

Signed in duplicate this 5th day of September, 1925.

[SEAL.] FRED HERRICK.

Witnesses:
JAMES W. GIRARD.
BRUCE E. HOFFMAN.

Approved at Portland, Oreg., under the above conditions September 8, 1925.

A. O. WAHA,
Acting District Forester.

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Status October 1, 1925

Railroad.—Under the second modification the following railroad grade had to be complete by October 1, 1925; construction of railroad grade ready for steel (excepting bridges, trestles, and minor ditching):

1. From a point near Burns to approximately station 955.
2. From approximately station 1112 to 1360.
3. From approximately station 1505 to 2154.

Additional work (not required), cost $70,654.72
Deficiency on work required 36,528.75

Excess work on grade 34,125.97
Additional work done 26,600.00

Total excess work done 61,725.97

Expenditures from July 1 to September 30 were $206,586.27.

Mill site.—No construction of mill buildings.
Acceptance of requirements.—Accepted October 17.

OCTOBER 17, 1925.

MR. FRED HERRICK,
St. Maries, Idaho.

DEAR SIR: The agreement executed by you June 15, 1923, for the purchase of certain timber in the Malheur National Forest, Oreg., as modified by two supplemental agreements signed by you March 3, 1925, and September 5, 1925, respectively, provides for the complete construction by October 1, 1925, of a

railroad grade between certain definitely designated points. The modification, signed September 5, 1925, makes the Secretary of Agriculture, final judge as to compliance with the contractual stipulations governing construction work, and also provides that he may, in his discretion, accept other equivalent work in lieu of failures to comply with the detailed requirements.

It appears that you failed to fully complete by October 1 all of the railroad grading that was required to be constructed within that time limit. However, since you performed sufficient other railroad grade, tunnel, and bridge construction work to more than offset the deficiency mentioned, I hereby accept in lieu thereof such other work.

Very truly yours,

C. F. MARVIN, *Acting Secretary.*

Status December 31, 1925

Railroad.—Following construction of grade required by December 31, 1925:

1. From station 2154 to station 2520 (approximately 7 miles); 86 per cent complete on December 31, 1925.

2. From Burns to mill; completed by December 31, 1925.

3. Construction or reconstruction of highways that may have been required or approved by the Highway Commission of Oregon as a replacement of any highway injured or rendered less usable by the construction of the railroad from Burns to the mill site; 85 per cent completed by December 31, 1925.

Additional work (not required), cost $59,097.58
Deficiency on work required 41,236.70

Excess in grade 17,860.88
Bridges 46,199.65

Total excess expenditures 64,060.53

Expenditures from October 1 to December 31, 1925, were $131,747.80.

Mill pond.—Excavations 90 per cent complete December 31, 1925.

Mill and power house.—Installation of foundation; no work done except leveling ground for foundation.

Acceptance of requirement.—Accepted February 9.

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FEBRUARY 9, 1926.

MR. FRED HERRICK,
St. Maries, Idaho
(Sent through the district forester).

DEAR SIR: By the terms of the agreement executed by you June 15, 1923, for the purchase of approximately 770,000,000 board-feet of timber on the Malheur National Forest, Oreg., as modified by two supplemental agreements signed by you March 3, 1925, and September 5, 1925, respectively, you were required to complete, by December 31, 1925, the construction of a railroad grade from Burns to the site of your main sawmill, make certain county highway changes rendered necessary by the construction of the railroad from Burns to the sawmill site, and complete excavation for the mill pond. The work done by you prior to January 1, 1926, on these three items is accepted as a substantial compliance with the contractual stipulations governing construction work that was to be completed prior to that date.

You were also required by the modified agreement to construct by December 31, 1925, the necessary railroad grade from station. 2154 to 2520 of the survey for the railroad, as well as complete the grading work that was to have been finished by October 1, 1925, and to install foundations for the main sawmill and power Plant. The report of the district forester, Portland, Oreg., indicates that you failed to meet these grading and foundation requirements completely.

However, in view of the fact that you performed other equivalent construction work in excess of the contractual requirements I am accepting such excess work in lieu of the grading and foundation deficiency existing December 31, 1926.

Very truly yours,

R. W. DUNLAP, *Acting Secretary.*

Status April 1, 1928

Railroad—Following work to be completed by April 1, 1926: Railroad grade, tunnels, bridges, etc., complete for steel from Burns to station 2,520 (3 miles near mouth of Lost Creek could be waived and time extended to July 1). On these requirements Mr. Herrick fell short $23,075, not including the 3 miles near Lost Creek, which were estimated to cost $54,000.

Sawmill and power house.—Installation of foundation required by December 31, 1925. On this requirement the deficiency was estimated at $15,000, with an added deficiency on the mill pond of $1,890.

Expenditures January 1, 1926, to April 1, 1926, $66,509.79.

Acceptance of requirement.—Not accepted; $50,000 liquidated damages collected. (See Drake's report of April 5, 1926.)

JUNE 17, 1926.

MR. FRED HERRICK,
Fort Dearborn Hotel, Chicago, Ill.

DEAR MR. HERRICK: Referring to your appeal of May 17, addressed to District Forester Granger at Portland, and confirming the conversation which we have had to-day, the terms upon which the contract of the above designation can be continued in effect are as follows:

1. The payments on or before July 5, 1926, of $50,000 as liquidated damages on account of your failure to meet the requirements of the stipulations by April1, 1926.

2. The execution of new stipulations which will provide for the following periodic construction requirements:

(a) Extending the time for the completion of the railroad grade from Burns to Seneca, as prescribed in stipulation 4 of stipulations governing construction work of February 25, 1925, to September 15, 1926.

(b) Extension of time for completion of the railroad from Burns to the timber to December 15, 1926, at which time it shall be in condition to operate.

(c) Extension of time for the completion of the entire sawmill plant ready to operate to March 1, 1927.

3. The new stipulations will also provide that you shall advance and make available to your representative in charge of construction on the Malheur sale the following amounts on the dates indicated, for expenditure by such representative in completing the railroad construction work required under the sale agreement as modified:

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June 25, 1926	$100,000
Aug.1,1926	70,000
Sept. l, 1926	70,000
Oct. 1, 1926	70,000
Nov. 1, 1926	70,000
Total	380,000

Satisfactory evidence that these required advances of funds have been made shall be furnished the forest supervisor by your representative.

4. Extension of time for the beginning of cutting and removal of timber to January, 1, 1927.

5. Agreement to pay liquidated damages in the sum of $50,000 for failure to meet any one of the foregoing requirements and to guarantee such payment or payments by a bond in that sum secured by a deposit of $50,000 in Liberty bonds.

As I have informed you, the payment of $50,000 above prescribed as liquidated damages should be made to the district forester at Portland, and the new stipulations will also be drawn up by him and be ready for execution by you or before July 5.

Very sincerely yours,

W. B. GREELY, *Forester.*

The following stipulations governing construction work are to be performed prior to March 1, 1927, under the timber-sale agreement signed by Fred Herrick on June 15, 1923, and approved by George H. Cecil, district forester, on June 15, 1923, as modified by an application executed on March 3, 1925; and approved by C. M. Granger, district forester, on March 12, 1925, and further modified by an application executed on September 5, 1925, and approved by the acting district forester on September 8, 1925, and further modified by an application executed on July G, 1926, and approved by C. M. Granger, district forester, on, July 14, 1926, which stipulations shall be considered a part of said agreement as modified:

1. The purchaser will advance and make available to his representative in charge of construction work in connection with the timber sale of June 15, 1923, Malheur National Forest, Oreg., for expenditure by such representative in completing the railroad construction work hereinafter described, the following amounts on the dates indicated:

Aug. 1, 1926	$70,000
Sept. 1, 1926	70,000
Oct. l, 1926	70,000
Nov. 1, 1926	70,000
Total	280,000

Evidence satisfactory to the forest supervisor, Malheur National Forest, that these required advances have been made, shall be furnished him by the purchaser's representative.

2. On September 15, 1926, the railroad grade from Burns to the point near the south line of section 34, township 16 south, range 31 east, Willamette meridian, being station 2520 of the railroad survey, including all cuts, fills, tunnels, bridges, trestles, or other structures, excavations, or movements of earth or rock necessary for the laying of ties and steel for permanent standard-gauge railroad track suitable for use in hauling logs in trains, shall have been completed: *Provided*, That this requirement shall not be construed to require completion of the widening of cuts or fills or other minor work which, in the judgment of the forest supervisor, may be done most economically after permanent steel has been laid and can be used for transportation purposes.

3. On December 15, 1926, the railroad from the mill to the timber shall be ready for operation.

4. On March 1, 1927, the complete sawmill plant shall be ready for operation.

5. The Secretary of Agriculture shall be the final judge as to the compliance with all of the above stipulations.

Signed in duplicate this 6th day of July, 1926.

FRED HERRICK.

Witnesses:
JAMES W. GIRARD.
FRED AMES.

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UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE

Application for Modification of Agreement

I, Fred Herrick, of St. Maries, Idaho, purchaser of timber in the above designated case, Malheur National Forest, by an agreement signed in duplicate by me on the 15th day of June, 1923, and approved by George H. Cecil, district forester, on the 15th day of June, 1923, request that said agreement and the modification of said agreement signed in duplicate by me on the 3d day of March, 1925, and approved by C. M. Granger, district forester, on the 12th day of March, 1925, and the further modification of said agreement signed in duplicate by me on the 5th day of September, 1925, and approved by the acting district forester on the 8th day of September, 1925, be further modified as follows:

By changing the first paragraph of section 3 to read:

"Construction work shall be carried on and completed in accordance with the accompanying stipulations dated July 1, 1926, which am attached hereto and made a part of this agreement, and supersede all stipulations heretofore agreed to, and failure to comply with any of said stipulations in whole or in part shall be sufficient cause for cancellation of this agreement. Unless an extension of time is granted, all

timber shall be cut and removed and the requirements of this agreement satisfied on or before November 30, 1945."

By changing section 46 to read as follows:

"And as a further guaranty of a faithful performance of the conditions of this agreement I deliver herewith a bond in the sum of $50,000, and do further agree that all moneys paid under this agreement shall, upon failure on my part to fulfill all and singular the conditions and requirements herein set forth, or made a part hereof, be retained by the United States to be applied as far as may be to the satisfaction of my obligations assumed hereunder. I do further agree that should the security on the bond delivered herewith or on any bond delivered hereafter in connection with this sale become unsatisfactory to the officer approving this agreement, I will within 30 days of receipt of demand furnish a new bond with security satisfactory to the approving officer.

"Whereas it is essential to the proper execution of the plans of the United States Government for the development of the Malheur National Forest and for the fullest and most economical utilization of the natural resources thereof, including the mature timber, that work be completed lay the dates specified herein and the stipulations governing construction work dated July 1, 1926; and

"Whereas the United States will suffer damages by reason of failure on my part to meet any of such requirements respecting the completion of work by the said specific dates and making the specified deposits to be available for construction work on the dates set forth in said stipulations, and it is impossible to estimate in advance, or to determine in the event of any such failure, accurately the amount of such damages:

"Now, therefore, it is agreed that the damages which the United States will suffer by reason of failure to meet any of the requirements respecting such work or failure to make any of the deposits as specified, will amount to the sum of $50,000, which sum I, the said Fred Herrick, agree to pay to the United States as liquidated damages and not as a penalty in the event of any such failure; and it is further agreed that if I, the said Fred Herrick, shall fail to pay the said $50,000 within 10 days after demand therefor, the United States shall have the right to sell the bonds heretofore and hereby pledged as security for compliance with this agreement and apply the proceeds of such sale to the extent of $50,000 in satisfaction of said damages; and I do further agree that if the proceeds of said bonds or any portion thereof are used to satisfy said liquidated damages because of any such failure, I will within 30 days of receipt of demand furnish new security for the bond executed by me on June 15, 1923, and approved by George H. Cecil, district forester, on June 15, 1923, or will furnish a new bond with a satisfactory security or sureties solvent and satisfactory to the approving officer."

If this application is approved, I do hereby agree to cut and remove said timber in strict accordance with all and singular the terms and provisions of the aforesaid contract, as herein and heretofore modified.

I further agree that if this application is approved my certain bond in amount of $50,000 secured by the deposit of United States Liberty bonds in said amount, to wit:

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Title of bonds	Coupon or registered	Total face amount	Serial number	Interest dates
First Liberty converted 4¼	Coupon	$10,000	B-00011202	June 15-Dec. 15.
do.	do.	10,000	E-00009725	do.
do.	do.	10,000	E-00011200	do.
do.	do.	10,000	E-00005650	do.
do.	do.	5,000	E-00010455	do.
do.	do.	5,000	C-00010433	do.
Total amount		50,000		

{E}xecuted by me at Portland, Oreg., on the 15th day of June, 1923, and approved by the district forester on the 15th day of June, 1923, which was given to the United States of America to insure faithful compliance with the terms of the aforesaid contract, shall bind me, my heirs, executors, administrators, successors, and assigns in the same manner as if said modifications had been included in the original contract, to insure compliance with which said bond was given.

Signed in duplicate this 6th day of July, 1926.

FRED HERRICK.

Witnesses
JAMES W. GIRARD.
FRED AMES.

Approved at Portland, Oreg., under the above conditions July 14, 1926.

C. M. GRANGER, *District Forester.*

Status September 15, 1926

Railroad.—Following required:

1. Advance of $70,000 for construction on 1st of August, September, October, and November, 1926. This was done for August and September.

2. Railroad grade from Burns to station 2520, near Seneca, be complete, ready for steel. Construction of grade about 33,000 yards short, but Mr. Herrick had laid 15 miles of steel.

Acceptance of requirement.—Accepted by Secretary on December 3 as substantial compliance. (See Hoffman's report of Sept. 27, 1926.)

PORTLAND, OREG., *November 29, 1926.*

FOREST SERVICE, *Washington, D. C.*:

Girard informs us that for purposes of bonding necessary assign Herrick contract to Fred Herrick Lumber Co. Recommend approval this request if satisfactory financial statement submitted.

AMES.

WASHINGTON, D. C., *November 30, 1926.*

FOREST SERVICE, *Portland, Oreg.:*

Your Herrick wire 29th. Suggest transfer contract to company under regulation 15 or execution new contract by company with cancellation present contract. Assignment by company to trustee for bondholders probably will fellow, but can not be approved in advance letter.

CARTER.

NOVEMBER 30, 1926.

DISTRICT FORESTER, *Portland, Oreg.*

DEAR SIR: I have wired you in reply to your letter of November 29, suggesting that instead of an assignment of the Herrick contract to the Fred Herrick Co. a transfer under the forms discussed on pages 88-5 and 89-5 of the manual, or possibly still better, the execution of an entirely new contract by the Fred Herrick Lumber Co., accompanied by an application for cancellation of the existing contract, properly signed by Mr. Herrick, would be preferable to a formal assignment. One reason for this suggestion is that, if the bonds are to be those of the teed Herrick Lumber Co., we can anticipate an application for the assignment of the contract to the trustee for the purchasers of those bonds, and I believe it

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would be simpler in that case to have the contract directly in the name of the Fred Herrick Lumber Co. Incidentally, the prohibition in the Revised Statutes of the assignment of Government contracts has been interpreted by the courts as being primarily for the protection of the Government's interests and has been modified by court decisions to the point where the proper administrative officer may recognize such an assignment after it has been made, but is not empowered to approve it in advance. We have had this very thoroughly threshed out with the solicitor's office in connection with the numerous assignments of contract made by the Cady Lumber Co. in connection with the refinancing of its organization on the Sitgreaves and

Coconino National Forest in District 3 and the Apache Indian Reservation. In these cases the Secretaries of Agriculture and Interior have agreed to the assignments after they have been made, but have specifically reserved approval of any future disposal of the contract by the trustee.

In any event there should be a satisfactory financial showing on the part of the Fred Herrick Lumber Co. before any assignment, transfer or new agreement is approved, as your telegram states.

Very truly Yours,

E. E. CARTER, *Assistant Forester*.

DECEMBER 3, 1926.

MR. FRED HERRICK,
St. Maries, Idaho.

DEAR SIR: By the terms of the agreement executed by you June 15, 1923, for the purchase of approximately 770,000,000 board feet of timber within the Malheur National Forest, Oreg., as modified by the supplemental agreement and accompanying stipulations executed July 6, 1926, you were required to complete the construction of certain railroad grade by September 15, 1926. The work done by you prior to that date on such railroad grade is accepted as substantial compliance with the contractual stipulation governing grade construction work.

Very truly yours,

R. W. DUNLAP, *Acting Secretary*.

PORTLAND, OREG., *December 7, 1926.*

FOREST SERVICE, *Washington, D. C.:*

Reply wire Herrick sale Girard reports November 30 that heavy rains prevented track-laying since conference November 12. This will make track-laying fall very considerably short on December 15, as now stipulated; therefore difficult to accept. As substantial compliance believe would be better have prior modification executed extending date for completion of railroad find beginning of logging to February 15. Please rush reply.

AMES.

WASHINGTON, D. C., *December 9, 1926*.

FOREST SERVICE, *Portland, Oreg.:*

Your Herrick wire 7th. Notify Herrick that we defer action on compliance with December 15 requirements until about February 1, when accomplishment of railroad and mill construction work in accordance stipulations will be considered at same time.

GREELEY.

PORTLAND, OREG., *January 28, 1927*.

FOREST SERVICE, *Washington, D. C.:*

Reply Kneipps wire. In addition to 30 miles completed railroad from Crane to Burns, railroad grade completed from mill to Seneca. 50 miles, and branch line and spurs in timber, 10 miles. Steel laid from mill to within 7 miles of Seneca. Forty-three miles track-laying temporarily suspended account bad weather. Pond excavation power house, concrete foundations, and walls complete. No construction on mill proper.

GRANGER.

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Mr. DE NEFFE. Then the delay in signing the contract consisted of the period from April 7, 1923, to June 15, 1923?

Mr. BARNES. Yes.

Mr. DE NEFFE. Did you see Mr. Herrick after the bids were opened?

Mr. BARNES. Yes; I met Mr. Herrick for the first time up at burns.

Mr. DE NEFFE. How long after the bids were opened?

Mr. BARNES. Oh, I could not say, but it might have been 15 days and might have been 20 days.

Mr. DE NEFFE. What happened then, whatever was the date?

Mr. BARNES. Well, he asked me to go to Prineville with him.

Mr. DE NEFFE. From Portland?

Mr. BARNES. It was at Burns where I met him, from there to Prineville.

Mr. DE NEFFE. All right.

Mr. BARNES. He had Mr. Girard with him, and Mr. Gray, of Alabama, and Mr. Crane, of Coeur d'Alene. Ho asked me to go to Prineville with him, and I went. I asked him which way he wanted to go, and he said he didn't know. I said there were three ways, and I said he could go through Bear Valley as he might want to see the timber. He said he didn't care about that that Girard knew all about it. However, we went through Bear Valley.

Mr. MCGOWAN. What was the date of that trip?

Mr. BARNES. I could not tell you, but it was May, 1923.

Mr. DE NEFFE. Did Mr. Herrick say anything to you as to whether be had ever seen the timber before he put in his bid?

Mr. BARNES. He didn't say anything about it.

Mr. DE NEFFE. He said that Mr. Girard had seen the timber and he did not care to go through it himself?

Mr. BARNES. He said that Jim knew all about it, and Jim meant Mr. Girard.

Mr. DE NEFFE. Which route did you take?

Mr. BARNES. We went through Bear Valley to Prineville.

Mr. DE NEFFE. Did you pass through any of this timber on the way?

Mr. BARNES. We went through a lot of private timber first and in the last end of the route, toward the head of Silvies River we went through a little of this timber.

Mr. DE NEFFE. You traveled by automobile, I suppose?

Mr. BARNES. Yes.

Mr. DE NEFFE. Did Mr. Herrick get out and look at the timber?

Mr. BARNES. No; he did not get out of the car at any time except when we ate dinner.

Mr. DE NEFFE. Did not make any examination of the timber at all?

Mr. BARNES. No.

Mr. DE NEFFE. Now, then you went to Prineville, and what, if anything, did Mr. Herrick say to you there?

Mr. BARNES. Well, we didn't get to Prineville until late that night, and the next morning, after breakfast, Mr. Herrick called me out on the street—well, in going through Bear Valley the day before I told him where the private timber was, but he didn't say anything. The next morning at Prineville he called me out and said, "Mr. Barnes,

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I don't like the idea of that private timber up in there. I have no money to buy private timber with." "Well," I says, "Mr. Herrick, you don't have to buy that private timber. You have bid on a contract here whereby, as you sign it, you sign to build a common carrier railroad, and you can haul it out of there, for the people who own it, either the logs or the lumber." He said he would be damned if he would. He says, "I can build a common carrier railroad but I don't have to haul the logs." I said, "You will if you are a common carrier." "Well," he says, "I can turn it into a private road. I can go into bankruptcy and turn it into a private road." He says "Another thing, I don't see any chance for a mill at the site there at Burns." I said, "Mr. Herrick, you have not looked. You came in late at night and left early the next morning." He says, "Now, Barnes, you have done a lot of good work in this country, and I appreciate it. I would not be in this country to-day except for you. I expect to make some money in this country. I want to put my mill up in the woods; and" he says, "I might get the Union Pacific to build to me." And then he says "I don't want no common carrier railroad now, and you know how to do these things, and you can fix this for me, and I will take care of you."

Mr. DE NEFFE. Fix it with whom?

Mr. BARNES. Well, he meant with the people, I suppose. I told Mr. Herrick—well, he says, "I don't believe in the people of Burns sitting around there for the last 40 years and profiting off your efforts." I told him "Mr. Herrick, the Burns people are my friends, and I promised them the pay roll at Burns of the sawmill when we started in; and that the timber would be in Grant County, and to divide up the proposition for both counties." I said "I have two sawmill sites at Burns under option, one north of Burns and one south of Burns, and you can have either one you want, as I will turn it right over to you as it is." "But" I says, "The sawmill must be the pay roll for Burns, or you can not have anything I have got in this country." He says, "All right, when we get back to Burns we will look at it, " and that was all there was to that.

Mr. DE NEFFE. When this timber was advertised, and this petition was sent in, was the matter discussed with the forest officials, and was it understood that Burns should have the sawmill?

Mr. BARNES. It was not in the contract, you understand.

Mr. DE NEFFE. I understand it was not in the contract, but I mean was that the general feeling and understanding?

Mr. BARNES. Yes; that was the understanding by everybody in that country.

Mr. DE NEFFE. And Mr. Herrick wanted to put the sawmill where?

Mr. BARNES. He said that day he wanted to put the sawmill in the woods.

Mr. DE NEFFE. Where?

Mr. BARNES. Up in Bear Valley, where the lumber was.

Mr. DE NEFFE. How far north of Burns?

Mr. BARNES. Fifty miles north of Burns.

Mr. DE NEFFE. Did he say anything about hauling his logs out?

Mr. BARNES. Hauling his logs out?

Mr. DE NEFFE. Yes.
Mr. BARNES. Oh, he told me in that conversation that he would not haul logs for anybody.

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Mr. DE NEFFE. That is, that he would not haul logs from the timber 50 miles to Burns, is that what he meant?

Mr. BARNES. Yes; and he meant that he would not haul logs for anyone else.

Mr. DE NEFFE. Where did you go from Prineville?

Mr. BARNES. We went out in the woods, at Prineville, and looked around the Rogers tract of timber. This man from Alabama, Mr. Gray, and Mr. Herrick was his friend, was to go with him.

Mr. DE NEFFE. Well, that is immaterial. Did you then go back to Burns?

Mr. BARNES. Yes.

Mr. DE NEFFE. What was said there?

Mr. BARNES. The next morning we went back to Burns, and I went out and showed Mr. Herrick this mill site north of Burns, and he threw up both hands and said, "Nobody would put a mill there." I said "Then, there is a place south of town." So we went down and looked at it. He asked me when we got down there, and this was at the Warm Spring, he said "How much water comes out of that hole?" I said, "1,300,000 gallons every 24 hours." He said "Is there anything in it to hurt a boiler?" I told him no. He then asked who owned the land around there and I told him I did, and he said "What have you got all this land for?" I said," Mr. Herrick, I don't own it but I have it under option." He says, "What the hell haven't you got under option in this country?" I said "Everything I have under option in this country is a help to you. I have got it all fixed for you, and have the right of way for the highest bidder on this timber. I planned it all, fixed it all for anybody who got this timber. So everything I have is a benefit to you."

We started out right down toward the irrigation district, and came back, and he got out of the car, and him and I walked down the lane a piece. I could not explain it to this committee, but it was down a right good piece, and he says, "Barnes, where is that spring from here?" It, was way across the field and a stranger would not know where it was. I said "Right over there at the paint of rocks." He said, "Barnes, I guess you knew what you were doing, and let's get some dinner."

Mr. DE NEFFE. Then, did you tell him what you would do with this mill site south of Burns?

Mr. Barnes. Not right then. He did not ask me.

Mr. DE NEFFE. What did you do with it so far as Mr. Herrick was concerned?

Mr. BARNES. I gave the mill site to Herrick in the long run.

Mr. DE NEFFE. How much land did you give him with it?

Mr. BARNES. Three hundred and twenty acres.
Mr. DE NEFFE. Was that for any consideration? In other words, did he pay you anything for it?

Mr. BARNES. Well, I had a contract with Mr. Herrick, sold him some timber, and I gave him some right of way and this mill site.

The CHAIRMAN. For a consideration?

Mr. BARNES. As a consideration with the timber, and I threw in the mill site and the right of way. That was free gratis, so far as I was concerned.

Mr. DE NEFFE. Was that subject to the condition that he was to build a mill there?

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Mr. BARNES. He was to build a mill on this land.

Mr. DE NEFFE. And he was to build a railroad, was that it?

Mr. BARNES. Yes, sure. But this has nothing to do with this thing here.

Mr. DE NEFFE. Yes, I understand, but I wanted to know whether he got that mill site. That is how near Burns?

Mr. BARNES. It is about a mile and a half from the city limits.

Mr. DE NEFFE. Then where did you go from Burns?

Mr. BARNES. From Burns we went to Portland. Mr. Herrick asked me to go to Portland with him and Girard and Crane and this man Gray.

Mr. DE NEFFE. What was the purpose in going to Portland?

Mr. BARNES. He asked me to go to Portland to see J. P. O'Brien. for him.

Mr. DE NEFFE. Who is he?

Mr. BARNES. The manager of the O.W. & R.M. Railroad.

Mr. DE NEFFE. Does that railroad tap that county, Harvey County?

Mr. BARNES. Yes.

Mr. DE NEFFE. What did he want you to see Mr. O'Brien for?

Mr. BARNES. He wanted to see O'Brien and see what he would do. I figured when we left Burns that he was going to O'Brien when I did, but when we got to Portland he wanted me to see O'Brien about the railroad.

Mr. DE NEFFE. What about it?
Mr. BARNES. What O'Brien would do for him on the railroad work coming in there, that is, so far as the railroad was concerned.

Mr. DE NEFFE. What did he want O'Brien to do?

Mr. BARNES. He expected in the first place to get O'Brien or the Union Pacific or the O. W. & R. M. Railroad to build this road. He told me to tell O'Brien "I am going to build a mill at Burns, at the Warm Springs, and another one above there." He says, "Because, you see, I will get it built 6 miles farther for me in that way."

Mr. DE NEFFE. He wanted the Union Pacific to build it for him?

Mr. BARNES. He says, "I am not going to put a mill up there, but if say I am going to put one there he will build it, 6 miles farther."

Mr. DE NEFFE. It was used as a threat?

Mr. BARNES. No; he would not use it as a threat, but to get all of the road built for him that he could.

Mr. DE NEFFE. Under the representation that he would put at mill up there.

Mr. BARNES. Yes.

Mr. DE NEFFE. Did you talk to Mr. O'Brien?

Mr. BARNES. Well, I had figured until I got to Portland that Mr. Herrick was going with me, but he did not, and went on to Seattle, and I went to see Mr. O'Brien myself.

Mr. HALLOCK. May I interpose right here in order to get that straight? Mr. Herrick wanted you to sort of fool Mr. O'Brien into believing that he was going to build two mills, is that it?

Mr. BARNES. Well, he said, "I am going to build down here below Burns, but you tell him I am going to build up here too."

Mr. HALLOCK. Build two mills?

Mr. BARNES. Yes, to tell him he was going to build two mills.

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Mr. DE NEFFE. Did you talk with Mr. O'Brien about it?

Mr. BARNES. Yes; I went to Mr. O'Brien about it.

Mr. DE NEFFE. Did you tell him what Herrick's proposition was?

Mr. BARNES. Yes.

Mr. DE NEFFE. What did Mr. O'Brien say?

Mr. BARNES. Well, I wrote Mr. Herrick a letter, but I did not tell him exactly what Mr. O'Brien said at the start.

Mr. DE NEFFE. And what did Mr. O'Brien say at the start?

Mr. BARNES. Well, I told him what Mr. O'Brien told me to tell him. And I will tell you what Mr. O'Brien said to me: He said, "Barnes, I would want Herrick's two feet and two hands shackled before I would care to do anything with him at all."

Mr. DE NEFFE. He would want him tied up good, in other words.

Mr. BARNES. Yes.

Mr. HALLOCK. But you did not put that in your letter to Mr. Herrick?

Mr. BARNES. No. I said to Mr. O'Brien: "Now, I want to know what I shall write to him?" He said, "Tell him we will be glad to see him at any time."

Mr. DE NEFFE. Where did you go after you saw Mr. O'Brien?

Mr. BARNES. Oh, I don't know. I was in Portland then. Herrick had left, and the next day—well, Girard and I

stayed there another day; and Herrick told us to go back and look over the private timber.

Mr. DE NEFFE. Did you go back to Burns?

Mr. BARNES. Yes; we went back to Burns, and put in about two weeks on this private timber, cruising it.

Mr. DE NEFFE. Did the people in Harney County become restive after the contract was signed because the work was not starting?

Mr. BARNES. Well, we cruised this timber for about two weeks, and nobody saw any results about anything then, even though they knew what we were doing. It ran along for quite a while, and Mr. Girard was around there, and yet no work was going on. And Herrick did not turn up, and people asked me two or three times what was going on. I went to Girard finally and told him "You better wire Herrick to know if he is going to do anything." Of course it was figured, or at least it had been reported that the contract was signed, but then we figured that it had not been.

Mr. DE NEFFE. Who reported that it was signed?

Mr. BARNES. Well, I don't know. It was generally talked about. Mr. Dodson in Portland told me he had heard it was signed, and I told Girard "You better wire Mr. Herrick and see what he is going to do." So he did wire him. He wired him I think it was about the 11th or 12th of June, and he got a wire back well, I know that be got a wire back on the 14th, I am sure of that, because we had to take a car and get to Bend pretty quick, as Guard asked me to go there with him, and we had to go very quickly in order to get to Portland. And when we got to Portland—well, when we got there it was at the same time Herrick got there, and he told me on the platform "Barnes, I want to meet you at the hotel at 12 o'clock. Me and Jim (that is, Girard) are going to the forest office."

Mr. DE NEFFE. When Mr. Herrick left you before that did he say who would manage and develop this project for him?

Mr. BARNES. Well, I don't remember of that at any time, but on this day when I met him in Portland, when we met there, and it

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had been reported that the contract was signed; he came there that day and met me at 12 o'clock, and Mr. Girard was not with him. Colonel Greeley, I think was in Portland that day, and was speaking somewhere, and I asked where Girard was, and he said he went to hear Colonel Greeley speak. Him and I went to lunch. At lunch he says, "Barnes, I am having a hell of a lot of trouble with this Forest Department." "Well," I says, "how is that, Mr. Herrick? I thought I was the only one that ever had any trouble with the Forest Department." He says "They are wanting me to put up a surety bond, and I have brought a Liberty bond." Well of course I then knew that the contract had not been signed. He says, "I am going down to sign the contract this afternoon, and I want to meet you here at three o'clock."

All right, I met him there at three o'clock, and Mr. Girard was with him, and he handed me the contract to look at. I did not read it, but looked at it here and there, and I saw signatures but don't just remember now what signatures were on it, but his was on it I think. He pulled his hand out of his pocket, and had some coupons clipped off Liberty bonds, and he says, "There are some coupons off of Liberty bonds, and, damn them, I will make them pay me interest instead of me paying them interest."

Mr. DE NEFFE. Did he say then who would manage this project?

Mr. BARNES. Yes; Girard was with him. He said, "Now Barnes, any deal you and Girard make on this timber, and on this mill site, and right of way, and stuff, is between you and me. He is my manager, and you tell all the people that I may be there to-morrow and may not be there for two years."

Mr. DE NEFFE. Did you and Mr. Girard go back to the Burns country?

Mr. BARNES. Girard and I made up a contract the next day, between me and the Herrick Lumber Co., and Girard. We went back to Burns, and I went around the country with him, and he was looking out here and there about the railroad. There was no man with him except myself. He did not have any men there.

Mr. DE NEFFE. Did Mr. Girard say anything about Frank Klobucher coming to join the Herrick organization on this project?

Mr. BARNES. Not then.

Mr. DE NEFFE. How was this project developed, by corporations, or were there any corporations formed?

Mr. BARNES. Well, they started to work there before they incorporated. They went along, and as I say, I do not think they commenced grading there until some time in September.

Mr. DE. NEFFE. But there were two corporations formed?

Mr. BARNES, Yes; the Fred Herrick Lumber Co. and the Malheur Railroad Co.

Mr. DE NEFFE. Have you certified copies of the articles of incorporation?

Mr. BARNES. No.

Mr. HALLOCK. I have the originals here.

Mr. DE NEFFE. We have certified copies for the record.

(The said copies of articles of incorporation, hereafter to be furnished, will be marked fox identification "Exhibit No. 10." See pages 216-228.)

Mr. DE NEFFE. Who were the organizers of those companies?

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Mr. BARNES. Fred Herrick was president, Girard was vice president and general manager, and Klobucher secretary and treasurer.

Mr. DE NEFFE. But who were the incorporators?

Mr. BARNES. They were the incorporators.

Mr. DE NEFFE. Those three men?

Mr. BARNES. Yes.

Mr. DE NEFFE. The names of these companies were, as to one of them, the Fred Herrick Lumber Co.?

Mr. BARNES. Yes.

Mr. DE NEFFE. And as to the other the Malheur Railroad Co.?

Mr. BARNES. Yes.

Mr. DE NEFFE. Now we are up to about the 15th of June, 1923. When did the work start on the railroad?

Mr. BARNES. I think it was in September that they did not do any work until September.

Mr. DE NEFFE. What was the trouble about starting?

Mr. BARNES. Well, I do not know, but they were not doing anything.

Mr. MCGOWAN. Mr. De Neffe, would a question interposed right here bother you any?

Mr. DE NEFFE. No.

Mr. MCGOWAN. Mr. Barnes, the Senate resolution upon which this hearing is based, S. 332, charges that:

"Whereas reliable citizens of said counties also state that there are circumstances surrounding said

transactions which strongly indicate that there was fraud and collusion between said Herrick and certain officials of the United States Forest Service in the making by said Herrick of said bid and in the execution of said contract, and that said Herrick has told different persons in said counties that he would not have entered into said contract if he had not been assured in advance by officials of the United States Forest Service that he would be granted all the extensions of time he desired to complete said contract."

Are you one of the reliable citizens on which this resolution was based?

Senator WALSH of Montana. Mr. McGowan, I do not think you better interrupt the examination.

Mr. MCGOWAN. That is just a preliminary question. I wanted to ask if up to this point, June, 1923, there was, in the opinion of the witness, any fraud between the members of the Forest Service and Mr. Herrick in connection with this contract, and if so what it was.

The CHAIRMAN. I take it that Mr. De Neffe is attempting to develop that situation, and I do not believe he should be interrupted.

Mr. MCGOWAN. Very well, I will withdraw that question.

Mr. DE NEFFE. I have a question pretty soon that goes to that very point.

Mr. MCGOWAN. All right. I beg your pardon.

Mr. DE NEFFE. Mr. Barnes, do you remember about when the first work was started, and what the nature of it was?

Mr. BARNES. Over at Crane, at the end of the O. W. & R. M. Railroad.

Mr. DE NEFFE. Yes; go ahead.

Mr. BARNES. They commenced grading there.

Mr. DE NEFFE. Did they let a contract to some big responsible contractor, or how did they do the work?

Mr. BARNES. No; they let it to different ones, and local people here and there.

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Mr. DE NEFFE. What was the nature of the work?

Mr. BARNES. Well, they started with a couple of teams plowing, and a couple of Fresno scrapers, for a couple of days, and then put on a few little jobbers.

Mr. DE NEFFE. On the ground from Crane to Burns, which is 30 miles going north?

Mr. BARNES. Yes.

Mr. DE NEFFE. It is a level valley there, is it not?

Mr. BARNES. Yes.

Mr. DE NEFFE. No rocks in there at all?

Mr. BARNES. No. Well, there was one little place of a little rock around the turn.

Senator WALSH of Montana. Was this contractor to build a railroad?

Mr. BARNES. Yes; to build a railroad.

Mr. DE NEFFE. What kind of construction was that, hard or easy?

Mr. BARNES. It was very easy construction. There was nothing but sage brush to clear off of some places.

Mr. DE NEFFE. It was just a matter of throwing up a grade?

Mr. BARNES. That is so.

Mr. DE NEFFE. Did they have many crews at the work or only a few?

Mr. BARNES. No; not at the start. They started in with two or three teams, and then a little later they put on some more, and they worked along until it froze.

Mr. DE NEFFE. Do you know about when that Crane-to-Burns section was finished?

Mr. BARNES. Well, I don't remember exactly the date when it was finished, but I remember the day of the celebration there, and I think it was the 24th of September, 1924.

Mr. HALLOCK. That is correct.

Mr. DE NEFFE. So they were a year building that 30-mile section?

Mr. BARNES. Yes.

Mr. DE NEFFE. Who furnished the steel and ties for this 30-mile section?

Mr. BARNES. Well, the Oregon Short Line, I guess.

Mr. DE NEFFE. Who laid the rails, do you know?

Mr. BARNES. The Morrison-Knutson Construction Co.

Mr. DE NEFFE. Did Mr. Herrick get into any financial difficulties while building this 30-mile section?

Mr. BARNES. Well, I don't know whether he was in financial difficulties or not, but it appeared to me as if he was because he was not spending much money and did not have much of a force on it.

Mr. DE NEFFE. Did anything happen with his contractors or workmen that led you to believe he might be short of money?

Mr. BARNES. Well, I don't know, not right then. Nothing led me to believe he was short of money until after he was not doing any work.

Mr. DE NEFFE. Was he sued by any of his contractors?

Mr. BARNES. No, he was not sued, but the steel-laying crew had to lay a lien on that piece of road for $17,600.

Mr. HALLOCK. But you do not know the details of the controversy over that, do you?

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Mr. BARNES. Yes, I do. I think I know all about it.

Mr. DE NEFFE. Well, then, in the spring of 1924 was there any further delay in the laying of steel or in the matter of restlessness on the part of the people?

Mr. BARNES. Well, there was no steel laid then for a long time again. But that winter of 1924. Mr. Herrick told me he was not going to do anything.

Mr. DE NEFFE. Why not?

Mr. BARNES. "Well," he says "You have got the road into Burns mow, and you have got to be satisfied."

Mr. DE NEFFE. Did he say why he wanted to wait, was it on anything else?

Mr. BARNES. Not then, he did, not. Finally the people made a protest to the congressional delegation, and they did go to work up in Silvies Valley, where there was some preliminary work, but they skipped all the rock work and went up in the valley and worked a little while with some small crews.

Mr. DE NEFFE. What was the reason for not going ahead at that time, what was Mr. Herrick waiting for?

Mr. BARNES. Well, he didn't say.

Mr. DE NEFFE. Was he waiting for any particular development in connection with anything at that time?

Mr. BARNES. No, not at that time, or I didn't know of anything.

Mr. DE NEFFE. Did you call his attention to the fact that he would not be able to finish the road on time at the rate he was progressing?

Mr. BARNES. Later I did.

Mr. DE NEFFE. And what did he say?

Mr. BARNES. No, that was before that, before the steel was started to be laid into Burns. They were not laying steel, and were not doing any work anywhere much, and I met him in Portland, and I asked him why they were not laying steel. He said he didn't know whether they were going to lay steel or not. I asked him why. He said "Well, I am going to wait and see if Coolidge is elected." "Well" I told him, "Coolidge was not thought of when you took this contract, Mr. Herrick." "Well," he says, "That is all right, but I want to know where I am at." "Well," I Says, "How are you going to get this job finished on time?" "Well," he says, "I don't know whether I will get it finished on time or not." I says "Well, how are you going to get it finished then?" He says, "I can get an extension, all the extensions I want." I says "What makes you think so?" He says "I know I can. Do you think I was fool enough to take a contract like this without knowing I could?"

Mr. DE NEFFE. Did you say anything to Mr. Girard about the way the work was dragging?

Mr. BARNES. Yes, several times. Everybody said something to Mr. Guard about it there.

Mr. MCGOWAN. Might I ask the date of that conversation, where Herrick said he could get all the extensions he wanted?

Mr. BARNES. I couldn't tell you the date, but it was in —

Mr. MCGOWAN (interposing). Where did it take place and in whose presence?

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Mr. BARNES. It was in the Imperial Hotel but nobody was present. We were sitting over in the corner talking.

Mr. MCGOWAN. And you don't remember the date?

Mr. BARNES. No; I couldn't remember the date. But it was before they started laying steel from Crane.

Mr. DE NEFFE. You talked to Mr. Girard you say about these delays. What, if anything, did he say about the matter of extensions?

Mr. BARNES. Well, we didn't talk about any extensions until pretty nearly the last end of it, Girard and I said "The first thing you know Herrick will be around here asking for an extension."

Mr. HALLOCK. Can you fix those conversations with a little more definiteness, as to time and place and who was present, so we can meet them?

Mr. DE NEFFE. Was that before the steel was laid into Burns or afterwards; or was it before that celebration or afterwards?

Mr. BARNES. Oh, yes; it was before that.

Mr. DE NEFFE. All right, what did Girard say?

Mr. BARNES. He said that he was the only one who could get an extension for Herrick. I said, "How can you do it?" He said, "I am acquainted with the department, and know, Colonel Greeley very well, and can fix it if I want to."

Mr. HALLOCK. Might that be fixed with a little more definiteness?

Senator WALSH Of Montana. I think you better endeavor to do that on your cross-examination, Mr. Hallock.

Mr. HALLOCK. All right.

Mr. BARNES. He was at Burns at that time.

Mr. DE NEFFE. What assistance did you give Mr. Herrick, if any, in the matter of getting rights of way?

Mr. BARNES. Well, what right of way he could use that I had I turned over to him, and that summer we went back from Portland after signing up the contract, I went out through the country and got rights of way for him.

Mr. DE NEFFE. Did any other people in there help him to get rights of way?

Mr. BARNES. Yes.

Mr. DE NEFFE. And did they cooperate with him?

Mr. BARNES. You bet they did. I think there is a man sitting right over there who was out in the car with us one day when we were getting some rights of way, Mr. Byrd. I think that he was there with the bunch of us anyway.

Mr. DE NEFFE. The railroad from Crane to Burns was finished in September, 1924. The time provided in the contract when the cutting of this timber should begin was April, 1925?

Mr. BARNES. Yes.

Mr. HALLOCK. As to the privately owned timber?

Mr. DE NEFFE. Yes. Now, Mr. Barnes, when was anything first said about an extension of time, to you, I mean?

Mr. BARNES. Well, I don't know just when the time was it was mentioned about an extension. You see the second extension —

Mr. DE NEFFE (interposing). I mean the first extension now.

Mr. BARNES. The first extension was given in 1925.

Mr. DE NEFFE. About what time of year; do you remember?

Mr. BARNES. Well, it was in the winter I think, some time in the winter. I know that there was a protest made against it by both counties.

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Mr. DE NEFFE. The protest, then, was started before the extension was given?

Mr. BARNES. Yes.

Mr. DE NEFFE. And the protest started along in the fall of 1925 or the winter of 1925, do you think?

Mr. BARNES. Yes. Well, it was in the fall some time.

Mr. DE NEFFE. Was it a vigorous protest?

Mr. Mr. BARNES. The most of the people from Grant and Harney Counties, or a lot of them at least, put in protests, and they gave me a petition and I took it to Senator McNary, I think it, was. Yes, I met him, and I think it was in the fall that this happened; that it was before Senator McNary came East, anyway.

Mr. DE NEFFE. What was their objection to this extension?

Mr. BARNES. Well because he had not done much work in the meantime, and they figured that it would just be the same way again.

Mr. DE NEFFE. Did they feel that he had shown good faith in prosecuting the work diligently?

Mr. BARNES. Well, I don't know, but —

Senator WALSH of Montana (interposing). Well, that is a matter of opinion.

Mr. DE NEFFE. Very well, I will withdraw that. There was an extension granted anyway.

Mr. BARNES. Yes. Mr. Carter came in there from Washington, and had a meeting in Burns, although I was not there—they met at Girard's office first, and had a few people at the courthouse, and on Sunday they had a meeting I think they told me, and there was about 40 people at the meeting.

Mr. DE NEFFE. I do not want anything testified to if you were not present.

Mr. BARNES. Well, I was not there.

Mr. DE NEFFE. Never mind.

Mr. BARNES. But Mr. Carter never went out on the work?

Mr. DE NEFFE. Very well, we will develop that in some other way. After the first extension was granted, in February, 1925, was the work prosecuted with vigor and diligence?

Mr. BARNES. No; it was just the same as it was before, up until last fall. That was the first extension that you were talking about?

Mr. DE NEFFE. Yes. After that they were granted additional periods of time within which to do certain things.

Mr. BARNES. Yes.

Mr. DE NEFFE. Did they do those things within the time specified in the first extension?

Mr. BARNES. No; they did not.

Mr. DE NEFFE. Was there any modification that you know of in the first extension?

Mr. BARNES. Yes; there was a modification that the road at Seneca, which was stopped about a mile and a quarter below Seneca. On the original contract, and where it was laid out, they determined this road to be was at Seneca here [marking on map].

Mr. HALLOCK. Is this the map you were referring to?

Mr. BARNES. Yes.

Mr. MCGOWAN. That is the map found in the prospectus issued by the Forest Service.

Mr. HALLOCK. Yes.

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Mr. DE NEFFE. The road was to go north as far as Seneca; is that right?

Mr. BARNES. Yes; it was to go here to Seneca, but they stopped on the south side of the river.

Mr. DE NEFFE. Who reported that they were going to stop there, was it the forest officials—did the news come from the forest officials?

Mr. BARNES. Well, they came up here [indicating on map] and bought terminal ground, and the people could find out. And they made a statement, and Mr. Girard said that was where they were going to stop, that they were not going on to Seneca.

Mr. HALLOCK. The point on this scale is 6 or 8 miles south of Seneca where you are marking it.

Mr. BARNES. I am not making a mark there, I am just looking along on the map.

Mr. HALLOCK. Mr. Barnes, you will notice that the map discloses the town of Seneca south of Bear Creek on the plat which you have in your hand, is that correct?

Mr. BARNES. Yes; but that is just —

Mr. HALLOCK (continuing). Let me finish my question: The point which you claim to be correct for the ultimate northern terminus of that line is a point well north of Bear Creek?

Mr. BARNES. No; just the other side of Bear Creek.

Mr. HALLOCK. In any event, the plat shows a place south of Bear Creek where the present terminus of the road is, or approximately there.

Mr. BARNES. Yes; but the creek is shown above Seneca here, where the name was written. But the name "Seneca" ought to be above Bear Creek. Here is where the road was going, to Seneca post office. That was in the first contract. But in the first extension they cut it down a mile and a quarter and left it on the other side of the creek. As to the people of that country, when they want to get this timber on the market, they fixed it so that would cut them off from the highway.

Mr. DE NEFFE. Where was the highway?

Mr. BARNES. At Seneca.

Mr. DE NEFFE. At Seneca post office?

Mr. BARNES. Yes. They wanted the road to go there.

Mr. DE NEFFE. For what reason?

Mr. BARNES. So they could have stockyards there and a place on the main highway.

Mr. DE NEFFE. And if it stops a mile or so south of Seneca will it be expensive to build a highway to the terminus of the railroad?

Mr. BARNES. Yes; it will cost the county quite a little bit of money to build a road over there, and to build a bridge across the creek. But this is where they were to build to [indicating on plat]. In the first extension they had done this without telling the people anything about it until afterwards, and then afterwards we understood the first extension meant or the changes from the first work, was to stop there [indicating on map].

Senator WALSH of Montana. Will you read the provision of the contract showing the terminus of the road?

The CHAIRMAN. Is that the original contract, Mr. De Neffe?

Mr. DE NEFFE. No; this is a copy.

Senator WALSH of Montana. Well, there is no doubt about the copy, I imagine.

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Mr. DE NEFFE. We have never had an opportunity to see this contract as finally drawn, and we were going by what appears in the prospectus.

Senator WALSH of Montana. Mr. MCGOWAN might read it.

Mr. HALLOCK. I think you gentlemen should have the plat before you in having your questions answered, because it shows Seneca located south of Bear Creek.

Mr. MCGOWAN. The section of the contract reads this way:

> It is further agreed as a part of the consideration of this agreement, that a common carrier railroad for freight and passengers in accordance with the laws of the State of Oregon shall be constructed from the main line construction at Crane, Oreg., to Seneca, Oreg.
>
> I do not think you will find anything in any of these modifications, and I think Mr. Barnes is incorrect in his statement on that point, changing in any way what should be a proper interpretation as to where the spot should be for Seneca. There is nothing in that at all, I mean in any of these modifications.

Colonel GREELEY. There has never been a modification dealing with that section of the contract.

Senator WALSH of Montana.. What was there at Seneca?

Mr. BARNES. A post office.

Senator WALSH of Montana. And what else?

Mr. BARNES. That is, just a post office and the people living there.

Senator WALSH of Montana. But how many people?

Mr. BARNES. Only just the one man and his family.

Senator WALSH of Montana. What was that?

Mr. BARNES. Just the man and his family, and he runs the post office for that district.

Senator WALSH of Montana. There is no local store at Seneca?

Mr. BARNES. Well, he has a little store there. But you see, Senator Walsh, the highway came up to this place, and —

Senator WALSH of Montana (interposing). I understand perfectly, but want to know how big a town it is.

Mr. BARNES. There is no town at all, just the post office.

Senator WALSH Of Montana. Just the post office and a little store?
Mr. BARNES. Yes.

Mr. DE NEFFE. Do you mean just the one building?

Mr. BARNES. Oh, there were four or five buildings.

Mr. HALLOCK. YOU mean farm outbuildings which belong to one man?

Mr. BARNES. Yes.

Senator WALSH of Montana. Just his farm and family, and the store and the post office?

Mr. BARNES. Yes.

Mr. DE NEFFE. Just one family lives there?

Mr. BARNES. That is all. There are other families living not very far from there, but the people wanted this road to come over to this highway so it would be convenient to ship their stock.

Mr. DE NEFFE. When the people speak of Seneca they speak of Seneca post office?

Senator WALSH of Montana. We will have to judge of that.

Mr. DE NEFFE. Well there are no corporate limits there.

Mr. HALLOCK. Seneca post office has oscillated between the Lincoln ranch and the Southworth ranch. At one time the post office has

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been at one point, and at another time it has been at the Lincoln ranch. One is north of Bear Creek and the other is south of Bear Creek.

Mr. BARNES. Well, in my time I never knew the post office to be at the Lincoln ranch.

Mr. HALLOCK. Well, we can show that later on.

Senator KENDRICK. What is the extreme distance between the post office as indicated by the witness and the actual terminus of the road?

Mr. BARNES. About a mile and a quarter. It was left on the other side of the river, while Seneca is over on this side of the river, a mile and a quarter up.

Mr. DE NEFFE. Was a second extension of the contract time asked for?

Mr. BARNES. Yes.

Mr. DE NEFFE. About when?

Mr. BARNES. Oh, it was some time in 1926, I think, but I don't just remember when it was asked for.

Mr. DE NEFFE. Were there any protests against granting it?

Mr. BARNES. Yes, a number of protests, a lot of them.

Mr. DE NEFFE. And was a second extension granted finally, do you know?

Mr. BARNES. Yes.

Mr. DE NEFFE. Do you know about when?

Mr. BARNES. It was granted in June, 1926, I think.

Mr. DE NEFFE. Have you the contract modifications, Mr. MCGOWAN?

Mr. MCGOWAN. Yes. Senator Means has the copy right at this time, and some correspondence that goes with it.

Mr. DE NEFFE. After the second modification was asked for, in June, 1926, what was the progress made after that, or was the work prosecuted diligently?

Mr. BARNES. Not at first. What time do you mean?

Mr. DE NEFFE. The second extension was granted along in June, 1926?

Mr. BARNES. Not at first; it was not, not much.

Mr. DE NEFFE. Were you people ever able to find out exactly what was done in the way of getting copies of any of these records from the Forest Service?

Mr. BARNES. Yes; I was sent down there by the county court of Grant County once, before I came to Washington, a week or so before, I guess it was.

Mr. DE NEFFE. Whom did you see?

Mr. BARNES. Mr. Granger and Mr. Ames.

Mr. DE NEFFE. At the Portland office?

Mr. BARNES. Yes.

Mr. DE NEFFE. What did you want?

Mr. BARNES. I had a letter from the county court asking if they would give me copies of the first contract and the second and third contracts or modifications, and whether it would show as to this $50,000 bond being forfeited. But they would not give me any copies. I asked them to let me take some copies; that is, to make a copy from theirs, but they said no, but that I could go in and take a look if I wanted to. I said I would come back the next morning to do it.
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But I did not go back the next morning, because I didn't care to do so, as I had instructions not to.

Mr. DE NEFFE. You were sent to get copies?

Mr. BARNES. Yes; I was instructed afterwards not to look at anything if they would not allow me a copy, or let me make one. I have got a letter here in my pocket from the county court, or at least think I have. Yes; here it is. It is the same letter and signed by the county judge.

Mr. DE NEFFE. Does the committee want it read?

The CHAIRMAN. I take it that it is not necessary to read it, but it may be made a part of the record.

OFFICE OF COUNTY COURT OF GRANT COUNTY,
Canyon City, Oreg., December 11, 1926.

Mr. C. M. GRANGER,
District Forester, Portland, Oreg.

DEAR MR. GRANGER: Mr. E. W. Barnes, the bearer of this letter, has this date been delegated to represent Grant County, Oreg., and to secure from your office documentary information in connection with the timber sale made to Mr. Fred Herrick in April, 1923; also the contract with Mr. Herrick entered into at that time, as well as evidence of all extensions granted and modifications, if any, made in that contract; also evidence of any and all penalties imposed and collected from Mr. Herrick by the forest department for violations of or failure to comply with his contract.

Mr. Barnes is authorized to receipt you for the documents furnished him.

Sincerely yours,

COUNTY COURT OF GRANT COUNTY, OREG.,
ORIN L. PATTERSON, *County Judge*,
By GEORGE YOKOM, *County Commissioner*.

Mr. DE NEFFE. Did Mr. Ames say anything at that time as to whether any forfeitures had been imposed when Mr. Herrick defaulted?

Mr. BARNES. He said the $50,000 bond when they gave him the second extension was forfeited. I asked him about the one in September, September 15 and December 15, and they were for $50,000 each, and he said he didn't know, Mr. Granger said he didn't know whether he was going to take that from Mr. Herrick or not, but that maybe they would leave it with him to work on.

Mr. DE NEFFE. I think they are all the questions I have at this time. I want to offer for the record this memorial from the Oregon Legislature.

The CHAIRMAN. That has already been made a pant of the record in the preliminary hearing by the full committee, so I do not think it is necessary to repeat it here.

Senator WALSH of Montana. Mr. Chairman, it is now five minutes to 12, and I take it that all of the members here would like to go on the floor.

The CHAIRMAN. The subcommittee will now stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 11.55 a. m., the subcommittee recessed, to meet to-morrow, Saturday, February 12, 1927, at 10 o'clock a. m.)

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HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREG.

SATURDAY, FEBRUARY 12, 1927

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON PUBLIC LANDS AND SURVEYS,
Washington, D. C.

The subcommittee met at 10 o'clock a. m., pursuant to the recess on yesterday, in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (chairman), Cameron, Means, and Walsh of Montana.

Present also: Col. W. B. Greeley, Chief of the Forest Service, and MCGOWAN, attorney, representing United States Forest Service; Blaine Hallock, attorney, representing Fred Herrick, James W. Girard, and Frank J. Klobucher; Frederick M. De Neffe, attorney, representing Grant County, Oreg.

The CHAIRMAN. The subcommittee will come to order.

Mr. DE NEFFE. With the committee's permission, I should like to ask a few more questions of Mr. Barnes.

The CHAIRMAN. You may proceed.

TESTIMONY OF E. W. BARNES OF PORTLAND, OREG.—Resumed

(The witness was duly sworn on yesterday before he began to give his testimony.)

(Further direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. NEFFE. Mr. Barnes, were you with Mr. Girard while this timber was being cruised?

Mr. .BARNES. Not all the time. I was with him maybe four or five days, in different running grounds. We were not cruising exactly, just looking around for the railroad.

Mr. DE NEFFE. Did he say anything at that time in regard to this property?

Mr. BARNES. Well, in general.

Senator WALSH of Montana. When was that?

Mr. BARNES. In the spring of 1923.

Mr. De NEFFE, Was it before or after this contract was entered?

Mr. BARNES. No, it was in the spring of 1922, before the contract was let.

Mr. DE NEFFE. And before it was advertised.

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Mr. BARNES. Yes; they were cruising the timber for the department in order to put it on the market and pricing it, which was before it was put on the market or advertised.

Senator WALSH of Montana. That was after your visit to Washington?

Mr. BARNES. Yes; the first time.

Senator WALSH of Montana. Who did that cruising?

Mr. BARNES. Mr. Girard had I think 10 or 11 men in the work for the department. Mr. Girard was cruising the timber at that time for the Forest Department.

Senator WALSH of Montana. He was in charge of the crew?

Mr. BARNES. Yes.

Senator WALSH of Montana. Where did he come from at that time?

Mr. BARNES. From Missoula.

Mr. DE NEFFE. Did Mr. Girard say anything in general about this timber at that time?

Mr. BARNES. Well, he said it was a good proposition. One day when we were over in Logan Valley he said it was an awful good proposition, and of course when we put that timber on the market we had no one to bid on it. We just got it on the market to see if someone would bid on it. Him and I talked over things, and one day, over in the Logan Valley, he said he knew a man who might bid on it but he didn't know whether he had the money to handle it or not. I told him then if he did to sure try to get him.

Mr. DE NEFFE. Did Mr. Girard ever discuss with you the question as to what information Mr. Herrick had regarding this timber before Herrick put in his bid?

Mr. BARNES. No—well, yes; he did. He told me when we were coming from Portland
once —

Senator WALSH of Montana (interposing). You better fix that date.
Mr. DE NEFFE. Yes, will you fix that date, if you will?

Mr. BARNES. Well, it was after the first time Mr. Herrick was in there, I think it was.

Mr. DE NEFFE. Was it after the bids were opened?

Mr. BARNES. Oh, yes. He said that the whole thing was left to him, that Herrick didn't see the timber and didn't care whether he ever seen it or not, that it was up to him anyway, that the whole thing was up to him, and that whatever he said was all right with Herrick.

Mr. HALLOCK. That was after Mr. Girard was employed by Mr. Herrick, was it not?

Senator WALSH of Montana. I thinly you better take that up on your cross examination.

Mr. HALLOCK, All right, Senator, pardon me, but I wanted to fix the time here with a little more definiteness.

Mr. DE NEFFE. About when was that after the bids were opened?

Mr. BARNES. I don't know. That was after Herrick and Girard were in there the first time, and after the bids were opened, and we went to Portland. We were on our way back.

Mr. DE NEFFE. He said that Herrick had not seen the timber.

Mr. BARNES. Yes.

Mr. DE NEFFE. Before he put in his bid.

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Mr. BARNES. Yes; he said it was up to him anyway, that whatever he done was all right with Herrick, arid it was that kind of conversation.

Mr. DE NEFFE. How many times has Herrick been in that country, do you know, have you any idea?

Mr. BARNES. Well, to my knowledge about four times. I seen him there three times myself, and he was there once when I wasn't there that I know of.

Mr. DE NEFFE. Now, something has been said about the desire of Herrick to eliminate the common-carrier clause feature of this contract, or as applying to the railroad north of Burns, and that would be between Burns and Seneca. And on yesterday you said that while at Prineville Mr. Herrick said he wanted that clause eliminated, and wanted you to use your influence or to fix it with the people so it would be eliminated. Did he ever mention that afterwards or anything connected with that phase of it?

Mr. BARNES. When we got back to Burns, and I think it was, well, I don't know what night, but I think it was Saturday that we got back to Burns —

Mr. DE NEFFE (interposing). Fix the date again, if you will.
Mr. BARNES. Well, I can't remember those dates.

Mr. DE NEFFE. Was it after the bids were opened?

Mr. BARNES. Oh, yes, it was after the bids were opened, and Herrick was in that country for the first time with Mr. Girard, after the bids were opened.

Mr. DE NEFFE. Maybe this will fix it: After the bids were opened you met Mr. Herrick down at Burns, and I believe you went to Prineville.

Mr. BARNES. Yes.

Mr. DE NEFFE. And then you went from Prineville in a day or so back to Burns?

Mr. BARNES. That is the way it was, and after we got back to Burns and were there two days I think, he spoke of it once again to me.

Mr. DE NEFFE. And what did he say?

Mr. BARNES. At that time he said he would not haul a log out of there for anybody but Herrick.

Mr. DE NEFFE. Had he been discussing that feature of the contract?

Mr. BARNES. Yes; he talked about it again, the same as he did at Prineville.

Mr. DL NEFFE. Was it objectionable to him?

Mr. BARNES. Yes.

Mr. DE NEFFE. What advantage did Mr. Herrick have if this common carrier clause were eliminated north of Burns?

Mr. BARNES. Well, he would have this advantage, that he would not have to run any common carrier there and contend with the commission, to whom he would have to report.

Mr. DE NEFFE. Do you mean the railroad commission?

Mr. BARNES. Yes; the railroad commission, and he would have about 7,000,000,000 feet of timber that no one else could bid on for there was no use of anyone bidding on it.

Mr. DE NEFFE. Will you just show the subcommittee on the map fastened there to the screen how he would have control of that timber? Just point to Seneca, which is below your pencil there.

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Mr. BARNES. Here is Seneca, but Seneca is not marked right on this map. It is southeast of section 27, just above the creek. Now, this is the country, and here is the mountain —

Mr. DE NEFFE (interposing). What does the green on that map represent?

Mr. BARNES. That is Mr. Herrick's unit, that he bid on.

Mr. DE NEFFE. I see, go ahead.

Mr. BARNES. And this place is the top of the mountain.

Mr. DE NEFFE. That is, the red line on the map?

Mr. BARNES. Yes; and there is a lot of timber that falls to the John Day River on the other side.

Mr. DE NEFFE. May I now ask: Is there any objection to introducing that map?

Mr. MCGOWAN. That is a Forest Service map, and so far as we are concerned we will be very glad to file it with the committee.

Mr. DE NEFFE. Then I ask the shorthand reporter to mark it, as an exhibit.

(The said map, identified as the Malheur National Forest—a smaller map covering the Bear Valley unit in which the timber in question is located already being in the record in connection with the prospectus, see opposite page 54—is marked "Exhibit No. 12" for the use of the subcommittee and of those interested, but is not inserted herein and made a part of the record.)

Mr. DE NEFFE. Mr. Barnes, you are now pointing out places on a map which is to be known as Exhibit No. 12.

Mr. BARNES. Yes. And this is the top of the mountain —

Mr. DE NEFFE (interposing). The red line above the Grand Ronde River?

Mr. BARNES. Yes. This is as far as he goes with the unit that he bid on. Down in this creek country is a lot of timber that has to come out at some time, over in this part.

Mr. DE NEFFE. That is west of the Herrick unit?

Mr. BARNES. No; this is the top. But over in here is a lot of timber, and then you go up Bear Creek.

Mr. DE NEFFE. That is, you are pointing now to the east of the Herrick unit?

Mr. BARNES. Yes; and all this stuff along here, over to about this far, will have to come out this way.

Mr. DE NEFFE. About how far east of the Herrick unit?

Mr. BARNES. Oh, about 20 miles.

Mr. DE NEFFE. He would control all of that, would he?
Mr. BARNES. He would control all of that if it was a private railroad, all that country in there.

Mr. DE NEFFE. What is that in pink east of Seneca, a lot of pink squares in there?

Mr. BARNES. They are private holdings over on the east fork. It has to come out the east fork of this river. That will not come out this way at all. Only about to here will come out this way.

Mr. DE NEFFE. About how many feet would have to come out over the Herrick railroad?

Mr. BARNES. Well, over the Herrick road, and figuring down in here, if you figure down here in Jobs Valley, with tap lines outside of his unit, there would be close to six billion feet. The Government does not figure that much, but I pretty near know what is in that country. I have been all over it, and cruised it here and there.

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Mr. DE NEFFE. Mr. Chairman, that is all I wish to ask Mr. Barnes. But I now wish to make one request of Mr. McGowan, if I may, this copy that you have, which includes the contract and different modifications, I should like to have put in the record at this time. You have a copy, as I understand.

Mr. MCGOWAN. Oh, yes; and that was introduced on yesterday and, made a part of the record.

Mr. DE NEFFE. All right..

Mr. HALLOCK. Mr. Chairman, I wonder if you care to indicate your desire, or the desire of the subcommittee as to the cross-examination and the order of proof so far as Fred Herrick and the Forest Department are concerned? Has the Chair any preference as to how we shall proceed?

The CHAIRMAN. Only that those preferring the charge should present their side of the case first, and then you may introduce your witnesses.

Mr. HALLOCK. I had more particularly in mind the matter of cross-examination as between the Herrick interests and Colonel Greeley. But perhaps that is more a matter between counsel here if the subcommittee has no preference in the matter?

Senator WALSH of Montana. I think you gentlemen might arrange that between yourselves.

Mr. MCGOWAN. Mr. Chairman, in the letters I introduced on yesterday, from Colonel Greeley to the chairman of the committee, appears one in connection with the papers of Mr. Barnes and Mr. De Neffe. In response to the subpoena issued by the subcommittee we have brought everything that we have in the way of files in connection with this matter. Now, we feel that Mr. Barnes has been very closely associated with this timber transaction ever since the timber was first put on the market, and while he appears here with some credentials from Grant County, Oreg., we have very good reason to believe that Mr. Barnes is interested in the acquisition of this timber for himself —

Senator WALSH of Montana (interposing.) Now, Mr. McGowan —

Mr. MCGOWAN (continuing). I am just laying the foundation.

Senator WALSH of Montana. I think you better go on with your cross-examination and make any argument later.

Mr. MCGOWAN. This is merely as to whether we will be entitled to look at the files of Mr. Barnes and Mr. De Neffe in connection with the passage of the memorial by the Oregon Legislature, to show, if the facts are there, that

there is a self-interest in connection with this whole inquiry. Aside from any question of fraud, and now we are prepared to meet everything from our standpoint, and to show everything that we have, but we believe that this subcommittee is entitled to know about that.

Senator WALSH of Montana. I am very sure that the subcommittee give you every facility to get what evidence you need, if there is ally evidence in the possession of the gentleman that you need, and to sure that every power of this subcommittee will be exercised cable you to get it.

Mr. MCGOWAN. Very well, Senator, with that understanding I will not say more at this time.

The CHAIRMAN. Will you take the witness, Mr. Hallock?

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(Cross-examination by Mr. Blaine Hallock, attorney for Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Barnes, you say you live in Portland?

Mr. BARNES. Yes.

Mr. HALLOCK. You are not a resident of Grant County?

Mr. BARNES. No.

Mr. HALLOCK. Can you tell us how it happens that Grant County has selected you as its representative to speak for its interests here?

Mr. BARNES. I own property in Grant County.

Mr. HALLOCK. What property do you own, just generally?

Mr. BARNES. I own some timberland there, and I own some other land there.

Mr. HALLOCK. You own some timberlands?

Mr. BARNES. Yes.

Mr. HALLOCK. Those timberlands were purchased subsequently to the coming of Mr. Herrick with this development program, were they not?

Mr. BARNES. By purchase, what do you mean?

Mr. HALLOCK. After Mr. Herrick came in there.

Mr. BARNES. I had them under option before Mr. Herrick came in there.

Mr. HALLOCK. Anticipating his coming you had those options?

Mr. BARNES. How is that?

Mr. HALLOCK. Anticipating his coming you had gotten those options, and when he came you subsequently took up those options, is that it?

Mr. BARNES. Not anticipating his coming, as I hadn't anticipated anybody—that is, I didn't know who it might be.

Mr. HALLOCK. What I am getting at is this: That your timber holdings were secured in anticipation, and I have no doubt very properly, of that development program up there.

Mr. BARNES. Certainly.

Mr. HALLOCK. So that you are naturally interested to see that country opened up in so far as it will serve your own ends in the matter of the ultimate disposition of your timber holdings.

Mr. BARNES. Well, naturally, as I have property there I want to see the country opened up.

Mr. HALLOCK. Yes. Now, you have other property there, you say.

Mr. BARNES. Yes.

Mr. HALLOCK. What specific property do you refer to?

Mr. BARNES. I have property at Burns, and I have property in Grant County, and I have property in Harney County.

Mr. HALLOCK. You have property at Burns?

Mr. BARNES. Yes.

Mr. HALLOCK. You refer to a body of approximately 2,000 acres of land owned by yourself and your associates, which embraces the entire acreage lying between the present town of Burns on the north and the mill site on the south, and on both sides of the railroad, and on both sides of the highway, which you plan to develop as a town site.

Mr. BARNES. No; I never planned to develop that part of it as a town site.

Mr. HALLOCK. Which did you intend to develop as a town site?
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Mr. BARNES. Up in Burns, inside the city limits.

Mr. HALLOCK. And that program is pretty well under way now?

Mr. BARNES. Yes; inside the city limits of Burns.

Mr. HALLOCK. And you and your associates have, as a matter of fact, bottled up all the acreage between the present city limits of Burns and the mill site on the south.

M. BARNES. Well, I didn't only bottle that up, if I did, but I got that, and I got the mill site, too, and at the same time I got the water rights.

Mr. HALLOCK. Yes; but we will get that a little later. Who are your associates in that land venture there at Burns, Mr. Barnes?

Mr. BARNES. Well, there are different ones, and I don't know who they all are.

Mr. DE NEFFE. Just a minute. Mr. Chairman, I do not know whether that is material or not.

Mr. HALLOCK. Oh, well, I am going to withdraw that question. I do not want to go too intimately into the personnel of Mr. Barnes's associates.

Mr. DE NEFFE. But I do not know whether it is material to this matter here as to the time.

Mr. HALLOCK. I will leave that with the committee.

Senator WALSH of Montana. It is too early for us to know as yet whether it is or is not material.

Mr. HALLOCK. One of those associates is this gentleman Archie McGowan who introduced the resolution in the Oregon House of Representatives.

Mr. BARNES. Archie McGowan didn't introduce it in the house.

Mr. HALLOCK. Is Archie McGowan interested with you in the town site? .

Mr. BARNES. He is in a little piece of land up in Burns, in the south end, but in nothing else.

Mr. HALLOCK. He has that interest with you?

Mr. BARNES. He has a one-fifth interest in a little piece of land there. But that is not the only property that Mr. MCGOWAN owns in Burns; he owns a lot of property up in the center of the town.

Mr. HALLOCK. And Mr. Ralph Hamilton, the gentleman who spoke for the Oregon resolution in the house, is the vice president of your town site company, is he not?

Mr. BARNES. Mr. Hamilton is not.
Mr. HALLOCK. Was he?

Mr. BARNES. No, never.

Mr. HALLOCK. Does he occupy an office with it?

Mr. BARNES. No.

Mr. HALLOCK. Is he a stockholder in it?

Mr. BARNES. Mr. Hamilton and the people at Bend have what they call the Burns Co., but I have nothing to do with the Burns Co. and am not in it.

Mr. HALLOCK. Well, I do not care about the intimate details of that connection. I simply want to determine whether or not it is a fact that Mr. Ralph Hamilton, who spoke for this resolution in the House of Representatives of Oregon, and Mr. Archie McGowan, who supported it there—as I am sure you will frankly confess—are associated with you in this land deal and this town-site venture and the development program that you have in mind at Burns.

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Mr. BARNES. Hamilton is not associated with me at all. He is a Burns Co. man. It is the Burns Co. over at Bend.

Mr. HALLOCK. I appreciate that, Mr. Barnes, that there are some details there in connection with the organization that puts him in one part of it and you, perhaps, in another.

Mr. BARNES. I have nothing to do with Hamilton.

Mr. HALLOCK. You are all interested in that 2,000 acres down there, in one form or another?

Mr. BARNES. Hamilton and those people over there have the Burns Co. I am not in the Burns Co.

Mr. HALLOCK. You are the one that turned the Burns Co. over to them?

Mr. BARNES. No; I never turned any company over to them.

Mr. HALLOCK. Well, you turned the land over to them, I mean, and I am not trying to be too technical with you.

Mr. BARNES. I know you are not.

Mr. HALLOCK. Will you not tell this subcommittee that you are all jointly interested in that townsite program at Burns?

Mr. BARNES. I stated that Mr. McGowan is interested in a little piece up in the south end of Burns. Now, he has a fifth interest in that piece of land up in that corner. The rest of the land he has nothing to do with.
Mr. HALLOCK. Is Mr. Wollenberg interested with you in that land venture?

Mr. BARNES. Mr. Wollenberg has nothing to do with me in any land at any place.

Mr. HALLOCK. Is he interested in the Burns Co.?

Mr. BARNES. No.

Mr. HALLOCK. Is Mr. Haight interested with you down there?

Mr. BARNES. No.

Mr. HALLOCK. Were either of these gentlemen interested with you in any of the Grant County holdings?

Mr. BARNES. Not a thing in the world.

Mr. HALLOCK. Have you purchased or taken any options on any land in the vicinity of the point which you referred to as Seneca?

Mr. BARNES. Yes; I have some land way south of there.

Mr. HALLOCK. Down about the present terminus of the road?

Mr. BARNES. No; below that, way down.

Mr. HALLOCK. Being townsite plans with reference to that country.

Mr. BARNES. No.

Mr. HALLOCK. What is your occupation?

Mr. BARNES. Well, I have been in the lumber business, the timber business, pretty nearly all my life.

Mr. HALLOCK. What is your occupation at this time?

Mr. BARNES. The timber business.

Mr. HALLOCK. By timber business do you mean endeavoring to acquire the Herrick timber?

Mr. BARNES. I buy timber and sell timber. I have a real estate license to do it.

Mr. HALLOCK. Your interest primarily at this time and for a period of years past has been to pursue and fight and embarrass and block Mr. Herrick as far as it is within your power.

Senator WALSH of Montana. Now, Mr. Hallock, that does not give us any facts at all. Just get the facts from this witness.

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Mr. HALLOCK. May I ask this question, and I am sure it will develop the facts: Is it not a fact that you have repeatedly ex-pressed yourself as committed to a program whereby you would fight Mr. Herrick with the last dollar that you could beg, borrow, or steal?

Mr. BARNES. Well, I do not know that I have done anything of the kind, Mr. Hallock.

Mr. HALLOCK. Well, think about it a little.

.Mr. BARNES. I will tell you a little about it if you will let me.

Mr. HALLOCK. I should thank you to do it.

Mr. BARNES. When Mr. Herrick carne into Burns I went month after month and helped them. I made a

contract with them, and sold them a little timber, and throwed {*sic*} in a mill site to them. That cost me $12,000, in that contract. I gave him right of way, and went out night and day and worked and got some right of way for him along there. And there are men in this room who went with me on some of those trips.

Mr. HALLOCK. All right.

Mr. BARNES. That is what I done for Mr. Herrick. And when I seen that Mr. Herrick was not going to do anything, or didn't intend to do anything, then I went to the Oregon delegation, and to the Forest Department, and made complaints, because people told me to, and I was interested the same as the people.

Mr. HALLOCK. So that you have said repeatedly, haven't you, Mr. Barnes —

Mr. BARNES (interposing). No; I never said repeatedly.

Mr. HALLOCK. Have you ever said in substance, or effect, or at all, that you would fight Mr. Herrick with the last dollar you could beg, borrow, or steal?

Mr. BARNES. No; I never did.

Mr. HALLOCK. You told me in this very room, did you not, very recently, that Mr. Herrick had not seen the last of you, and that you would pursue him to the last ditch?

Mr. BARNES. No; I didn't say that.

Mr. HALLOCK. Did you say anything like that?

Mr. BARNES. Not in those words. But when you commenced talking with me the other day I said this was the place to settle this matter, and to quit talking about it, like I told you on yesterday.

Mr. HALLOCK. That is not the conversation that I am referring to. Do you deny making similar statements to anybody?

Mr. BARNES. I don't remember ever making a statement like that. That was not my attitude. I helped Mr. Herrick until I seen he wouldn't do anything in that country.

Mr. HALLOCK. Is it not a fact that you rarely ever refer to Mr. Herrick without coupling his name with an oath?

Mr. BARNES. Oh, no.

Mr. HALLOCK. Do you say that is not a fact?

Mr. BARNES. No.

Mr. HALLOCK. Is it not a fact that you vilify him at every opportunity, sir?

Mr. BARNES. No

Senator WALSH Of Montana (interposing). Well, I suggest to counsel that that is not a proper question.

Mr. HALLOCK. Well, I wonder why it is that this man vilifies Mr. Herrick and his mother in the oaths that he uses toward him.

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Mr. DE NEFFE: There is no evidence to that effect.

Mr. BARNES. Mr. Hallock, you are mistaken.

Senator WALSH of Montana. If the witness has made any statements at any time to any persons I suggest that you ask him about the particular statements.

Mr. HALLOCK. I thank you, Senator. I should like to lay the foundation for that question: Mr. Barnes, is it not a fact that as early as April, 1923, the day that these bids were opened and in the afternoon of that day, in the city of Portland, you had an interview with Mr. George L. Gardner, who is here somewhere in this room, yes, right over there; and in the Hotel Portland, on that date, you told Mr. Gardner, in substance and effect, that you were going to fight Mr. Herrick to a finish, and employed in connection with his name a foul oath, characterizing that man in such terms as that?

Mr. BARNES. How could I do that, Mr. Hallock, when I had never met Mr. Herrick, and ever knew anything about him?

Mr. HALLOCK. I ask you if you did that.

Mr. BARNES. I did no such thing.

Mr. HALLOCK. And you never have since, to anyone?

Mr. BARNES. Not that I remember.

Mr. HALLOCK. I see.

Mr. BARNES. I had never met Mr. Herrick, and it was the first I had ever heard at all of him, the day the bids were opened. Why should I want to do that.

Mr. HALLOCK. Now, Mr. Barnes, you appear here and present your credentials, and also certain documents in the form of resolutions. Are you able to tell us who is the author of those resolutions, one from the Grant County Livestock Association and one from Grant County court?

Mr. BARNES. Yes, six.

Mr. HALLOCK. Who, please?

Mr. BARNES. Well, the Grant County court. Judge Patterson called me up from Portland and told me they had passed a Senate resolution calling for an investigation, and if they had passed the resolution they may as well burn it up as to send it here without somebody with it from Portland --

Mr. HALLOCK (interposing). I am not asking you about that. I am asking you who the author is of the document?

Mr. BARNES. The Grant County court.

Mr. HALLOCK. You had nothing to do with it?

Mr. BARNES. No; nothing.

Mr. HALLOCK. And nothing to do with the resolution of the Grant County Stock Growers Association?

Mr. BARNES. That was mailed to me at Portland.

Mr. HALLOCK. Did you have anything to do with the resolution passed by the Oregon Legislature?

Mr. BARNES. Did I?

Mr. HALLOCK. Yes.

Mr. BARNES. Yes, sir.

Mr. HALLOCK. To what extent did you participate in the preparation of said resolution?

Mr. BARNES. If you want me to I will tell you.

Mr. HALLOCK. All right.

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Mr. BARNES. I came here and couldn't get the legislation, and I wired back to the people of Grant County and told them, and they went down there {Salem} and got the memorial from the legislature.

Mr. HALLOCK. But I am asking you about the preparation for the dictation of the matter that went into it.

Mr. BARNES. The preparation of the matter that went into it?

Mr. HALLOCK. Yes.

Mr. BARNES. No.

Mr. HALLOCK. Who prepared it, to your knowledge?

Mr. BARNES. Who prepared it?

Mr. HALLOCK. Yes.

Mr. BARNES. I prepared one here, but it was not used at all.

Mr. HALLOCK. You prepared one here and telegraphed it to Mr. Archie McGowan?

Mr. BARNES. I did no such thing.

Mr. HALLOCK. You did no such thing?

Mr. BARNES. No, sir.

Mr. HALLOCK. You sent it back there.

Mr. BARNES. It was not used at all.

Mr. HALLOCK. In any event you prepared one and sent it back there?

Mr. BARNES. Yes, sir.

Mr. HALLOCK. And it was modified and passed then?

Mr. BARNES. I guess the people from Grant County went down there and had it started before it got there, as near as I know.

Mr. HALLOCK. The people in the legislature, Mr. Barnes, passed it in the form you prepared it?

Mr. BARNES. There was some of it in it, but they changed it.

Mr. HALLOCK. Yes.

Mr. BARNES. They changed it, and put more to it, I think.

Mr. HALLOCK. What was it, Mr. Barnes, that suggested to you the necessity or advisability of securing a memorial from the Oregon Legislature at a time while you were back here in Washington?

Mr. BARNES. Mr. Hallock, give me credit for knowing a little bit of something.

Mr. HALLOCK. I want to, Ed, but —

Senator WALSH of Montana (interposing). Let us avoid these things, gentlemen, and stick to the question.

Mr. HALLOCK. Pardon me, Senator.

Mr. BARNES. After I couldn't get what I was sent for, I sent word back to the Grant County people what they should do.

Mr. HALLOCK. I am asking you, Mr. Barnes, who was it here in Washington, if anyone, that suggested the advisability or the necessity of securing a memorial from the Oregon Legislature?

Mr. BARNES. Here?

Mr. HALLOCK. Yes.

Mr. BARNES. Nobody.

Mr. HALLOCK. The suggestion came from there, did it?

Mr. BARNES. What suggestion?

Mr. HALLOCK. The suggestion, from Grant Count?

Mr. BARNES. No; I suggested it, myself, to Grant County.

Mr. HALLOCK. What am getting at is this, Mr. Barnes; how does it happen that you got the cart before the horse, so to speak? You came here and sought a memorial from Congress before you got your resolution from the Oregon Legislature.

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Mr. BARNES. No; I did not.

Mr. HALLOCK. At any rate, will you produce, Mr. Barnes, so that we can get from your point, the correspondence and communications, in telegraphic form, and letters, and otherwise, bearing on that matter? I do not mean now, but during the hearing?

Mr. BARNES. Yes; I will do the best I can. Some of the letters and wires I wrote only in pencil, and didn't keep a copy.

Mr. HALLOCK. You did keep a copy of some.
Mr. BARNES. Yes, sir; I may have of some.

Mr. HALLOCK. Well, everything you have, if you will be good enough to do that.

Mr. BARNES. I will bring you any I can.

Mr. HALLOCK. All right. How does it happen that you come here with no credentials from Harney County, the county —

Mr. BARNES (interposing). Pardon me. I have them.

Mr. HALLOCK. Pardon me. (Continuing.) The county where this development is going forward.

Mr. BARNES. Yes, Sir.

Mr. HALLOCK. Will you produce them?

Mr. BARNES. Yes, sir; I have fifteen or twenty sworn letters here from people there, sent to me —

Mr. HALLOCK (interposing). Will you be good enough to produce those during the course of the hearing?

Mr. BARNES. Yes, Sir.

Mr. DE NEFFE. Have you got them here, Mr. Barnes?

Mr. BARNES. Yes; right hear.

Mr. HALLOCK. I wonder whether you will produce them now.

Mr. BARNES. I could, if you want to take the time.

Mr. HALLOCK. I would like to have them.

Mr. BARNES. Will you look for them (handing papers to Mr. De Neffe).

The CHAIRMAN. You continue with the witness while he is looking for them.

Mr. HALLOCK. Yes, sir. Mr. Barnes, as evidencing your authority to appear here you introduced four telegrams, dated in January, 1925. Do you recall those? They are in the record here?

Mr. BARNES. Well, they were telegrams that were sent here in 1925 to Senator McNary.

Mr. HALLOCK. Yes.

Mr. BARNES. I never seen them until they were read there.

Mr. HALLOCK. You had nothing to do with their preparation?

Mr. BARNES. No; I knew nothing about them until they were read. That is the time everybody was kicking about the work going on there.

Mr. HALLOCK. Now, you know, Mr. Barnes, as a matter of fact those telegrams were prepared under your program of propaganda.

Mr. BARNES. How could they be, Mr. Hallock.

Mr. DE NEFFE. Answer the question, Mr. Barnes, please.

Mr. HALLOCK. I am asking you whether they were.

Mr. BARNES. No.

Mr. DE NEFFE. Answer the questions.

Mr. HALLOCK. You say they were not?

Mr. BARNES. No, Sir; I never knew about them or heard about them until here.

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Mr. HALLOCK. And isn't it a fact that you, or people working under your direction, presented similar telegrams to Mr. Julian Byrd and Mr. Jamieson and they were carrying these around, and were working with people and urging them to send similar telegrams here.

Mr. BARNES. Well, there were certain people running around there carrying them themselves, but was I carrying them myself?

Mr. HALLOCK. That is what I am asking you.

Mr. BARNES. No.

Mr. HALLOCK. They were carrying them in a wholesale fashion, weren't they?

Mr. BARNES. If that is the case —

Mr. HALLOCK (interposing). Have you noticed, Mr. Barnes, that the telegram signed by Mary Griffin and by Willard Laythe are identical in form?

Mr. BARNES. I don't know anything about it. I have not seen them.

Mr. HALLOCK. They were evidently prepared by some one and submitted for the signature of those people.

Mr. BARNES. I don't know.

Mr. HALLOCK. And those telegrams, and this matter appears —
Mr. BARNES (interposing). They don't amount to much anyway. Come on with your questions.

Mr. HALLOCK. The telegrams say:
Barnes represents people here and you should wire him here at Burns the present status of the matter.

Did you have anything to do with that?

Mr. BARNES. No, sir.

Mr. HALLOCK. Didn't know, even, you were the representative of these people?

Mr. BARNES. No.

Mr. HALLOCK. No?

Mr. BARNES. No; there is a lot of telegrams sent out of there. I don't know about all of them.

Mr. HALLOCK. And the statement that you were their representative here came as much of a surprise to you as to Senator McNary, so far as you know?

Mr. BARNES. No, no; I knew that the people were kicking about the work going on there.

Mr. HALLOCK. I am not asking you about that. I am asking you about whether you are the people's representative. You were surprised about that?

Mr. BARNES. No; I was not surprised. That has been going on ever since Herrick came into the country.

Mr. HALLOCK. Yes?

Mr. BARNES. It has.

Mr. HALLOCK. This telegram of Robert Sinclair—Sinclair is a janitor at the courthouse, isn't he?

Mr. BARNES. I guess he is; he works around there somewhere.

Mr. HALLOCK. This man R. E. Cole is the sewer man around Burns, isn't he? Does he have charge of the sewers?

Mr. BARNES. I don't know. He has charge of a hotel there. I don't know whether he runs the sewers, or not.

Mr. HALLOCK. So far as you know, he may.

Mr. BARNES. No.

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Mr. HALLOCK. You do know, prior to taking this sewer job he was on a railroad section gang there?

Mr. BARNES. No; I don't know that.

Mr. HALLOCK. Well, you wouldn't say that that isn't a fact?

Mr. BARNES. No, sir.

Mr. HALLOCK. This man Willard Laythe, he is the man that works at the Burns Garage and changes tires and pumps gasoline?

Mr. BARNES. I don't know whether he works there.

Mr. HALLOCK. You know they don't represent the sentiment of the people in 1925 —

Mr. BARNES (interposing). We will have a lot more stuff here.

Mr. HALLOCK. All right, sir. Now, this resolution from the Stockgrowers Association is signed, not by lumbermen, but by stockmen, isn't it, Mr. Barnes?

Mr. BARNES. Well, that is, I guess, from the stockmen. I am certain of it.

Mr. HALLOCK. They are stockmen, and are concerned with Colonel Greeley's grazing policy, isn't that true?

Mr. BARNES. I don't know. I guess they are concerned about Colonel Greeley's policies.

Mr. HALLOCK. Yes; the resolution indicates that. And they have thrown Mr. Herrick in there for good measure?

Mr. BARNES. No; they want to get their stock out without going over the narrow gauge railroad.

Mr. HALLOCK. That is what they are interested in.

Mr. BARNES. That is what they started out for, to get their stock out of there.

Mr. HALLOCK. But they are stockmen and they are not interested in Mr. Herrick's interests primarily?

Mr. BARNES. They are interested in their own interests. They want to get their stuff out of there.

Mr. HALLOCK. Now, Mr. Barnes, you told us about the conversation that took place in the office of Mr. Ames in April, 1923, when the bids were opened?

Mr. BARNES. Yes, Sir.
Mr. HALLOCK. Do you recall, or have you told us all the conversation —

Mr. BARNES (interposing). That wasn't a conversation, in April, 1923, but when the bids were opened.

Mr. HALLOCK. Yes; when the bids were opened. Do you think you have given us all the conversation you can recall between yourself and Mr. Flood?

Mr. BARNES. There might have been something else; I don't remember.

Mr. HALLOCK. You recall you had a little conversation with Mr. Flood in Mr. Ames's office there?

Mr. BARNES. We had no conversation. Mr. Ames made me acquainted with Mr. Flood, and there was only there, Mr. MCGOWAN, Mr. Ames, Mr. Flood and myself, and I think Mr. Munger came in, and after that Mr. Cecil.

Mr. HALLOCK. Do you remember whether anything was said relative to withdrawing Mr. Herrick's bid?

Mr. BARNES. No; not a word.

Mr. HALLOCK. Not a word?

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Mr. BARNES. Not a word.

Mr. HALLOCK. Mr. Barnes, to refresh your memory a little bit, is it not a fact that on that occasion, in Mr. .Ames's office, in Portland, in April, 1923, on the morning that these bids were opened, there present, Mr. Ames, Mr. Flood and several other gentlemen —

Mr. BARNES (interposing). Not when they were opened, there wasn't several other gentlemen there.

Mr. HALLOCK. Who was present when they were opened?

Mr. BARNES. I think Mr. Ames, Mr. Flood and myself, and Mr. Munger might have come in. I am not sure.

Mr. HALLOCK. At any rate isn't it a fact that on that occasion and under those circumstances, Mr. Ames opened the Fred Herrick bid and read it, and you said, in substance and effect, "Who the hell is Herrick?" Do you remember that?

Mr. BARNES. I remember asking who Herrick was. I don't remember saying it that way.

Mr. HALLOCK. Well —

Mr. BARNES (interposing). I might have said it that way.

Mr. HALLOCK. And you remember Mr. Flood told you Mr. Herrick was a timber man from up in the Idaho country?

Mr. BARNES. Yes, Sir.

Mr. HALLOCK. Do you remember that?

Mr. BARNES. Yes; I say I do.

Mr. HALLOCK. And is it not a fact, Mr. Barnes, that shortly after that you called Mr. Flood to one side and said to him, in substance and effect: "Young man, you have a bid in here for Fred Herrick. I don't know who he is, but you take that bid down along with the $25,000 certified check that accompanies it, and get the hell out of here, and I will give you a check in equal amount." Or words to that effect?

Mr. BARNES. Blaine Hallock —

Senator WALSH of Montana (interposing). Just answer whether you did, or not.

Mr. BARNES. I did not.

Mr. HALLOCK. Not in substance or effect?

Mr. BARNES. No, sir.

Mr. HALLOCK. You never did?

Mr. BARNES. Never in the world.

Mr. HALLOCK. Never in the world?

Mr. BARNES. Never in the world.

Mr. HALLOCK. And that is just as true as any other statement you have made here? The facts are, Mr. Barnes, that you were greatly disturbed to see that Herrick bid in there, weren't you?

Mr. BARNES. It didn't bother me. I didn't care who got that timber.

Mr. HALLOCK. Now, Mr. Barnes, that isn't entirely true, is it? Because you worked with and had an interest in the Brooks-Scanlon Lumber Co.?

Mr. BARNES. No.

Mr. HALLOCK. And isn't it a fact that you told him that if they would bid $2 or $2.05 there wouldn't be any other bids?

Mr. BARNES. I went and got Doctor Brooks to make a proper bid after there was no bid.

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Mr. HALLOCK. And assured him there would be no other bids?

Mr. BARNES. No; this, was after there were no bids.

Mr. HALLOCK. After there were no bids?

Mr. BARNES. I asked him what he would pay for it.

Senator WALSH of Montana. The question is, Did you at that time assure Doctor Brooks that there would be no other bid?

Mr. BARNES. No; I did no such thing.

Mr. HALLOCK. At that time you had taken options on pretty nearly 100,000,000 feet of timber in that country, which were going to expire in that year, July and September of 1923?

Mr. BARNES. I don't know whether some options would expire.

Mr. HALLOCK. Well, Ed, you do know that a lot of these options would expire?

Mr. BARNES. Some of them.

Mr. HALLOCK. The majority?

Mr. BARNES. Not the majority.

Mr. HALLOCK. But, in any event, you took the options

Senator WALSH of Montana (interposing). Let us have the answer of the witness to the question. The question is, you took the options?

Mr. HALLOCK. You took the options?

Mr. BARNES. Yes; I had options on this timber in there.

Mr. HALLOCK. You had the options, and you had the understanding with the Brooks-Scanlon lumber people that they would pay you $2 a thousand for that, and you protect them?

Mr. BARNES. I had no understanding with them at all.

Mr. HALLOCK. And didn't you tell James W. Girard that you did have that definite understanding and arrangement, and that the Brooks-Scanlon Lumber Co. had agreed to pay you $2 a thousand if they were the successful bidder for that timber?

Mr. BARNES. No.

Mr. HALLOCK. And isn't it also a fact that you told him on that occasion you had a further understanding with these gentlemen to the effect that if they were the successful bidder they would not only take the timber at that price, but give you a good job as taxman or landman in connection with the timber?

Mr. BARNES. No.

Mr. HALLOCK. Whether you told then that or not, is it a fact?

Mr. BARNES. No.

Mr. HALLOCK. It isn't a fact?

Mr. BARNES. No, sir; I had no arrangement with Brooks-Scanlon at all.

Mr. HALLOCK. Who were you representing when you went there that day?

Mr. BARNES. I wasn't representing anybody. I went down to see the bids opened.

Mr. HALLOCK. Did you submit the Brooks-Scanlon bid?

Mr. BARNES. No.

Mr. HALLOCK. You didn't have anything to do with it?

Mr. BARNES. No, no.

Mr. HALLOCK. You went there as a disinterested stranger?

Mr. BARNES. No; I went in there to see the bids opened. I didn't know whether there were any other bids, or not.

Mr. HALLOCK. Now, the facts are, Mr. Barnes, as you have told us; that you had always thought that the Government could not get more than a dollar and a half a thousand for that timber?

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Mr. BARNES. No; I never said that. I wanted the timber put on the market to make it an object for somebody to bid on it, and we granted it put on at a dollar and a half minimum price, and then they could bid as far as they wanted to.

Mr. HALLOCK. And you had always heard that the likelihood would be that is all they would get out of it?

Mr. BARNES. No; I wanted it put on at a dollar and a half, so the people would take notice of it and go in and look at it.

Mr. HALLOCK, At any rate, when Mr. Herrick got it, you realized that you had the privately owned stumpage on your hands, and you went to Mr. Herrick at once to induce him to purchase it.

Mr. BARNES. I didn't go to Mr. Herrick at all.

Mr. HALLOCK. What did you do about it?

Mr. BARNES. I told you yesterday what I did.

Mr. DE NEFFE. Answer the question, Mr. Barnes.

Mr. BARNES. What is the question?

Mr. HALLOCK. I say, you went to him, when he was the successful bidder, to sell your private stumpage.

Mr. BARNES. No, Sir.

Mr. HALLOCK. I don't mean literally, but through Mr. Girard.

Mr. BARNES. No.

Mr. HALLOCK. Don't you remember, when you accompanied these gentlemen, Mr. Barnes, you said you came

to discuss these timber bids —

Mr. BARNES. Mr. Herrick asked me to go to Prineville with him —

Mr. HALLOCK (interposing). And you did urge him to buy your private stumpage from you?

Mr. BARNES. I urged him to buy nothing. I told him I had it there and had this mill site.

Mr. HALLOCK. And it was immaterial whether you let the options expire and become frozen up there, or make a good profit out of them? That was a matter of absolute indifference to you?

Mr. BARNES. What I wanted to sell was my timber, to whoever was the high bidder.

Mr. HALLOCK. You knew you had to sell it, and Mr. Herrick came in and paid you a profit running from $16,000 to $20,000 on that deal?

Mr. BARNES. No, sir. He paid $1.49 a thousand for it.

Mr. HALLOCK. And you had picked this up all the way from 50 cents to a dollar a thousand?

Mr. BARNES. No, no; none of it was ever picked up at 50 cents.

Mr. HALLOCK. At any rate it was a nice profit.

Mr. BARNES. No.

Mr. HALLOCK. And the old gentleman told you he wanted you to have a nice profit, because you had worked hard and were entitled to it, or words to that effect.

Mr. BARNES. Herrick didn't want anybody to make any money off him. No chance for anybody to make any money off Herrick.

Mr. HALLOCK. Now, I understood you to say, Mr. Barnes, that there was no certified check accompanied the Herrick bid. Did you want to be understood —

Mr. BARNES (interposing). I said I didn't see no check accompanying it.

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Mr. HALLOCK. You are not stating as a fact that there was no check accompanying that bid?

Mr. BARNES. I think, if I remember, there was no check with either bids the day they were opened.

Mr. HALLOCK. Mr. Barnes, have you, yourself, undertaken to dictate to the citizens of Grant County the manner in which they should participate in this investigation and controversy, and how they should undertake to express themselves with regard to Colonel Greeley and Mr. Herrick?

Mr. BARNES. Well, I don't know as I have. You mean, told them how to do it —

Senator WALSH of Montana (interposing). That question is little indefinite.

Mr. HALLOCK. It is preliminary. I think it is, however, Senator, I will make it a little clearer. Here are the facts, as late as February of this year, from the city of Washington, you telegraphed to certain citizens of Burns, dictating the precise terms of documents you directed them to send here?

Mr. BARNES. At Burns?

Mr. HALLOCK. Yes.

Mr. BARNES. Well —

Mr. HALLOCK (interposing). Bearing on their attitude toward Mr. Greeley in this matter.

Mr. BARNES. I don't think I sent a telegram.

Senator WALSH of Montana. You can get a copy of the telegram.

Mr. HALLOCK. You don't think you sent such a telegram?

Mr. BARNES. No, sir.

Mr. HALLOCK. Will you be good enough to look through your files, and get a copy of it if you have it?

Mr. BARNES. Yes, Sir.

Mr. HALLOCK. Will you be good enough to do it now?

Mr. BARNES. No; I can't do it now.

Mr. HALLOCK. Maybe you can remember if I refresh your recollection. Did you not send, addressed to a citizen of Burns, under date of February 4, a communication —

Mr. DE NEFFE (interposing). To whom was that addressed?

Mr. HALLOCK. I will give it, if he desires it, later.

Mr. DE NEFFE. All right.

Mr. HALLOCK. As follows (reading)

Get up a petition signed by as many as possible to read like this: "We the undersigned certify we believe that the Forest Service Department were negligent in signing the contract with Herrick and that Herrick is not financially able to handle this contract and was not from the start." Send this to me at once as it is very important and confidential. You and Biggs do this. Let me know when Girard left and who went with him.

Were you the author of a document of that purport?

Mr. BARNES. I think I sent that message.

Mr. HALLOCK. Did you get a response?

Mr. BARNES. Yes, sir.

Mr. HALLOCK. Will you produce that?

Mr. BARNES. Yes, I will, I guess—yes; I will.

Mr. HALLOCK. Can't you produce it now?

Mr. BARNES. No; I can't, because it is in the hotel.

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Mr. HALLOCK. You make it a little difficult to interrogate you without these papers. Will you be good enough to get that at your first opportunity?

Mr. BARNES. Yes.

Mr. HALLOCK. Now, why was it, Mr. Barnes, that you found it necessary, as late as February 4, 1927, to dictate to those people to sign this petition, when they had this opportunity to come in voluntarily, as you would have, the people could come in and express themselves.

Mr. BARNES. I will tell you why I done that. Because the people of Burns are divided, and I had a wire that

said that Mr. Herrick is coming here, and he has two men here now at his expense —

Mr. HALLOCK (interposing). Who are they?

Mr. BARNES. Mr. Byrd and Mr. Jamison.

Mr. HALLOCK. Mr. Byrd and Mr. Jamison are here at his expense?

Mr. BARNES. They were not subpoenaed.

Mr. HALLOCK. You know they are here at his expense?

Mr. BARNES. They were not subpoenaed.

Mr. HALLOCK. That is rather characteristic of your statements. Have you any authority for saying that Mr. Byrd and Mr. Jamison are here at Mr. Herrick's expense?

Mr. BARNES. Yes; I think I have a telegram to that effect.

Mr. HALLOCK. Will you produce it?

Mr. BARNES. Yes; I think I will.

Mr. HALLOCK. That is interesting, and I would like to have you produce it.

Mr. BARNES. Well, many, I know, are for the applicants. I am not here representing Harney County, but I am here representing Grant County, and a number in Harney County.

Mr. HALLOCK. It is in Harney County where the development is located?

Mr. BARNES. No; partly in Grant County.

Mr. HALLOCK. And the construction work is in Harney County?

Mr. BARNES. There is a railroad building into Grant County.

Mr. HALLOCK. But the saw mill, and the improvements generally —

Mr. BARNES (interposing). The saw mills are —

Mr. HALLOCK (interposing). Isn't it a fact the construction work —

Senator WALSH of Montana (interposing). Let him answer.

Mr. HALLOCK. Isn't it a fact that the construction program with respect to which you say there has been so much delay, is almost entirely in Harney County?

Mr. BARNES. The mill will be in Harney County, but the railroad will be in Grant County.

Mr. HALLOCK. I am not talking about the logging.

Mr. BARNES. Part of it is in Grant County.

Mr. HALLOCK. And still you had to dictate a program to those people?

Senator WALSH of Montana. That is not developing a fact.

Mr. HALLOCK. No; that is argument. Now, Mr. Barnes, you always took the position to me and others, didn't you, that this $50,000 imposed by the Forest Service was a mere gesture and not a bona fide payment, isn't that true?

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Mr. BARNES. I always took the position that there was no bond canceled; the first extension.

Mr. HALLOCK. I am talking about the $50,000 payment made in July, 1926. You told me, and others, repeatedly, didn't you, Mr. Barnes, that that was a mere gesture, and that payment was not in fact made?

Mr. BARNES. I told you, the first extension of it, there was no bond canceled.

Mr. HALLOCK. I am not talking about that. I am talking about the $50,000 payment that was commented on in the newspapers pretty generally.

Mr. BARNES. I might have said —

Senator WALSH of Montana. The question is not the cancellation of any bond. Did you make any statement that the $50,000 was not paid, and was a mere gesture?

Mr. BARNES. I did on the first extension, and the other, I said, I didn't believe, was cancelled.

Mr. HALLOCK. You made a good deal of capital of that, didn't you?

Senator WALSH of Montana. That is indefinite.

Mr. HALLOCK. I would like to offer in evidence two documents, and ask that they be marked, one being a receipt for $50,000, and the other a letter stating the collection of the check, being dated July 14, 1926.

(The documents referred to were handed to Mr. De Neffe.)

Mr. DE NEFFE. All right. No objection.

Mr. MCGOWAN. I think it would be proper, in view of the fact that Mr. Hallock has made the offer of those papers, at this time for me, in supplement of that, to offer and show a receipt of the United States Treasury Department, dated July 15, 1926, for the sum of $50,000, covering miscellaneous receipts, forfeitures by contractors. This was the $50,000 that the Forest Service actually required Mr. Herrick to pay in connection with one of the extensions of his timber sale contract that is now in controversy.

Mr. DE NEFFE. No objection.

(The documents so offered are printed in full, as follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, NORTH PACIFIC DISTRICT,
Portland, Oreg., July 14, 1926.

MR. FRED HERRICK,
St. Maries, Idaho.

DEAR MR. HERRICK: The check for $50,000 given by you in payment of the liquidated damages was sent for collection and returns have just been received. The application for modification of agreement has now been approved and the duplicate copy is inclosed, as well as the duplicate copy of the stipulation. Copies have been sent to Mr. Girard.

The stipulations provide that satisfactory evidence of the required advances shall be given by your representative to the forest supervisor of the Malheur National Forest. As such satisfactory evidence, it will be expected that evidence shall be furnished on the second day of each month, such evidence to consist of duplicate deposit slips from the banks in which the deposits have been made, and a statement by your representative that the required funds are and hill remain available for the required purposes until expended.

Very sincerely yours,

C. M. GRANGER,
District Forester.
By A. O. WAHA, *Acting.*

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The regulations of the Department of Agriculture do not permit Forest officers to receive money due the Government. Send remittance to District Fiscal Agent.

Do not send personal checks unless certified by bank on which drawn.

LETTER OF TRANSMITTAL

(See other side for instructions, read carefully.)

JULY 14, 1926.

DISTRICT FISCAL AGENT,
Forest Service, Portland, Oreg.

There is inclosed herewith a (1) (money order draft) for $50,000, drawn payable to the Federal reserve bank, Portland, Oreg., to be placed to the credit of the United States. This deposit is payment (First, second, or third payment; payment in full; to cover advertisement; to accompany bid, etc.) on account of liquidated damages as provided for in contract. Miscellaneous receipts. Forfeitures by contractors. (Timber sale, settlement for trespass, cooperative agreement, etc.) Malheur National Forest. (2) Fred Herrick (signature of payer.) (3) St. Maries, Idaho (post office).

FRED AMES,
Assistant District Forester.

(Complete case designation.)
(The following stamp also appears on the face of the document:)

Received payment subject to collection July 13, 1926.

[Insignia]

Abstract No. 21, Portland, Oreg.

(On the reverse of the above document appears the following:)

INFORMATION FOR PERSONS MAKING PAYMENT

Indicate on the opposite side in the space marked —

(1.) The character of your remittance.
(2) Your name.
(3) The address to which you wish the receipt sent.
Make payments by postal or express money orders, bank drafts, cashier's checks, or certified checks drawn payable to the Federal Reserve Bank, Portland, Oreg.

Do not send personal checks unless certified by the bank.
Do not send cash or postage stamps.
Send payment with this form to tile district fiscal agent, Forest Service, Portland, Oreg. He can not accept your payment without this form.
If you have lost the form obtain another copy from the forest officer.

INSTRUCTIONS TO FOREST OFFICERS

Furnish this form to persons making payments for timber and for other resources of the national forests except grazing and special use. Enter in the spaces provided the amount of the remittance and the designation of the transaction on account of which payment is made.

Do not use this form for grazing or special-use permits.

Depositary will forward this to the Secretary of the Treasury through the Treasurer of the United States with daily transcript of same date.

(This deposit is not subject to check.)

No. 28.

FEDERAL RESERVE BANK OF SAN FRANCISCO, CALIF.

Portland Oreg., July 15, 1926.

I certify that A. H. Cousins, district fiscal agent, has this day deposited to the credit of the Treasurer of the United States $50,000 on account of miscellaneous receipts, forfeitures by contractors, for which I have signed triplicate receipts. (Certificates issued on account of sales of land, etc., patent fees, and surveys to be in triplicate.)

$50,000.

F. BRETSCHER, *Cashier*.

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(On the reverse of above document appears the following:)

I certify that this is an exact copy of the original certificate of deposit on file in the Treasury Department.

A. M. SMITH,
Acting Chief of Division of Bookkeeping and Warrants.

FEBRUARY 10, 1927.

Mr. HALLOCK. Mr. Barnes, you have had something to say about your claim that this mill site was donated to Mr. Herrick. Now, you don't want the committee to get the idea that it was transferred to Mr. Herrick without any consideration?

Mr. BARNES. Well, it was, and it wasn't. It is in the contract with Mr. Herrick. The mill site cost me $12,000. I sold him, 80,000 feet of timber at $1.49 a thousand. I gave him 40 miles of right of way, and threw in this mill site, providing he put the mill on this land.

Mr. HALLOCK. And it was all tied in with the same consideration, but for convenience, inasmuch as the timber was purchased, as the options matured, you stated a price on the timber, which when paid up, would cover the full consideration?

Mr. BARNES. Yes; but there was a consideration in the contract that he was to put in a mill, which he hasn't done.

Mr. HALLOCK. I have here a certified copy of this contract, which I am satisfied is correct. Do the gentlemen care, to look at it?

Mr. DE NEFFE. Mr. Barnes can look at it. I have never seen it. (A paper was handed to Mr. Barnes.)

Mr. BARNES. I guess that is the copy of the contract; yes.

Mr. HALLOCK. We would like to offer it in evidence.

Mr. BARNES. I do not want that in evidence. Not that contract.

Mr. DE NEFFE. Well, let me see it. I do not know what it is about.

Mr. BARNES. I have other reasons.

Senator WALSH of Montana. Why do you not want that in evidence?

Mr. BARNES. Well, I have other reasons. I have a lawsuit standing with Mr. Herrick in the Federal court in Oregon.

Senator WALSH of Montana. That is not a good reason. It will be admitted.

The CHAIRMAN. It will be admitted in evidence.

Mr. DE NEFFE. I have no objection to it.

(The copy of the contract referred to is here printed in the record in full, as follows)

THE BURNS CO.,

Burns, Oreg., August 27, 1925.

MR. JAMES W. GIRARD,
Care of Fred Herrick Lumber Co., Burns Oreg.

DEAR SIR: On the $55,000 contract for mill site right of way and timber there is one claim in 17-31 we could not get title to, this claim being known as the Day claim. Therefore according to our contract there is about $319: due me. You can check your contract and figure it out leaving the Day claim out. Please leave a check payable to me for the amount at the First National Bank and oblige
Very truly yours

E. W. BARNES.

This agreement, made and entered into this 16th clay of June, 1923, by and between Fred Herrick, of St. Maries, Idaho, by James W. Girard, his representative, the party of the first part, and E. W. Barnes, of Portland, Oreg., the party of the second part, witnesses:

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That the party of the first part hereby agrees to buy and the party of the second part hereby agrees to sell, the following described lands and timber and timber without the land, as listed hereinafter, in Grant County, Oreg., for the total price of $55,000, to be paid as follows:

As each deed or deeds and abstract is deposited in the First National Bank of Burns, Oreg., by the party of the second part, they are to be promptly examined by the party of the first part, or his attorneys, and if title is found valid they are to be, as the options fall due, accepted and paid for at the rate of $1.49 per thousand feet, based on the description by forties and the cruise listed, to wit:

List of land and timber with agreed cruises: Lot 1, sec. 1, T. 17 S., R. 31 E., 34.38 acres, 450 M.; lot 2, sec. 1, T. 17 S., R. 31 E., 34.74 acres, 425 M.; SW. ¼ NE. ¼, sec. 1, T. 17 S., R. 31 E., 40 acres, 175 M.; etc., making altogether a total 1,901.63 acres, 32,075 M.

List of timber without the lands, with right of way, 99 years' removal: NE. ¼ NE. ¼ sec. 8, T. 17 S. R. 31 E., 40 acres; NW. ¼ NE. ¼ sec. 8, T. 17 S., R. 31 E., 40 acres; NE.¼ NW. ¼ sec. 8, T. 17 S., R. 31 E., 40 acres, etc., making altogether a total of 1,200 acres, 4,615 M.

It is understood and agreed that if the title to any of the above-described lands shall fail, through no fault of the party of the second part, any such land or lands shall be deducted from the lands above listed and the party of the first part shall take such lands as titles can be delivered for and pay accordingly, as per above list of cruises.

It is also understood and agreed that the party of the second part will deliver, free from all incumbrance and subject to acceptance of title by the party of the first part, 320 acres of land for a mill site, at and including the 40 acres on which the Warm Springs on section 35, township 23 south, range 30 east, is located, and also including the water from said spring. It is also understood and agreed that the party of the second part will turn over to the party of the first part all rights-of-way options from Crane to Seneca now in his possession, which the party of the first part may wish to use.

It is further understood and agreed that, in consideration of the above-mentioned rights of way, lands for mill site and water rights, the party of the first part hereby agrees to locate and build his mills, box factories, etc., upon the 320-acre tract above referred to and it is agreed that the said tract is to be specifically selected and agreed upon by Mr. Girard and Mr. Barnes immediately upon their return to Burns, Oreg.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first in this agreement written.

J. W. GIRARD. [SEAL.]
E. W. BARNES. [SEAL.]

Witnesses:
V. J. GRAY.
E. F. DARVELL.

It is understood and agreed that the party of the second part will be given any and all surplus water from the spring or pond not needed by the party of the first part.

J. W. GIRARD.
E. W. BARNES.

Mr. HALLOCK. Mr. Barnes, you have a lawsuit standing against Mr. Herrick in the Federal court in Portland, as you said. You have another lawsuit against Mr. Herrick standing in the circuit court of Harney County, Oreg., that is a fact, is it not, involving your claim to recover that mill site?

Mr. BARNES. Yes; because he did not build the mill when he should have.

Mr. HALLOCK. Yes; I will get at that in a moment. And until we were able to settle with you last summer on right of way matters and condemnation suits and that sort of thing we had eight lawsuits pending with you or against you at that time, did we not, up there? I am speaking of the Fred Herrick Lumber Co.

Mr. BARNES. You did not have that many or anything like it, Mr. Hallock.

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Mr. HALLOCK. Well, I will refresh your memory a little on that. Until we were able to settle those suits, Mr. Barnes, you had instituted a damage action for coming in and constructing a railroad on your land in Grant County without what you characterized as appropriate authority, that is true, is it not?

Mr. BARNS. Well now, let me make an answer to that.

Mr. HALLOCK. You can answer fully if you wish to later, but I want to go ahead with my summary. Answer that question.

Senator WALSH of Montana. That question is whether you have got such a lawsuit or did have?

Mr. HALLOCK. Did you have such a lawsuit?

Mr. BARNES. Yes; I did have.

Senator WALSH of Montana. Now he had better make his explanation.

Mr. HALLOCK. All right, Senator.

Mr. BARNES. The reason there was an action for damages there was this road was supposed to be turned in some time into a private road, and I made Mr. Herrick take that piece of property so that he could not turn it into a private road later on. The court gave me a deed for it. I did that for the people of this county.

Mr. HALLOCK. May I explain this, Senator. I am not talking about the condemnation case. That was upon the damage action. That was because you contended he had damaged you in constructing the road or putting embankments on your land, or something?

Mr. BARNES. Was this, do you mean, up near Bear Valley?

Mr. HALLOCK. Yes.

Mr. BARNES. No, Mr. Girard came to me and asked me about that right of way, and they were grading on it then, and I told him that he could have it for nothing if he would —

Senator WALSH of Montana. Do not go into details, Mr. Barnes. The simple question is: What was the lawsuit about?

Mr. HALLOCK. A damage action.

Senator WALSH of Montana. Now do not go into details. What was it about?

Mr. BARNES. It was a damage action.

Senator WALSH of Montana. Well, what was the nature of the damage action?

Mr. BARNES. Well, he wanted a right of way across this land.

Senator WALSH of Montana. No; what did he do that you were suing him about?

Mr. BARNES. Well, I did not sue him at all.

Mr. HALLOCK. Oh, yes, Mr. Barnes, you were the plaintiff in the damage action, do you not remember?

Mr. BARNES. Well, he wanted this right of way, and I told him he could have it for nothing if he would sign an agreement that it would be a common carrier to Seneca, and he said he would not do anything of the kind. "Well," I said, "then you will have to condemn it, and then it will be a common carrier. You can not turn it back into a private road." And I let him condemn it.

Senator WALSH of Montana. Well then the action was by Herrick against you for condemnation?

Mr. BARNES. Yes.

Mr. HALLOCK. I think I can clear it up a little, Mr. Barnes. Mr. Girard at all times refused to sign any contracts with you of

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Any character, did he not, when you asked him to put up indemnity bands insuring the completion of the road and matters of that sort, just as a preliminary question? He always refused to do that, did he not? Stating that he had a contract with the Government, and that he felt that he was dealing with the Government and not with you as an individual, that is true, is it not? That is just a preliminary question, sir.

Mr. BARNES. Well, I guess there was once he said that; yes.

Mr. HALLOCK. Yes, and that was always his attitude?

Senator WALSH of Montana. That is aside from the question. The question is: Did you refuse to make any contracts with Mr. Herrick, or Mr. Herrick refuse to make any contracts with you?

Mr. BARNES. I never refused to make any contracts with Mr. Herrick at any time.

Senator WALSH of Montana. Did Mr. Herrick ever refuse to make any contracts with you? Now, not any particular contract, but did he refuse to make any contracts at all with you?

Mr. BARNES. No; he did not.

Senator WALSH of Montana. Now, go on with your question.

Mr. HALLOCK. What I mean is this, Mr. Barnes, that in connection with many of our troubles there you were always insistent that as an individual you felt that you had the right to demand indemnity bonds and covenants under which Mr. Herrick would do certain things within certain times, and matters of that sort?

Senator WALSH of Montana. Mr. Hallock, I do not think you had better ask him that. If there is any specific matter that you want to ask him about do so, but please do not ask him about a general policy.

Mr. HALLOCK. Very well, Senator. I thought I could anticipate his explanation of this suit. In any event, Mr. Barnes—and I do want to get this into the record in as clear a form as I can—last summer you had pending over in Grant County a damage action coupled with an injunction enjoining Mr. Herrick from coming upon your premises. That was one suit?

Mr. BARNES. That is the one I just talked about.

Mr. HALLOCK. Yes. And then in connection with that suit Mr. Herrick had to condemn a right of way across your land because you would not convey, that was true, and that suit was pending at that time, was it not?

Mr. BARNS. Yes.

Mr. HALLOCK. Then, down in Harney County you had sued Mr. Herrick to recover possession of this very mill site that you had deeded to him, and that suit was pending in Harney County, and you and one of your associates —

Senator WALSH of Montana. Well, when you speak about his having deeded this and then he sought to recover it, let us find out upon what ground he made that contention.

Mr. HALLOCK. I want to, Senator, when we get the eight suits covered in order.

Senator WALSH of Montana. Yes, but let us try to be fair about this thing. Go on and tell why you felt obliged to bring that suit to get back the property that you had conveyed to him.

Mr. BARNES. Well, the reason that I brought that suit, Senator, was that Mr. Herrick did not build this mill when he said he would build it, and I waited six months afterwards and then brought suit.
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Senator WALSH of Montana. Well, you brought suit to recover it because you claimed that he had not carried out his part of the contract?

Mr. BARNES. Yes.

Senator WALSH of Montana. Very good.

Mr. HALLOCK. In that connection, Mr. Barnes, this contract which you have been good enough to identify for us reads that "It is further understood and agreed —

Senator WALSH of Montana. Now let us not go into the details of the contract farther, Mr. Hallock. We understand now that he has got that lawsuit pending. Let us not try that lawsuit.

Mr. HALLOCK. Yes. I was a little fearful that the committee might conclude that the contract obligated us to perform at a certain time.

Senator WALSH of Montana. The committee is not going to decide that. The gentleman has simply told us what he claimed in the matter.

Mr. HALLOCK. Yes. Now the citizens of Harney County interested themselves in that controversy at an earlier stage when you refused positively to give Mr. Herrick the deed which you covenanted to give him covering that mill site, did they not?

Mr. BARNES. I did not refuse positively not to. I wanted to put the deed in escrow.

Mr. HALLOCK. And you wanted to inject covenants into it which your contract did not call for?

Senator WALSH of Montana. Well, now, let us try to avoid trying that lawsuit, Mr. Hallock.

Mr. HALLOCK. All right, Senator, but I wanted to get this —

Senator WALSH of Montana. We understand now that there was a controversy about the conveyance of that mill site, and that either one or the other brought a lawsuit about it, and that that lawsuit was pending. Now that is all this committee is interested in. We are not going to try the merits or the demerits of that lawsuit.

Mr. HALLOCK. I appreciate that, Senator.

Senator WALSH of Montana. Now all this goes to show the animus of this man, if there is any, the surrounding circumstances, and that kind of thing, but please let us keep away from these controversies, except to say that they are pending or were pending.

Mr. HALLOCK. Yes, and I appreciate your position, Senator. The matter that I have not made very clear, without any endeavor to go into that question again, is this: We are criticized in these resolutions, don't you see, for failure to build a mill down there rapidly. Now I would like to show —

Senator WALSH of Montana. Yes. I hope you are not going to understand that this committee is going to take for granted the recitals in that resolution. We are trying to find out what the facts are.

Mr. HALLOCK. Yes. I had hoped to show some circumstances under which we were confronted with a very serious obstacle against spending any money down there on that mill site for a long time, condemning rights of way over this man's land to get to it with our tracks and things of that sort.

Senator WALSH of Montana. You will have abundant opportunity to show that. I wish you would go on with the line of examination

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that you were pursuing, Mr. Hallock, to show all of these controversies pending, and what they were about.

Mr. HALLOCK. Thank you, sir. I misunderstood you, Senator. I thought that you did not care for anything more of that, sort in the record.

Now, Mr. Barnes, we had discussed the two suits that were pending last summer in Grant County, the damage action and the condemnation action, and then you mentioned the action in the Federal Court in Portland involving this mill site, and we were commenting upon the suit in the circuit court of Harney County, Oreg., involving the mill site. Just a word now about the action in the Federal court. In that action, which is still pending, you claim that Mr. Herrick has damaged you to the amount of $280,000, and sue to recover that sum, is that not true?

Mr. BARNES. That is true.

Mr. HALLOCK. And that is because you recite in that complaint and urge that this timber that you sold to Mr. Herrick at $1.50 a thousand was worth in fact $2.50 a thousand when you sold it to him; is that not true?

Mr. BARNES. Well, I do not just remember what the complaint is.

Senator WALSH Of Montana. Well now, Mr. Hallock, Senator Means and I are lawyers. And we can hardly conceive that Mr. Barnes, through a lawyer, has gone into a court and sued for $280,000 because he sold timber for $1.50 that was worth $2.50 a thousand.

Mr. HALLOCK. That is what he says, Senator.

Senator WALSH of Montana. Well, but there must be some other ground for the institution of that suit.

Mr. HALLOCK. There is; yes.

Senator WALSH of Montana. Well, you know about it. Tell what it is about and put the question to the witness.

Mr. HALLOCK. Yes. I would like to, Senator —

Senator WALSH of Montana. We understand, Senator Means and I at least, and I dare say every member of this committee, that that could not be the reason for that suit.

Mr. HALLOCK. Well, I will read this.

Senator WALSH of Montana. That can not possibly be an accurate statement of the substance of the complaint.

Mr. HALLOCK. Well, Senator, I want to make it absolutely accurate.

Senator WALSH of Montana. I wish you would do so. Let us know what the lawsuit is about.

Mr. HALLOCK. Mr. Barnes, this is a certified copy of the complaint. It has been certified by the clerk of the court. And will you concede that that is what it purports to be, Mr. De Neffe?

Mr. DE. NEFFE. I am not familiar with it, Mr. Hallock. It is news to me. It purports to be a certified copy all right, from the county clerk. Well, you were speaking about a suit in the Federal Court, Mr. Hallock.

Mr. Hallock. This has been removed to the Federal court, Mr. De Neffe.

Mr. DE NEFFE. Oh, I see. It was filed there first. I don't know.

Mr. HALLOCK. It is now pending in the Federal court. Mr. Barnes, in this complaint which counsel has been good enough to concede as a true copy of the original, it is recited that —

> On the 16th day of June, 1923, the said timber so sold to the said Herrick was worth not less than $2.50 a thousand feet. That on said date the right of way so

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> conveyed to the defendant was worth not less than $2,000. That plaintiff was induced to sell said lumber at $1.48 a thousand feet, and to convey said right of way to the defendant without any payment whatsoever by reason of defendant's agreement to locate and construct the sawmill and other mill buildings and mill pond upon the land conveyed to hire by plaintiff, and to complete the construction thereof and of the said railroad not later than April 1, 1925.

Now, Mr. Barnes, it was your contention when that complaint was verified, and it is your contention now, is it not, that you actually sold to Mr. Herrick for the considerations that you have indicated here timber which was worth $2.50 a thousand and that you only got $1.48 a thousand for it?

Senator WALSH of Montana. Well now, that is not a question for the witness at all.

Mr. HALLOCK. Senator, it is only preliminary to this, and I fear that I am tiring you, and I do not want to do that. It is preliminary to the proposition that Mr. Barnes always contended right up to this time that $1.50 was all the Government ought to ask for this timber, but he sues Mr. Herrick on the ground that the timber was worth $2.50, and he did not get it. It is a circumstance that —

Senator WALSH of Montana. Just now we are trying to find out what this lawsuit is about.
Mr. HALLOCK. Well, I have been endeavoring to find that out too.

Senator WALSH of Montana. That was the line of examination we were pursuing. I felt by reason of the interruption that I gave you I ought to suggest that you ought to continue.

Mr. HALLOCK. Very well, Senator.

Now, Mr. Barnes, I have a memorandum here bearing upon your testimony with respect to what Mr. Flood said to you on the afternoon of that day in April, 1923, following the opening of the bids. I think you said that Mr. Flood called you over to the hotel and told you that one Jim Girard had told him that the Shevlin-Hixon people were going to bid on this timber.

Mr. BARNES. He asked me how the bids came to be so much different, so much difference in the two bids, and I told him that I didn't know. And he said, "Well, we understood that Shevlin-Hixon was going to bid."

Mr. HALLOCK. That Jim Girard had told him that?

Mr. BARNES. Wait a minute, now. I asked him who told him, and he said that Jim Girard told him.

Mr. HALLOCK. Is your recollection of that quite positive, Mr. Barnes?

Mr. BARNES. What?

Mr. HALLOCK. Have you quite a positive recollection of that?

Mr. BARNES. You bet.

Mr. HALLOCK. And couldn't be mistaken in it?

Mr. BARNES. No; I am not mistaken.

Mr. HALLOCK. Why, didn't you know, Mr. Barnes

Mr. BARNES. I guess he was wondering the difference in the two bids, Mr. Flood was.

Mr. HALLOCK. Didn't you know, Mr. Barnes, or do you, that Mr. Flood and Mr. Girard never became acquainted until six months ago?

Mr. BARNES. Until six months ago?

Mr. HALLOCK. Yes.

Mr. BARNES. Well, that is a funny thing if they never became acquainted until six months ago.

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Mr. HALLOCK. But you have a positive recollection that Mr. Flood made a statement about what Mr. Girard had told him way back in 1923?

Mr. BARNES. Certainly. Mr. Girard said —

Senator WALSH of Montana. He has answered and told us positively that that conversation took place.

Mr. HALLOCK. Now, I am only calling your attention to this, Mr. Barnes, because I want you to correct your testimony if you care to. Are you quite positive that Mr. Girard told you at any time that he was close to Colonel Greeley, or words to that effect?

Mr. BARNES. Oh, yes.

Mr. HALLOCK. And that he could get any extensions that he wanted?

Mr. BARNES. Yes, he told me that lots of times, that he was a close friend to Colonel Greeley.

Mr. HALLOCK. And he could get all the extensions that he wanted?

Mr. BARNES. Yes, but he said that nobody could get an extension for Herrick, only him.

Mr. HALLOCK. That he could get all he wanted because of his connection with Colonel Greeley?

Mr. BARNES. Yes.

Mr. HALLOCK. You are quite positive about that?

Mr. BARNES. Certainly.

Mr. HALLOCK. And you commented upon the fact that Mr. O'Brien, the general manager of the Union Pacific Railroad has told you —

Mr. BARNES. Not the Union Pacific.

Mr. HALLOCK. The O. W. R. & N. Co., that Mr. O'Brien, the general manager of the O. W. R. & N. Co., had told you that he wanted Mr. Herrick tied and shackled before he dealt with him?

Mr. BARNES. That is the first remark he made to me when I went up to talk for Mr. Herrick with him.

Mr. HALLOCK. And yet you know, Mr. Barnes, that subsequently Mr. O'Brien did make an arrangement with

Mr. Herrick under which the line from Crane to Burns was built?

Mr. BARNES. He did.

Mr. HALLOCK. And advanced substantial sums of money in connection with that transaction?

Mr. BARNES. I would like to tell you how that came about.

Mr. HALLOCK. All right.

Mr. BARNES. Mr. O'Brien told me to write Mr. Herrick and tell him to come down and he would be glad to see him. That is the way I wrote Mr. Herrick, as near as I can remember. Mr. Herrick never did come down for a long time, and O'Brien wondered why he wasn't coming. It had got of and people telling around that O'Brien, or the Union Pacific, wouldn't have anything to do with Mr. Herrick, or various people made that remark, which wasn't true. They were waiting for Herrick to come and show him, and Herrick never came and showed him. When he did come I told O'Brien that the only way to get Herrick, to find out what he wants to do is for you to get in your car and invite him up to the ground and show what he wants. O'Brien said, "That is right, I guess that is what we will do." In about 10 days from that he sent word for Herrick to meet them on the ground.

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Mr. HALLOCK. In any event, they are warm personal friends to-day, to your knowledge?

Mr. BARNES. Yes.

Mr. HALLOCK. And they have very close business relations in connection with that development program?

Mr. BARNES. Yes; they are working on it. They give him steel on ten years contract. The Forest Department said all over the country that the road wouldn't have anything to do with Herrick and naturally they didn't want to get the blame for anything, and they were doing the best they could with him.

Mr. HALLOCK. Now, Mr. Barnes, getting into the resolution which is the basis of this proceeding, Senate No. 332, it is first observed that by the terms of the contract the purchaser agrees within a period of two years from the date of the contract, that is June 15, 1923, to construct and complete, ready for operation, 80 miles of railroad. Now the facts are that there is no such recital as that in the contract, is there, to your knowledge?

Mr. BARNES. Eighty miles of railroad?

Mr. HALLOCK. Yes.

Mr. BARNES. Yes.

Mr. HALLOCK.. To have it completed by June 15, 1925?

5 Mr. BARNES. Well, it doesn't say—but this was connected with the timber, you know he had to commence cutting April 1, 1925, and this road had to be completed before they commenced cutting timber.

Mr. HALLOCK. I will get at that in a minute, but that recital as it appears there is not correct to your knowledge, is it?

Mr. BARNES. Well, I don't know. Which is this here?

Mr. HALLOCK. This is the Senate resolution.

Mr. BARNES. Well, I don't know anything about that. They tore that all to pieces down there.

Mr. HALLOCK. That is the document.

Mr. BARNES. I don't think I ever read it since —

Mr. HALLOCK. Well, in any event then, for the sake of the record, I want to call attention to the fact that there

is nothing in the contract that sustains that recital.

Senator WALSH of Montana. What recital do you refer to?

Mr. HALLOCK. The first one, Senator, on the first page:

> Whereas by the terms of said contract the said purchaser agreed within a period of two years from the date of said contract

Which is June 15, 1923 —

> to construct and complete, ready for operation, approximately eighty miles of common carrier railroad to a designated point within said Grant County, Oreg.

The contract is silent as to any limit of the construction of that road.

Mr. BARNES. Is it any part of that paragraph that you read, Mr. Hallock, is that what you meant?

Mr. HALLOCK. I beg your pardon?

Mr. BARNES. Is it any part of that contract?

Mr. HALLOCK. No; that the contract obligates Mr. Herrick to build any part of that road within any particular time, Mr. Barnes.

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Now Mr. Barnes, going over on to page 2 of the resolution, you note that it says:

> Whereas on two different occasions said Forest Service has, since the signing of contract, granted to said Herrick and to the corporations by means of which he is attempting to develop said project an extension of one year to complete the performance of said contract, making a total of two years' extension which has thus been, granted.

Now; are we to understand that to mean that Mr. Herrick has received a two years' extension from June 15, 1925, within which to complete the railroad?

Mr. BARNES. No, no. It means that there have been two years all together, one year at a time, granted to him.

Mr. HALLOCK. Well then, so that we will understand that without too much confusion, the contract does not contain within its four corners any date with respect to which the railroad as such should be completed, does it?

Mr. BARNES. Well, the contract states that he must begin cutting and removing timber April 1, 1925.

Mr. HALLOCK. That is private timber?

Mr. BARNES. And it is in this contract, that is, it says in the prospectus how much it costs to build this road and everything on it, and it says that this is a part of this cutting in this contract that the road must be built. Well, now, he can not cut timber without having the road.

Mr. HALLOCK. Yes, but to make my position a little clearer: Under the contract Mr. Herrick is required to begin cutting and removal of the Government timber by October 1, 1925, is he not?

Mr. BARNES. The last extension.

Mr. HALLOCK. No, no; under the contract?

Senator WALSH of Montana. The original contract.

Mr. BARNES. Yes; that is on the Government timber, but it says above that on private timber April 1.

Mr. HALLOCK. Yes, but I am talking about the Government aspect of the contract.

Mr. BARNES. Yes.

Mr. HALLOCK. And if as you say he has received two extensions, it means he has received two years' extension?

Mr. BARNES. No, he didn't receive two years at one time.

Mr. HALLOCK. I know he didn't, Mr. Barnes, but you recite here, or somebody did recite here —

Mr. BARNES. Well, I didn't recite that.

Mr. HALLOCK. Well let me ask my question and then we will see if we can not clear it up. If, as the contract recites, Mr. Herrick was to begin cutting and removal of timber from the Government lands on October 1, 1925, and if in one form or another he has received two years' extension, then obviously he would be required to begin the cutting and removal on or before October 1, 1927, would he not?

Mr. BARNES. Begin cutting January 1, 1927, that is when he was to commence cutting the last time.

Mr. HALLOCK. Well, I am just asking you what the two years' extension that the resolution actually recites here does to Mr. Herrick's obligation to begin the cutting and removal of the Government timber. It sets it over to October 1, 1927, doesn't it? Now

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you haven't heard anything to the effect that Mr. Herrick wants an extension on that date, have you?

Mr. BARNES. Well, yes.

Mr. HALLOCK. That he wants an extension of time beyond October 1, 1927, within which to begin the cutting and removal?

Mr. BARNES. Yes; and his mill has got to be finished the first of March if he cuts any timber, and he hasn't commenced on it.

Mr. HALLOCK. I am not asking about that. I want you to say anything you have to say on the question of whether that Mr. Herrick has ever asked any extension of time beyond the two years recited in the resolution, beyond October 1, 1927, within which to begin the cutting and removal of the Government timber?

Mr. BARNES. Well, I don't know, but we expect that he is going to ask for another one the same as he did on the other past two.

Mr. HALLOCK. Well, it is largely a matter of suspicion?

Mr. BARNES. Well, we know he can not finish it or do anything like it on time, or even commence it. Why wouldn't we look for that he would be asking for an extension again?

Mr. HALLOCK. Now the resolution next goes on, Mr. Barnes, and recites that reliable citizens further charge a conspiracy between the Forest Service and James W. Girard and Frank Klobucher. Now who are those reliable citizens, if you know, who make that charge? I am wondering if you know the source of that information? Did you ever hear any one charge them with this conspiracy?

Mr. BARNES. Well, that is all over the country.

Mr. HALLOCK. Well, name one.

Mr. BARNES. Everybody talks about that.

Mr. HALLOCK. Name one man who claimed to have knowledge of the facts and preferred such a charge against these men.

Mr. BARNES. Well, I don't know of any man that preferred that charge right out and said, but it is the talk and it is the suspicion of the whole country in there.

Mr. HALLOCK. What you mean, in a nutshell, is this, Mr. Barnes, isn't it, that because these men, Mr. Klobucher and Mr. Girard, were formerly employed in the Forest Service, and because of these extensions that have been granted, you suspicion, and perhaps others do, that there is some collusion or conspiracy or fraud, is that it?

Mr. BARNES. Well, I don't know what they suspicioned, but everybody says that there must be something wrong, that this contract has been let, and the way that it has gone on all the time. Now if this thing —

Senator WALSH of Montana. Well, wait a minute, wait a minute. Do I not express the view of the committee that we ought to be confining ourselves to proof of the conspiracy without talking about the talk around the country?

The CHAIRMAN. That is right.

Senator WALSH of Montana. Let us try to go to the meat in this thing and get the facts without talking about what the talk is around the country.

Mr. HALLOCK. Well, then, to put it in another way: Can you produce anything in the form of an affidavit, a document, a statement, or anything concrete or tangible or remotely so that will, evidence this alleged conspiracy?

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Senator WALSH of Montana. Well, I think that is an improper question. If he does not produce something, if he does not produce some evidence, as a matter of course this committee will not find that there is any conspiracy. Let us consider the evidence that is here.

Mr. DE NEFFE. Senator Walsh, may I call the attention of the committee to this resolution of the county court where that very thing is mentioned.

Senator WALSH of Montana. Well, it is a matter really of no great consequence what is recited in that resolution.

Mr. DE NEFFE. He was asking for some proof.

Senator WALSH of Montana. I think we have been fairly liberal about that matter seeing that the time of the committee is limited.

Mr. HALLOCK. I will just conclude that with one question. Will you tell us, Mr. Barnes, the names of any persons who to your knowledge have made such a charge against these men?

Mr. BARNES. Well, I don't know. What do you mean by making a charge?

Mr. HALLOCK. Any one who claimed to know the facts constituting the basis for a charge of conspiracy or collusion?

Mr. BARNES. The names, not the facts? Not right out, no, but everybody complained that there must be something wrong, knowing what they were and their not doing anything—that there must be something wrong, and there ought to be an investigation to find out.

Mr. HALLOCK. And that is as far as you can go on that?

Mr. BARNES. That is as far as I can go; there may be some other witnesses here that have more than I have. But I am saying, on your proposition, that there is an awful lot of suspicion. That is all that I get myself.

Mr. HALLOCK. I see. Now, the resolution also recites, on page 4, that very reliable citizens charge that Mr. Herrick took this contract as a pure speculation —

Senator WALSH of Montana. I am going to object, Mr. Chairman, to going any further in that line of examination.

Mr. HALLOCK. I will be glad to desist, Senator. I do not want to tire the committee at all. I suspect I may have carried this a little too far as it is. I won't pursue these questions any further. I do not believe I have anything more in

mind at this juncture.

Senator MEANS. I may not be here Monday, and there are one or two questions I would like to propound to the witness.

Mr. Barnes, are the terms of the original contract that was entered into fair to the Government and to both parties, so far as you know?

Mr. BARNES. I think so; I think it was carried out that way.

Senator MEANS. Then there was nothing dishonest or fraudulent about the advertisement and the preliminaries to the entering into of the original contract, was there?

Mr. BARNES. Only that when the first parties made an offer and the Government put this timber on the market they made a straight open bid and advertised for 30 days. Mr. Girard, who cruised the timber for the Government, went out and got Mr. Herrick to make a bid of $2.80.

Senator MEANS. Was there anything wrong about that, about a government official getting a higher bid?

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Mr. BARNES. No, there is nothing wrong about that. But this timber was advertised, Senator, all over the United States for months before that, and every company had a prospectus of it and looked at the prospectus. The way this is—Mr. Flood told me that. Mr. Girard told them that the Shevlin-Hixon Co. was going to bid on it and it was pretty high. Girard likewise has told Mr. Herrick, "You bid this $2.80, the Government wants that $2.80, and you will get the contract, and I will go with you as your general manager and we will go in partners." And he got a raise of $5,000 a year for going in partners, with him.

Senator MEANS. If the original contract had been carried out; everybody would have been satisfied?

Mr. BARNES. Oh, say, if the original contract had been carried out there would be no kick about it.

Senator MEANS. Then the only complaint that we have here is as to these extensions and the reason for them?

Mr. BARNES. Yes.

Senator MEANS. Let me ask you what you believe the Forestry Department should have done at the expiration of the time named in the contract when the first extension was asked?

Mr. BARNES. Well, after the way the work went on in the two years that he had it, Senator, I should think that they should have canceled his contract.

Senator MEANS. Then your complaint personally and that of those that you represent, is that the Government did not cancel the contract instead of granting the first extension?

Mr. BARNES. They did not cancel it, but instead of that they favored him. They did not take any bond from him.

Senator MEANS. I wish you would just answer my question, please. That is the first complaint you have to make?

Mr. BARNES. Yes.

Senator MEANS. And then, to further emphasize that, they granted a second extension?

Mr. BARNES. Yes.

Senator MEANS. And what you complain of to the committee is that the facts surrounding the granting of the extensions were such as to cause you to believe that there should bean investigation because it was a fraud against the Government?

Mr. BARNES. Well, in letting the first contract too, the way it was let, and a Government man going in partners

with him.

Senator MEANS. But, since the terms of the contract were fair to the Government, Mr. Barnes, had it been carried out there would have been no complaint?

Mr. BARNES. Surely.

Senator MEANS. That is, there is no objection to the manner and, method of carrying out the contract provided in the contract?`

Mr. BARNES. No; there have been no complaints about that.

Senator MEANS. Then they were fair?

Mr. BARNES. Yes; I figure maybe they were fair enough, but the two extensions we figure should not have been made.

Senator MEANS. Then all you are complaining of here is the two extensions of the contract and the failure of the Government to cancel the contract for noncompliance at the time the first extension was granted?
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Mr. BARNES. Yes; and in awarding the first contract without them having financial funds to carry it on.

Senator MEANS. You charge then that the Forestry Department, acting thereunder, did not do its full duty by the Government, in not making proper inquiry as to the financial standing of the man with whom they were making the contract?

Mr. BARNES. They should not have, because he has not used any money anywhere in the two years, to amount to anything, which he ought to have had to show that he could do it.

Senator MEANS. Have you read the letters of the Forestry Department in explanation of why their granted the extensions?

Mr. BARNES. I read some of them last night.

Senator MEANS. Are there any facts therein stated, generally, that you can point out to me no that are untrue, or any reasons therein stated that are faulty?

Mr. MCGOWAN. Senator Means, just for the purpose of identifying those letters, may I suggest that they are the letters that I offered to the committee yesterday when I offered a copy of the contract and the modifications?

Senator MEANS. Yes.

Mr. BARNES. Well, there was letters there that showed that the district forester said there were reasons for canceling the contract with Mr. Herrick —

Senator MEANS. All right, then —

Mr. BARNES. But the chief forester still extended the contract.

Mr. DE NEFFE. I was going to develop that, Senator Means.

Senator WALSH of Montana. Mr. McGowan has some questions, I understand.

(Cross-examination by Mr. D. F. McGowan, attorney representing United States Forest Service.)

Mr. MCGOWAN. Mr. Barnes, sketching briefly the preliminaries in connection with this timber sale: You first made the application to the Forest Service that the timber be put upon the market? Am I correct?

Mr. BARNES. Yes, I came here with petitions to the Chief Forester, the Oregon delegation and the Chief Forester.

Mr. MCGOWAN. And you at that time yourself took the position that the timber was worth $1.50 a thousand?

Mr. BARNES. Yes.

Mr. MCGOWAN. Were you not advised by the Forest Service that they would not sell the timber until an appraisal had been made?

Mr. BARNES. Oh, yes. I knew that myself. I knew they could not do that.

Mr. MCGOWAN. And following that suggestion that was made to you by the Forest Service, the Forest Service put cruisers into the field and made an appraisal of the timber?

Mr. BARNES. Yes.

Mr. MCGOWAN. And the appraisal report was, in due time, sent to Washington?

Mr. BARNES. Yes.

Mr. MCGOWAN. And you were given a copy of that report, were you not?

Mr. BARNES. No—not a copy of the price.

Mr. MCGOWAN. Were you not given the information that the timber had been appraised at $2.75?

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Mr. BARNES. No, it was not. As far as I ever knew it was appraised at $3.

Mr. MCGOWAN. But in any event the price was regarded by you as too high?

Mr. BARNES. Yes; because it was 80 miles from the railroad, and I figured that nobody would go in there and look at it and bid on it.

Mr. MCGOWAN. The removal of the timber necessitated the building of 90 miles of railroad?

Mr. BARNES. Eighty miles of railroad.

Mr. MCGOWAN. Well, approximately 80 miles?

Mr. BARNES. Yes.

Mr. MCGOWAN. When that appraisal was made and in the hands of the local officers in Portland did you not immediately come to Washington in connection with it?

Mr. BARNES. I went to Mr. Cecil in Portland and asked him if he knew the appraisement on it. He did not tell me.

Mr. MCGOWAN. Did you protest at that time against the price?

Mr. BARNES. He didn't tell me what the price was. He, said; "Barnes, you might think it was too high, but the only place you can get any consideration of that would be at Washington." And I came back and told the people, and they paid my expenses to come to Washington.

Mr. MCGOWAN. Now, did you not, following your trip to Washington, immediately back track, as it were, and go to Portland, Oreg., when Colonel Greeley was in the field, and have a conference with him in Portland?

Mr. BARNES. I went from here to Oregon, and the Secretary of Agriculture's instructions said to meet him on July 22 at Portland.

Mr. MCGOWAN. And you had a conference with Colonel Greeley in Portland?

Mr. BARNES. Yes.

Mr. MCGOWAN. And at that time you protested again against the price that the forest cruiser had put on the timber?

Mr. BARNES. There were 15 men at that hearing —

Mr. MCGOWAN. Just answer the question, if you please.

Mr. BARNES. Yes.

Mr. MCGOWAN. In other words, why were you petitioning against the price that was put on the timber by the Forest Service officers?

Mr. BARNES. Because I figured that nobody would bid at that price, 80 miles from the railroad, on that timber.

Mr. MCGOWAN. In other words, did you not at that time have a present desire to acquire that timber for yourself?

Mr. BARNES. Myself? No.

Mr. MCGOWAN. Or somebody that you represented?

Mr. BARNES. No.

Mr. MCGOWAN. Were you there *pro bono publico*? Why were you spending your time traveling around the country? Merely because of the public weal?

Mr. BARNES. I had a duty to Grant Country—Grant and Harney Counties and I wanted the country developed.

Mr. MCGOWAN. Very well. Colonel Greeley at that time—if I do not state this correctly you will correct me—told you that he was in sympathy with the development, but the law required him to sell the timber at the appraised value?

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Mr. BARNES. He said he sent 12 men in there and he always took his own men's word, and he said he was going to advertise it for six months at $2.75.

Mr. MCGOWAN. And following that conference it is true that the timber was put on the market at $2.75? That is, under the prospectus a copy of which has been put in the record?

Mr. BARNES. Yes. But he told me that if he did not get any bids at the end of six months —

Mr. MCGOWAN. We will come to that. Was not the timber advertised in all the more important trade journals?

Mr. BARNES. Yes; all over the country.

Mr. MCGOWAN. Yes. It was given wide publicity?

Mr. BARNES. Yes.

Mr. MCGOWAN. The date for the opening of bids under the $2.75 price was in February, was it not?

Mr. BARNES. Fifteenth of February.

Mr. MCGOWAN. 1923?

Mr. BARNES. Yes.

Mr. MCGOWAN. And there were no bids received?

Mr. BARNES. No.

Mr. MCGOWAN. And then you appeared in Minneapolis in connection with the Brooks-Scanlon people about putting the timber on the market? Did you not appear there?

Mr. BARNES. I was going home to Portland, and when I visited my folks in Stillwater, Minn., I had a letter, or a telegram, from Mr. Ames asking me if I knew anybody interested in the timber.

Mr. MCGOWAN. In other words, the Forest Service did not try to cover up this proposition at all? They advertised the timber extensively?

Mr. BARNES. They didn't advertise it yet. Then I went to Minneapolis and got Dr. Brooks to make an offer of $2 on this timber, and I had a hard time getting him to do it.

Mr. MCGOWAN. What prompted you to go to Dr. Brooks to get the price?

Mr. BARNES. Because there were no bids, and we wanted the country opened up, and I was doing the best I could to get the country opened up. I was doing as Mr. Greeley told me, at the end of six months if there was no bids for me to go back and get the best offer I could, and he would readvertise it for thirty days.

Mr. MCGOWAN. Very well. Now, there is no criticism of the Forest Service, as I understand it, from you or any of your associates in Grant and Harney Counties, up to the time of the Brooks-Scanlon that I have referred to?

Mr. BARNES. No.

Mr. MCGOWAN. Following the time when the bids were to be received in connection with the $2.75 price, the Forest Service put the timber on the market again for a period of 30 days?

Mr. BARNES. After Doctor Brooks made the offer they put it on the market again at the minimum price of $2, because he made that offer.

Mr. MCGOWAN. So they cut the price of $2.75 to $2?

Mr. BARNES. Yes, to start with.

Mr. MCGOWAN. And that was advertised in the trade journals, was it not?

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Mr. BARNES. There was no prospectus sent out on that.

Mr. MCGOWAN. It was advertised in the Oregonian?

Mr. BARNES. Yes.

Mr. MCGOWAN. And, I think, in the Telegram?

Mr. BARNES. As I recall it, in the Telegram and in the Oregonian both.

Mr. MCGOWAN. There was no attempt on the part of the Forest Service, so far as you know, to withhold that information from the public with reference to the $2 proposition?

Mr. BARNES. No.

Mr. MCGOWAN. That was given publicity?

Mr. BARNES. They even told the people who made the offer of $2.

Senator WALSH of Montana. What was that?

Mr. BARNES. They told the people who made the offer that Doctor Brooks was the one who made the offer, and they advertised it at $2.

Senator WALSH of Montana. Did they advertise the fact of an offer of $2 from the Brooks people?

Mr. BARNES. They did not put it in the advertisements, but Mr. Sherman, of Washington here, in the Forest Service wired into Burns who made this offer, and told people, told Girard, told Herrick, who made the offer of $2. They advertised this timber at the minimum price of $2. They should not have run around the country telling people who made that offer of $2; they should have put it on the market at the minimum price of $2. That was saying—if Senator Walsh made a $2 offer here, he knows his business, and I can bid $2.50 or something. They should have started this price at the minimum of $2, but they told other people who made this offer.

Senator WALSH of Montana. What do you know about what they told?

Mr. BARNES. It was wired into Burns from Sherman here who made the offer—from Sherman, of the forest office, that Brooks and Scanlon made the offer at the time it was advertised.

Senator WALSH of Montana. Let us get what the fact is, Mr. Barnes. The Forest Service wired to inquire who made the offer?

Mr. BARNES. No; the forest office here wired to Burns, Oreg., who made this offer—that is, the people that made it.

Senator WALSH of Montana. That is, they wired to Burns that the offer was made by the Brooks people?

Mr. BARNES. Yes.

Senator WALSH of Montana. To whom did they wire?

Mr. BARNES. They wired to I. S. Geare {Geer?} in Burns.

Senator WALSH of Montana. Did the advertisement say that anybody had offered —

Mr. BARNES. No; not in the advertisements, Senator.

Senator WALSH of Montana. It was just a straight declaration that $2 was the minimum?

Mr. BARNES. Yes. They put it on the market at $2. If this offer had not been made at $2 we would not have got it on the market again.

Senator WALSH of Montana. What I want to know is, what information the Forestry Service gave. They gave out information that they already had an offer of $2 for it? And gave the name of the company that made the offer?

Mr. BARNES. Yes; but they did not advertise it that way.

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Senator WALSH of Montana. I understand.

Mr. MCGOWAN. Then the bids were opened in connection with the 30-day ad?

Mr. BARNES. Yes.

Mr. MCGOWAN. And then the two bids were received?
Mr. BARNES. Yes.

Mr. MCGOWAN. The Brooks-Scanlon of $2, and the Fred Herrick at $2.80?

Mr. BARNES. Yes.

Mr. MCGOWAN. Now, you were desirous of buying the timber at $1.50 were you not?

Mr. BARNES. No; I wanted it put on the market at $1.50 if possible.

Mr. MCGOWAN. You did not care to buy it for yourself?

Mr. BARNES. No; I didn't have any way to buy it when I was getting the timber put on the market.

Mr. MCGOWAN. You did not intend to bid in the name of Barnes?

Mr. BARNES. Oh, no.

Mr. MCGOWAN. Now, the Herrick bid was $2.80. Did you figure how much that meant to the Federal Government and to the State of Oregon as against the $1.50 bid, which we say was in your mind at the time you wanted the timber put on the market? Did you ever figure that out?

Mr. BARNES. I don't know as I did—against the $1.50? You couldn't hardly figure it that way, Mr. McGowan; you figure it from the $2 bid.

Mr. MCGOWAN. You ought to figure it from the basis of the $2?

Mr. BARNES. Yes.

Mr. MCGOWAN. I want to go into these figures, and I will offer them for the record. If the Forest Service received $2.80 a thousand for this as against the $2 bid, there was a difference of, say $689,350. And as against the $1.50 bid, the figure that Mr. Barnes proposed —

Senator WALSH of Montana. I do not think that is quite right. Mr. Barnes said that he thought $1.50 ought to be the minimum; that is to say, when the advertisement was put out $1.50 should be fixed as the minimum, and instead of that, $2.75 was fixed as the minimum.

Mr. BARNES. And there was no bid.

Senator WALSH of Montana. The committee will be glad to have the figures showing the difference to the Government as between a dollar and a half and two dollars and eighty cents.

Mr. MCGOWAN. Very well; I won't go into the detail. The difference between the $2.80 and the $2 bid amounted to $689,000, and the difference as between the $2.80 bid and the $1.50 price amounted to approximately $1,074,000.

Senator WALSH of Montana. One of your questions implied that the Forest Service and the Government had secured that amount, that the amount had been paid. As I gather from the testimony, so far there has been no cutting and no amount paid so far.

Mr. MCGOWAN, No, sir; that is the contract price, and that is what it will mean when these receipts eventually come in.

Senator WALSH of Montana. That is, if the contract is carried out according to its terms, that is what the Government will get?

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Mr. MCGOWAN. Yes, Sir. We want to bring these figures to the attention of the committee in connection with the so-called fraud, so far as the Forest Service is concerned, prior to the actual award. What Mr. Girard did—well, I will come to that later. I offer these figures, Mr. De Neffe [handing paper to Mr. De Neffe].

Mr. DE NEFFE. It is based on a wrong assumption.

Senator WALSH Of Montana. Well, it is a mathematical computation?

Mr. MCGOWAN. It is a mathematical computation, and there is no assumption in it.

Senator WALSH of Montana. On the amount of surplus timber, figured on the cruise made by Mr. Girard?

Mr. MCGOWAN. The computations are made from the figures taken from the contract itself, which followed,

of course, the Girard cruise.

Mr. DE NEFFE. You do not claim, do you, Mr. McGowan, that Mr. Barnes advocated the sale of this timber at a dollar and a half a thousand?

Mr. MCGOWAN. Just exactly what was in this —

Senator WALSH of Montana. Well, we have the facts so far as the testimony itself is concerned.

(The figures submitted by Mr. McGowan fire here printed in full, as follows:)

FEBRUARY 8, 1927.

MEMORANDUM

The timber under the Herrick contract is estimated to cut 770,000 M yellow pine, 78,000 M Douglas fir, 42,000 M other species, 890,000,000 M total.

Herrick's bid was for $2,289,350
Minimum price as advertised 1,600,000

Increase received through bid 689,350

Of the receipts, the State will get 25 per cent for roads and schools and 10 per cent additional will go to roads and trails on the forest.
The increase in price will therefore mean an increase to the State as follows:

For roads and schools $172,337.50
For forest roads and trails 68,935.00

Total spent in State 241,272.50

This amount would have been lost to the State if Mr. Herrick had not bid.
If the timber had been sold for $1.50 per M for yellow pine and 50 cents for other species as desired by Mr. Barnes, instead of under the present sale, it would have brought $1,215,000.

Herrick's bid was $2,289,350
Barnes's offer was 1,215,000

Loss if Barnes's offer had been accepted 1,074,350

Under the Barnes offer the State would have lost—

For roads and schools $268,587.50
For forest roads and trails 107,435.00

Total 376,022.50

Mr. MCGOWAN. Mr. Barnes, would you tell us specifically what was in your mind—I am not asking now about what everybody knows, but what was in your mind, specifically as to where the fraud was, if any, that was in this deal as far as the sale of this timber to Herrick by the Forest Service was concerned, prior to the modifications?

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Mr. BARNES. Prior to the modifications?

Mr. MCGOWAN. Yes.

Mr. BARNES. Well, Mr. Girard got Herrick to make this bid, and Mr. Flood told me that it was understood by him that Girard said that Shevlin-Hixon was going to bid, too, and their bid would be pretty high. I said, "Why did you bid yourself the $2.80?" He said, "We had to figure that the Shevlin-Hixon was going to bid," and he told me

that Girard had said so. Now, Girard went in partners with Herrick. Isn't it natural that any man in the world that knows the circumstances would say, "Why did he go in partners with him?" We do know that he got a direct raise in salary right after the bid.

Mr. MCGOWAN. From whom?

Mr. BARNES. From Herrick.

Mr. HALLOCK. There is nothing in the record to that effect.

Senator MEANS. He is just answering the question.

Mr. BARNES. I am just answering the question.

Mr. HALLOCK. I do not think a matter of that kind should be injected without a scintilla of evidence to support it.

Senator WALSH of Montana. I really feel that the question is objectionable, because the committee is going to determine whether there is fraud in the contract, and it does not make any difference what this man thinks about it.

Mr. MCGOWAN. I was trying to bring from him, Senator Walsh, what was in his mind as a fact, not as a conclusion—what was in his mind as a fact, or something that might happen to be a fact, with reference to —

Senator WALSH of Montana. But as I understand the proposition, I think it is entirely immaterial to this committee what this man thinks about it.

Mr. MCGOWAN. Now, Mr. Barnes, coming down to the resolution itself, I think we are entitled to know this, if there is anything to support it. Who are the officers of the Forest Service that are supposed to have been involved in these private transactions?

Mr. BARNES. Who?

Mr. MCGOWAN. Yes. What are their names?

Mr. BARNES. Well, Mr. Girard was the man that we supposed worked this deal up.

Mr. MCGOWAN. All right. Girard is No. 1?

Mr. BARNES. Yes.

Mr. MCGOWAN. All right. Who is No. 2, if there is any such person?

Mr. BARNES. Well, the Portland office at that time—Mr. Ames for one.

Mr. MCGOWAN. He is guilty of fraud? Is that what you believe?

Senator WALSH of Montana. Wait a moment, Colonel McGowan, I am going to object to that.

Mr. MCGOWAN. Very well, Senator.

Senator WALSH of Montana. As I stated, this man is here practically in the position of a complainant, and if he has any evidence to show fraud it will be developed before this committee. Then in due course, as a matter of course, you will have opportunity, to make any explanation that you wish. Why go into what this man thinks about the matter or what reason he has for thinking anything outside of the facts?

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Mr. MCGOWAN. This was my reason for that; I won't press it, but I will just give you the reason. This resolution 332 states that reliable citizens of the county say that there were transactions which strongly indicate that there was fraud and collusion between Herrick and certain of the officials of the United States Forestry Service.

Senator WALSH of Montana. That is an averment of the complaint, practically, and we are trying to find out what the evidence is.

Mr. MCGOWAN. What the evidence is as to who the men were, so that we might meet the issue.

Now, Mr. Barnes, there appears this provision in the resolution with reference to Mr. Herrick's financial resources. It says:

> Whereas said citizens further charge that neither Fred Herrick nor said corporations ever had and have not now, sufficient financial resources to perform said contract according to its provisions, and charge that said contract was secured, as aforesaid, as a pure speculation on the part of said Herrick.

What is the source of that information? What facts are there to support that?

Mr. BARNES. The fact is that work has not been done and he has not spent the money in there that he claims he has spent.

Mr. MCGOWAN. That is merely a conclusion on your part?

Mr. BARNES. Not on my part; on the people's part of the country.

Mr. MCGOWAN. Have you any facts to support the proposition that Herrick was not properly financed at the time the Forest Service made the contract with him?

Mr. BARNES. Yes, I have.

Mr. MCGOWAN. Tell the committee what they are.

Mr. BARNES. I have the report of Dun's that he was not.

Mr. MCGOWAN. A report made to you?

Mr. BARNES. Yes—well, not made to me, but I have it right here.

Mr. MCGOWAN. Will you produce it?

Mr. BARNES. Yes. If he was financed, why didn't he go to work and do it?

Mr. MCGOWAN. I do not want to argue it with you; I am asking you for the fact.

(The witness produced a paper which he handed to Mr. McGowan.)

Mr. MCGOWAN. Mr. Barnes, as I read this report it is dated December 27, 1926. Am I correct in that?

Mr. BARNES. Yes, but it gives a lot of stuff' from before that.

Mr. MCGOWAN. Is that a financial statement as to Herrick's condition as of the date the contract was entered into?

Mr. BARNES. No. Two hours after the bids were opened there was a wire sent to two banks out there that Herrick was not able to handle this proposition.

Senator WALSH of Montana. Let us see what this says [examining the paper produced by the witness]. Did you want to interrogate him further about this?

Mr. MCGOWAN. No, sir; I do not care to ask him any more questions about that, because it is so obvious that a paper dated 1926 which he offers to substantiate his testimony with reference to Herrick's financial condition as of 1923—the inference is obvious.

Mr. BARNES. I told you, two hours after the bids were opened in Portland and I tried to subpoena Mr. Ames —

Senator WALSH of Montana. We have learned about that, Mr. Barnes.

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Mr. MCGOWAN. Mr. Barnes, at the time you came to Washington to see Colonel Greeley or the Secretary of Agriculture, with reference to the putting of this timber on the market were you not in the employ of the Hines Lumber Co.?

Mr. BARNES. No, Sir. At the time I came with the petition, do you mean?

Mr. MCGOWAN. At any time since this contract was—since this timber was first put up.

Mr. BARNES. No; not since it was put on the market.

Mr. MCGOWAN. What do you mean? Do not let us quibble about it.

Mr. BARNES. We are not going to quibble about it. Since the timber was advertised —

Senator WALSH of Montana. Find out when he was associated with them.

Mr. MCGOWAN. When were you associated with Edward Hines Lumber Co.?

Mr. BARNES. I think it was two years before that —

Senator WALSH of Montana. Two years before what?

Mr. BARNES. I mean a year—a year before I came with the petitions to have it put on the market.

The CHAIRMAN. That was 1921?

Mr. BARNES. In 1920 I was; with the Edward Hines Lumber Co. and looked that country over.

Mr. MCGOWAN. I hand you here a letter dated March 30, 1924, signed by E. W. Barnes, to W. B. Greeley of the United States Forest Service, and ask you if you can identify that letter?

Mr. BARNES. That is my signature.

Mr. MCGOWAN. And in that letter at that time you purported to want to buy this timber, did you not?

Mr. BARNES. What?

Mr. MCGOWAN. In that letter you desired to buy this Herrick timber?

Mr. BARNES. What date is this letter? March 30, 1924?

Mr. MCGOWAN. Yes. I merely want to offer this for identification; we will put it in later.

Mr. BARNES. I made an offer to Colonel Greeley to buy that timber at one time.

Mr. MCGOWAN. In that letter of 1924—let me have it and I will call one line of it to your attention, merely for the purpose of identifying the letter.

> Now, Colonel Greeley, we assume you intend to have Mr. Herrick to expedite this work. If he does not see his way clear to do this I have other people who are financially able and ready to go ahead at once and complete the work on time.

Mr. BARNES. That is all right.

Mr. MCGOWAN. You identify the letter, do you not?

Mr. BARNES. Yes, that is my signature.

Senator WALSH of Montana. You had better have it marked for identification.

(The letter so identified by the witness, dated March 30, 1924, from E. W. Barnes to W. B. Greeley, was marked by the reporter for identification "Barnes 1." See p. 443.)[1]

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Mr. MCGOWAN. I hand you, Mr. Barnes, a telegram dated April 23, 1926, signed E. W. Barnes, to Col. W. B. Greeley, in which again you ask for a cancellation of the Herrick contract, and in which you make a specific bid for the timber —

Mr. BARNES. I did not ask for the cancellation of the contract in that telegram.

Mr. MCGOWAN. Just a minute—just for the purpose of identifying it.

Mr. BARNES. I sent this telegram, and made them an offer, offering to reimburse Herrick for everything he was out and pay the same price for the timber, and the people would be out nothing and the Government would not be harmed either. He was not doing the work, and the people wanted it done.

Mr. MCGOWAN. And you received a reply from Colonel Greeley dated April 23, 1926? I will ask you if you received such a reply as I have here in my hand. I merely want to identify these letters.

Mr. BARNES. That is one letter that I received from him.

Mr. MCGOWAN. From Colonel Greeley?

Mr. BARNES. Yes.

Mr. DE NEFFE. What is the date?

Mr. MCGOWAN. April 23, 1926. I hand you another telegram, signed E. W. Barnes, to Col. W. B. Greeley dated May 1, 1926, in which you state—and I ask this merely for identification—"I do not expect acceptance of my offer until Herrick contract canceled."

Mr. BARNES. Let me see that. That is all right.

Mr. MCGOWAN. Is that your telegram? Do you identify that?

Mr. BARNES. Yes. I told him if he canceled the Herrick contract and wired me I would come here immediately and go ahead with the work and have it all done in 14 months, I think it was.

Mr. MCGOWAN. I hand you Mr. Sherman's letter of May 1 to you, in reply to that. Do you identify that—in which he states that he will not do business with you while the contract is outstanding?

Mr. BARNES. Yes.

Mr. MCGOWAN. Will you mark these for identification?

(The four documents so identified by the witness, being a telegram dated April 23, 1926, from Mr. Barnes to Colonel Greeley, see page 444; letter dated April 23, 1926, from Colonel Greeley to Mr. Barnes, see page 444; telegram dated May 1, 1926, from Mr. Barnes to Colonel Greeley, see page 445; and letter of May 1, 1926, from Mr. Sherman to Mr. Barnes, see page 445, were marked as one document "For identification Barnes 2.")

The CHAIRMAN. We will recess for a few minutes, to answer the roll call.

(At this point there was an informal recess of about 10 minutes, to permit the members of the committee to respond to a roll call in the Senate.)

[1]Believe this number an error. "Barnes 1" was submitted earlier. Ed.

The CHAIRMAN. The committee will resume. Is Mr. Barnes present?

Mr. BARNES. Yes.

Mr. MCGOWAN. Mr. Barnes, as I understand it, what you said was that after the passage of these resolutions by the county court of Grant County you came to Washington seeking a Federal inquiry into this sale.
Mr. BARNES. Yes.

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Mr. MCGOWAN. But you did not meet with success prior to the passage of the memorial by the Oregon Legislature?

Mr. BARNES. No.

Mr. MCGOWAN. The Forest Service had nothing to do with your lack of success in that connection, did it?

Mr. BARNES. I don't know.

Mr. MCGOWAN. Now, section 38 of the contract as it appears in the record, Exhibit No. 9, and as it was signed, is as follows:

> It is further agreed as a part of the consideration of this agreement that a common carrier railroad for freight and passengers in accordance with the laws of the State of Oregon, shall he constructed from the main line connection at Crane, Oreg., to Seneca, Oreg.

Mr. BARNES. Yes; that was the first contract.

Mr. MCGOWAN. Do you know as a matter of fact if any representations were made to the Oregon Legislature that the Forest Service was going to abandon this common carrier clause?

Mr. BARNES. I did not make it to them myself. I don't know who made it, but I suppose it was made, and I think they had good reason.

Mr. MCGOWAN. Did you ever suspect that the Forest Service was going to abandon this clause?

Mr. BARNES. Well, not the Forest Service, but that they would let Herrick do it if there was any way he could.

Mr. MCGOWAN. That the Forest Service would let Herrick do it?

Mr. BARNES. That they would.

Mr. MCGOWAN. Did you ever inquire of the Forest Service to find out what their attitude was in regard to that common carrier clause?

Mr. BARNES. Yes.

Mr. MCGOWAN. Of whom?

Mr. BARNES. Well, I don't know that I did, but our county judge did.

Mr. MCGOWAN. Well, I am asking if you inquired.

Mr. BARNES. No, not lately, not for a long tinge.

Mr. MCGOWAN. Did you at any time?

Mr. BARNES. Well, in the first place we asked them for a common carrier railroad, you know.

Mr. MCGOWAN. What I am talking about and the question propounded to you was, if you have inquired of the Forest Service whether they were going to abandon the common carrier clause of the contract.

Mr. BARNES. No, the Forest Office had nothing to do with abandoning it.

Mr. MCGOWAN. Can not you answer the question yes or no. It seems to me it is clear.

Mr. BARNES. No; I don't think I ever did have any conversation about any common carrier clause with the Forest Service.

Mr. MCGOWAN. Yet there was considerable agitation surrounding this common carrier clause?

Mr. BARNES. Yes.

Mr. MCGOWAN. You were, of course, connected with the local agitation in connection with this Herrick sale and the possible cancellation of it.

Mr. BARNES. Well, I do not follow you there?

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Mr. MCGOWAN. Well, you were interested in having the Herrick sale canceled, for whatever reason; and irrespective of the reason you were interested in having it canceled.

Mr. BARNES. I figured that it should be canceled; yes.

Mr. MCGOWAN. One of the reasons given to the Oregon Legislature was the proposition that the Forest Service was going to abandon the common carrier clause?

Mr. BARNES. Not the Forest Service, I don't think that I never made that remark to anybody.

Mr. MCGOWAN. Here is what the Oregon memorial says:

> Whereas it is further charged by citizens that an attempt is being made by the said Herrick to secure a modification of said contract eliminating the clause therein providing that said railroad shall be a common carrier, and the elimination of said clause from said contract will enable said Herrick to bottle up the territory served by said railroad and retard development thereof, and thereby enable the said Herrick to secure an unjustifiable advantage.

Somebody represented to the Oregon Legislature that the common-carrier clause was to be abandoned.

Senator WALSH of Montana. No; that is not what that says at all, Mr. MCGOWAN. That says that Herrick proposed to try to get it abandoned.

Mr. MCGOWAN. Well, all right, let us have the cross-examination proceed on that basis, then, Senator.
I will ask you, Mr. Barnes, if you ever endeavored to ascertain the views of the Forest Service on what it proposed to do with that common-carrier clause in the contract.

Senator WALSH of Montana. He has already answered that. He says he never talked with them. I trust you will appreciate, gentlemen, that every member of this subcommittee is holding this hearing under stress, that there are other very important duties calling, and I am going to ask all of you to endeavor to avoid duplication in so far as it is possible.

Mr. MCGOWAN. Very well, Senator. I believe that is all I will ask.

Mr. HALLOCK. Mr. Chairman, with the utmost regard for Senator Walsh's views, and with an earnest desire to respect them, I have in mind two very brief questions I should like to have an opportunity to propound to Mr. Barnes before the witness is taken on redirect examination. And I want to say right here that we all realize that this subcommittee has been very patient, extremely so, and we appreciate it.

The CHAIRMAN. Very well, you may proceed.

(Further cross-examination, by Mr. Blaine Hallock, attorney for Fred Herrick, James W. Girard, and Frank J.

Klobucher.)

Mr. HALLOCK. Mr. Barnes, referring to the financial statement that you introduced a while ago, purporting to come from R. G. Dun & Co.: I note that it only attempts to disclose the financial condition of the Milwaukee Lumber Co. That is a fact, is it not?

Mr. BARNES. Oh, no.

Mr. HALLOCK. It is a statement of the Milwaukee Lumber Co., Fred Herrick, president, and Flagg, secretary, and then comments on the status of things.

Mr. BARNES. Well, it mentions all his other companies, all the way down.

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Mr. HALLOCK. I will get to that in a moment.

Mr. BARNES. It says he bought 890,000,000 feet of timber over at Burns. It says he paid $25,000 on it, and has got an option on it, and has the option on it yet.

Mr. HALLOCK. At any rate I think we agree that that is a financial statement only of the Milwaukee Lumber Co., or purports so to be.

Mr. BARNES. No.

Mr. HALLOCK. However you construe it, all right, but that is what it says on it.
Mr. BARNES. The Senators can look at it, and they will see it mentions all these places.

The CHAIRMAN. The paper will speak for itself.

Mr. HALLOCK. Have you secured a financial statement of Mr. Herrick's Export Lumber Co.?

Mr. BARNES. It says he is supposed to have sold —

Mr. HALLOCK (interposing). I asked you, have you secured a financial statement of Mr. Herrick's Export Lumber Co.?

Mr. BARNES. No.

Mr. HALLOCK. Or of his Coeur d'Alene Co.?

Mr. BARNES. No. Members can look at this and see what it says.

Mr. HALLOCK. I repeat the question, have you secured a financial statement of
Mr. Herrick's Coeur d'Alene Lumber Co.?

Mr. BARNES. No.

Mr. HALLOCK. Or of his St. Maries Co.?

Mr. BARNES. No. It says here that on the St. Maries Mill Co. he paid down a certain amount on a million and a half dollar proposition.

Mr. HALLOCK. Or of the Scotch Lumber Co. of Alabama?

Mr. BARNES. That is what it says.

Mr. HALLOCK. I asked you, have you secured a financial statement as to that Alabama Co.?

Mr. BARNES. It says so here.

Mr. HALLOCK. It says his holdings in the Alabama district are said to foot up several millions of dollars.

Mr. BARNES. That it is said so, but he does not give a financial statement, and there must be something wrong with a man who will not give a financial statement and yet expects to get credit.

Mr. HALLOCK. You said something about some remarks that had been exchanged in regard to the common-carrier feature of this railroad in the early days of this venture.

Mr. BARNES. Yes.

Mr. HALLOCK. When the Malheur railroad was incorporated, it was incorporated as a common carrier, was it not?

Mr. BARNES. It did not say so at Salem.

Mr. HALLOCK. Do you not know as a matter of fact that its articles of incorporation, and its charter, required that it should be a common-carrier, and that many times it has exercised the right of eminent domain as a common carrier; that is true, is it not?

Mr. BARNES. I think I have a letter from somewheres {*sic*} down at Salem saying it does not say that. I will look it up and see if I can not find the letter.

Mr. HALLOCK. In any event, as of this date, or of any comparatively recent date, or of any date at all, after the discussions that

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you said took place years ago, do you know of any fact or circumstance that would indicate that Mr. Herrick or the Forest Service, or either of them, was or is attempting to avoid a common carrier status for that railroad?

The CHAIRMAN. If you will.

Mr. DE NEFFE. It is as follows:

> On April 1, 1926, the railroad grade from Burns to a point near the south line of section 34, township 16, south range 31 east, Willamette meridian, being station 2520 of the railroad survey, including all cuts, fills, tunnels, bridges, trestles or other structures, excavations, or movements of earth or rock necessary for the laying of ties and steel, for a permanent standard-gauge railroad track suitable for use in hauling logs[2] in trains shall have been completed.

Mr. BARNES. Now, in your modification this is what you say. It does not say common carrier for freight and passengers as it originally did. So why didn't the Oregon delegation have the right to pass the memorial?

Senator WALSH of Montana. Let us avoid commenting on it. That is the feature you were referring to, anyhow, is it, Mr. Barnes?

Mr. BARNES. Yes.

Mr. HALLOCK. Do not you realize that section 38 requires a common carrier railroad?

Mr. BARNES. Originally, yes.

Mr. HALLOCK. And there has never been any modification or attempted modification of that, and that this additional matter to which you direct attention is merely cumulative with respect to certain dates when that construction shall be completed, and matters of that sort,

Senator WALSH of Montana. All that is argument.

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[2]This is the phrase, "suitable for use in hauling logs," on which Barnes based his conclusion that the Forest Service was abandoning the common-carrier clause.

Mr. BARNES. It says here for hauling logs on trains.

The CHAIRMAN. Just answer the question.

Mr. HALLOCK. Then with the exception of the document to which you have just referred, and which was read, have you any evidence, or can you give us any facts, with respect to any attempt on the part of Mr. Herrick subsequent to the conversations you have given us, relative to his desire or intention to abandon the common carrier status of this railroad?

Mr. BARNES. In the talk at Burns, where Girard told McGowan he would never haul a log or any mail over that road for anyone else. That is common talk in all that country.

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Mr. HALLOCK. You say that Girard told MCGOWAN?

Mr. BARNES. Yes. He didn't tell it to me, because I have not been around Girard for a year or so.

(Redirect examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. In this Exhibit No. 9 I am referring to the stipulations governing the construction work, dated July 6, 1926, and signed by Mr. Herrick, which is the third modification. Did you find that same change, Mr. Barnes, in paragraph 2 there, in which the passenger phase of the railroad is eliminated? That is, it is only required to be a logging railroad.

Mr. BARNES. The same thing in the other one.

Senator WALSH of Montana. You had better read it to the committee.

Mr. DE NEFFE. It is identical, Senator. I thought we could save time.

Senator WALSH of Montana. Very well. In the third modification there was the same question?

Mr. DE NEFFE. Yes; the stipulation governing the construction work. It is paragraph 2. It is signed by Mr. Herrick.

Mr. HALLOCK. It describes the character of the structure necessary, like the ties, and steel, and the standard track suitable for hauling logs —

Mr. DE NEFFE. (Interposing). It is a logging railroad.

Mr. BARNES. Why didn't they say for common carrier passenger railroad, the same as the original?

Mr. DE NEFFE. Now, has Mr. Girard said anything to you recently about whether they were going to have that common-carrier clause eliminated from the contract?

Mr. BARNES. Not recently.

Mr. DE NEFFE. Do you remember about when he told you?

Mr. BARNES. Oh, I think it was probably two years he told me the common carrier was a fake, and should not have been in.

Mr. DE NEFFE. You said the Burns people are divided on this issue. What is the reason for that, if you can tell?

Mr. BARNES. Well, naturally there is a reason. Herrick buys some stuff at some of their stores there, and the ones that he is trading with is with Herrick.

Mr. DE NEFFE. Yes.

Mr. BARNES. And naturally they are with him, and that is where it divides. Some speak good for Herrick, and

some are against him.

Mr. DE NEFFE. The $50,000 bond should have been forfeited on the 1st of October, 1925; isn't that right, according to the contract?

Mr. BARNES. Yes, sir.

Mr. DE NEFFE. For default?

Mr. BARNES. Yes, sir.

Mr. DE NEFFE. Did you and the people try to find out whether that had been forfeited?

Mr. BARNES. Are you speaking of the first extension, or the second?

Mr. DE NEFFE. I am speaking of the bond.

Mr. BARNES. The extension.

Mr. DE NEFFE. When the first extension was granted?

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Mr. BARNES. Yes; we all figured and heard that it was canceled right away.

Mr. DE NEFFE. But, was it, in fact, canceled right away?

Mr. BARNES. No; I think it was pretty near a year after.

Mr. DE NEFFE. Where is that receipt from the Federal reserve?

The CHAIRMAN. That was offered this morning.

Mr. MCGOWAN. There were two put in?

Mr. DE NEFFE. There were two. I wanted to refer to them. I want to refresh your mind. I believe you said under the contract this road was to be a private road. Did you mean that?

Mr. BARNES. No.

Mr. DE NEFFE. That is the way I took it down.

Mr. BARNES. No; the road was to be a common-carrier road under the original contract.

Mr. DE NEFFE. I wanted to correct that.

Mr. BARNES. Yes, sir.

Mr. DE NEFFE. Now, in response to Senator Means' question, something was said about the complaint dated from the time that this work lagged; is that right? That is, the complaint entered by the people from the time that it was apparent that the work was just being stalled along?

Mr. BURNS. Yes; the people complained.

Mr. DE NEFFE. Because it lagged?

Mr. BARNES. It didn't start at all.

Mr. DE NEFFE. Now, in regard to the fraud or suspicious circumstances that Senator Means was asking about—isn't that what you were asking about, Senator?

Senator MEANS. Yes.

Mr. DE NEFFE. The circumstances indicating fraud and collusion, what are some of those circumstances which have been developing here, and which we are asserting indicate —

Senator WALSH of Montana (interposing). That would be a conclusion.

Mr. DE NEFFE. Yes; that would be a conclusion.

Senator WALSH of Montana. If there is any other fact you want from this witness, get the facts. He has told us about all he knows, I think.

Mr. DE NEFFE. Yes; I think that is a matter for the committee's consideration on the evidence that has come in.

Senator WALSH of Montana. It would be simply a repetition of what has gone in.

Mr. DE NEFFE. Now, you suggested a minimum of a dollar and a half to be asked for at the first bid. What was the idea? Were you urging the Government to sell it at a dollar and a half?

Mr. BARNES. We wanted the Government to sell this, and put it up at a dollar and a half to bidders.

Mr. DE NEFFE. Did you think it would encourage more bidders?
Mr. BARNES. I think it would, maybe. If I saw it advertised for a dollar and a half, I might go and look at it, and then I might bid, even as high as $3.

Mr. DE NEFFE. And then you thought there would be more bidders than if it was two or three dollars?

Mr. BARNES. Yes: it doesn't make any difference what minimum you put on it, because they have a right to cancel all bids.

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Mr. DE NEFFE. Then you didn't urge them to put it up at a dollar and a half?

Mr. BARNES. Yes; I did urge —

Mr. DE NEFFE (interposing). I mean to sell it at a dollar and a half ?

Mr. BARNES. No; I didn't, because we expected a number of bids.

Mr. DE NEFFE. I wanted to call the committee's attention to these bids. I don't know that that makes any difference, on the bids, what Mr. Barnes wanted it sold for. That is erroneous. He didn't want it sold for that. He wanted the minimum at that.

Senator WALSH of Montana. Yes; we understand that.

Mr. DE NEFFE. The Senators understand that.

In regard to this letter and telegram that you sent to Colonel Greeley here in April, I think, or May, 1926, making certain offers, or stating—making certain propositions in case Herrick's contract is canceled, what was your purpose?

Mr. BARNES. The purpose was, because the work was not going on, and I knew of people at that time that would take this over and the work was not going on, and we wanted it to go on, and I thought if Colonel Greeley and Herrick canceled this contract—we figured that if we could pay Herrick off and pay the same price, that the Government would get the same price —

Senator WALSH of Montana (interposing). Who were you representing at that time?

Mr. BARNES. Senator Walsh that is confidential, the people I was representing. I don't represent them now,

and have no one to buy the timber at this day.[3]

The CHAIRMAN. Were you acting as the agent of these people?

Mr. BARNES. Yes; at that time I was told to make the offer, and if Colonel Greeley had accepted, we would have been here in no time. At this time I don't have anybody to buy it.

Mr. DE NEFFE. Are you negotiating for it now?

Mr. BARNES. No; all we think, if it is opened, the most responsible bidder, and the highest man, would get it.

Mr. DE NEFFE. That is all I have?

Mr. MCGOWAN. Mr. Barnes, you didn't have the money, yourself, to finance this deal?

Mr. BARNES. Oh, no.

Mr. MCGOWAN. And you were acting for an undisclosed principal, is that the idea?

Mr. BARNES. Well —

Senator WALSH of Montana (interposing). That is what he has told us; he was told to make the offer.

Mr. MCGOWAN. All right.

Mr. BARNES. I should have backed the offer up. I wrote Mr. Herrick a letter and offered him $100,000 profit, because he wasn't doing any work, to take up his contract.

The CHAIRMAN. Is Mr. Barnes excused?

Mr. DE NEFFE. Yes; that is all.

The CHAIRMAN. That is all, Mr. Barnes. You are excused. Who is your next witness?

Mr. DE NEFFE. Mr. Wollenberg.

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TESTIMONY OF L. WOLLENBERG, OF GRANT COUNTY, OREG.

(The witness was duly sworn by the chairman.)

(Direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. State your name.

Mr. WOLLENBERG. L. Wollenberg.

Mr. DE NEFFE. Where do you live, Mr. Wollenberg?

Mr. WOLLENBERG. Grant County, Oreg.

Mr. DE NEFFE. And have you ever lived in Harney County?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. How long did you live there?

[3]I have not been able to determine who Barnes might have been representing. He often assumed things that were not fact. He may have thought he represented someone when he did not.

Mr. WOLLENBERG. Eighteen years.

Mr. DE NEFFE. And what business were you in there?

Mr. WOLLENBERG. Well, I was in the merchandise business, and was postmaster for the first seven or eight years that I was in Harney County.

Mr. DE NEFFE. And what else did you do while you were there?

Mr. WOLLENBERG. I was school director, and city treasurer, and I have always been unfortunate to have all these things saddled on me.

Mr. DE NEFFE. And how long have you lived in Grant County?

Mr. WOLLENBERG. Twenty years.

Mr. DE NEFFE. And what have you done while you were there?

Mr. WOLLENBERG. I have been in the United States mail service nearly constantly all that time. I have been councilman of our city for four years, and mayor for some years—seven years consecutively; school director there, and president of the commercial club, which I am now and have been for the last eight years.

Mr. DE NEFFE. What kind of Government service were you in?

Mr. WOLLENBERG. Star Route Mail Service.

Mr. DE NEFFE. You have handled that for 20 years?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. Where does that run?

Mr. WOLLENBERG. Well, I have, at times, several different routes. At this time I have one route 145 miles long, seven days a week, commencing in Gilliam County, running through Wheeler County, and into Grant County; and then I have another one goes from Canyon south to Burns; that is three times a week.

Mr. DE NEFFE. That is all right.

Mr. WOLLENBERG. And then one north from Canyon six times a week.

Mr. DE NEFFE. Have you kept in touch with this Herrick railroad contract?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. And timber contract?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. And you say you are at the head of the commercial club there?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. And in that capacity this matter has come to your attention?

Mr. WOLLENBERG, Yes.

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Senator WALSH of Montana. Where, Mr. De Neffe?

Mr. DE NEFFE. In Canyon City. Is that right?

Mr. WOLLENBERG. Canyon, and Burns both. I know all the people, there, as well as in Grant County.

Mr. DE NEFFE. Have you ever talked with Mr. Girard—you know him, don't you—James W. Girard?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. Regarding whether this railroad would go clear through to Seneca?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. Do you remember when that was?

Mr. WOLLENBERG. I think that was the fall of 1925. The county court asked myself and an attorney by the name of Otis Patterson to go to Burns and ask Mr. Girard if his intentions were to come to Seneca, or if his intentions were to stop where he then contemplated, and now contemplates stopping.

Mr. DE NEFFE. Right there I want to ask you if Seneca is a well-defined location?

Mr. WOLLENBERG. Well, Seneca has been a post office for 35 years that I know of.

Mr. DE NEFFE. Has the post office ever been at any place than at Seneca for the last 35 years that you know of?

Mr. WOLLENBERG. No, sir.

Mr. DE NEFFE. Has it ever been at the Lincoln farm, or Lincoln?

Mr. WOLLENBERG. No, sir.

Mr. DE NEFFE. All right. Now, what made you think that the railroad might stop south of Seneca?

Mr. WOLLENBERG. Well, there is a good many things in connection with that. Grant County, and the bureau of public roads were building a very expensive road through Seneca into Canyon. And the bureau of public roads had it in charge, of course, and I very frequently rode with the engineer in charge. I was interested, of course, from the community standpoint, as well as my own—carrying mail, there, I had been 20 years, and I remember one day, about—it was about April, 1924—Mr. Girard came into the camp where Mr. Myers and I were, and they were then contemplating extending the road that they first contemplated building from there on to reach Seneca, and Mr. Myers asked Mr. Girard if he would tell him where he was going to stop, and if he did he would build him a road right to his door. Mr. Girard refused to say. And from all appearances after that, of course, they weren't coming—the only matter that I was interested in and that my people were, that they would come over to where there was facilities for stockyards and warehouses and everything that pertains to a common carrier railroad, and if he stopped over there on the other side of the river where there is no facilities of that kind, you are right up against a hill or the river and a swamp. That was my only object —

Mr. DE NEFFE (interposing). In this prospectus, when this timber was advertised, Seneca was given as the northern terminus of the road, Wasn't it?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. I see. And is Grant County a livestock country?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. And would there be considerable stock shipped out over this railroad?

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Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. Ml right. Now then, when you were down talking with Mr. Girard, what was said there?

Mr. WOLLENBERG. Mr. Patterson done all the talking. I listened, of course. Mr. Girard said that he didn't intend to come to Seneca; that it was inconvenient for him to come there.

Mr. DE NEFFE. And did he say where they were going to stop?

Mr. WOLLENBERG. Yes; the place where they now contemplate stopping.

Mr. DE NEFFE. That is how far south of Seneca?

Mr. WOLLENBERG. Well, it is something over a mile.

Mr. DE NEFFE. Is it north or south of the river there?

Mr. WOLLENBERG. Southwest of Seneca.
Mr. DE NEFFE. Did he give any reason why he was going to Seneca?

Mr. WOLLENBERG. It was inconvenient. In this connection, I wish to say that the policy of the Herrick people has been so far as we are concerned, that it was none of our business what they done or what they said. That has been the attitude, and still is the attitude.

Mr. DE NEFFE. You mean of the Herrick people?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. They consider you people as intruders, is that it?

Mr. WOLLENBERG. They consider us as intruders, yes.

Mr. DE NEFFE. When you express an opinion or desire?

Mr. WOLLENBERG. Yes, sir. In that connection I may say that the Forest Department has that attitude in connection with this.

Mr. DE NEFFE. Now, if the railroad stops where Mr. Girard said it would, would that make it any more expensive for you people to connect with the railroad?

Mr. WOLLENBERG. The county claims it would cost then $10,000 for the road and the bridge over the Silvies River.

Mr. DE NEFFE. What was Mr. Girard's attitude? Was he willing to discuss it, or get together on the proposition, or did he just tell what he was going to do?

Mr. WOLLENBERG. No. Mr. Patterson told him in my presence that they were going to object to that.

Mr. MCGOWAN. Mr. Chairman, I don't like to be technical at all, but it seems to me the question of the road of Seneca, whether it is a difference of one mile one way or the other is purely a matter under the contract itself; that the rights of the Government are the rights in the contract and if the complainants here from Grant County feel that the Government has a right to require the road to go into what they conceive to be Seneca, they at least ought to give the Forest Service to interpret the terms of the contract, and give Colonel Greeley to say what he conceives to be the legal requirements. As I understand, the Seneca proposition is something that has come in since we have been here. It has nothing to do with the Oregon memorial, and nothing to do with the Senate resolution, and does not involve the fraud whatever.

Mr. DE NEFFE. If I may make a statement right here —

Senator WALSH of Montana (interposing). I don't believe we need to take time for that.

Mr. DE NEFFE. If the committee wants to go ahead, I am willing to go ahead.

Senator WALSH of Montana. This man has told practically all he knows about it, apparently.

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Mr. WOLLENBERG. The club adopted a resolution in that respect, and sent it to our delegation with our report, after our visit with Mr. Girard.

Mr. DE NEFFE. This only goes to the matter of motives, Senator. Here these people have been in default a number of times, and it is a custom, whenever a default has occurred in a contract with the Government, that they insist upon performance. Now, instead of tightening up in this they have made concessions. It is our purpose to show that there is some sinister influence here.

Senator WALSH of Montana. Let us avoid discussion of it before we get the evidence in.

Mr. DE NEFFE. I can not help but mention it. I was only laying the ground to cover it.

What did you and Mr. Patterson do then?

Mr. WOLLENBERG. We came back and reported to the county court Mr. Girard didn't intend to come across the river at a place where it would be convenient for the public to do business with the terminal of the road.

Mr. DE NEFFE. Did you ever talk with Mr. Girard about the matter of the elimination of the common-carrier clause of this contract?

Mr. WOLLENBERG. Yes.

Mr. DE NEFFE. When was that?

Mr. WOLLENBERG. Well, I think it was in the early—it was in the early spring of 1924.

Mr. DE NEFFE. And what did he say?

Mr. WOLLENBERG. Well, I was riding with him and Mr. Klobucher down to Burns, and the topic of the conversation on that trip was with reference to the common carrier. He said that the common carrier was a very objectionable matter to his people and himself, and that Barnes had made a mistake by thinking that a common carrier should be in that route. I said, "I expect Mr. Barnes knew what he was doing." "Well," he said, "I don't think that he did. It could be brought about in another way but it would have the same effect as a common carrier would have."

Mr. DE NEFFE. Did he say how it could be brought about?

Mr. WOLLENBERG. I was not particularly interested. He did try to explain, but I knew that the common carrier was in there, and the matter was not of any importance.

Mr. DE NEFFE. What was his objection to the common carrier clause? Did he state?

Mr. DE NEFFE. He said that it was too much red tape.

Mr. DE NEFFE. I will just finish this question. State briefly just what was his objection to the common-carrier clause. Too much red tape, you say?

Mr. WOLLENBERG. Yes.

Mr. DE NEFFE. Now in what way?

Mr. WOLLENBERG. Well, he would have to make reports to different commissions, etc.

Mr. DE NEFFE. Did you have occasion to observe whether the work was being prosecuted along the route?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. You drove, you say, with the car how often from Canyon City down to Burns?

Mr. WOLLENBERG. I drove in 1924 all of the automobile season.

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Mr. DE NEFFE. And in 1925 did you drive?

Mr. WOLLENBERG. The same; yes.

Mr. DE NEFFE. You would drive down one day?

Mr. WOLLENBERG. Yes.

Mr. DE NEFFE. And back the next?

Mr. WOLLENBERG. Yes.

Mr. DE NEFFE. And did the wagon road follow the railroad part of the way?

Mr. WOLLENBERG. Part of the way.

Mr. DE NEFFE. And you had a chance to be observing it?

Mr. WOLLENBERG. Yes.

Mr. DE NEFFE. Was the work being rushed with big crew of men or otherwise?

Mr. WOLLENBERG. No, sir.

Mr. DE NEFFE. What was the nature of the general work?

Mr. WOLLENBERG. All I could see was two or three small parties.

Mr. DE NEFFE. Did you have any occasion to learn about Mr. Herrick being short of money and not being able to meet his obligations in this work?

Mr. WOLLENBERG. Nothing only checks that were turned down from contractors; checks would be floating over toward Grant County, and people generally, of course, as you understand, if you are the stage driver, tell you their troubles, and they asked me to take then over to Burns to see if I could get them cashed.

Mr. DE NEFFE. These are checks that contractors who had worked with Herrick would give to other men; is that right?

Mr. WOLLENBERG. Yes.

Mr. DE NEFFE. Can you tell anything that was said along that line?

Mr. WOLLENBERG. Well, I ran across two of the contractors whose checks were in question, and I asked them "What is the matter?' Tell me the truth about this matter."

Mr. DE NEFFE. You mean you were asking them why their checks were being turned down?

Mr. WOLLENBERG. Yes.

Mr. DE NEFFE. Yes?

Mr. WOLLENBERG. Well, he said the nearest I could —

Senator WALSH of Montana. Now, is that not decidedly heresay about what the contractor said, that they did not get their money, or something of the kind?

Mr. DE NEFFE. Yes.

Senator WALSH of Montana. I do not believe you had better go into that.

Mr. DE NEFFE. It is pretty hard to get all these people here, Senator, but it has a direct bearing on how Mr. Herrick was paying the contractors. He would promise them a certain amount that he would put in the bank, and they would draw checks thinking it would be there.

Senator WALSH of Montana. Then you would have to have their word for it.

Mr. DE NEFFE. I realize that that may be so.

Senator WALSH of Montana. This would be hearsay.

Mr. HALLOCK. Let me say this, Senator. If he can give us one instance of a repudiated Fred Herrick Co. or Malheur Railroad Co. check we will not object to that testimony. If he can give us just one instance.

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Mr. DE NEFFE. Of course if we were out there holding these hearings in those counties we could do that, but it is pretty hard to get all those witnesses here. All right, we will waive that.

Did you ever discuss with any official of the Forest Service the matter of the enforcement of any forfeitures under the Herrick contract?

Mr. WOLLENBERG. Yes; the assistant supervisor of the Malheur Forest rode with me from Burns to Canyon one day and we had our discussions; they were along the lines of the time, really, and he said that the Forestry Department was contemplating making provisions whereby Mr. Herrick would forfeit a certain amount of money upon certain days that he fell down upon the provisions.

Mr. DE NEFFE. Can you fix that date, approximately? Do you remember when that was?

Mr. WOLLENBERG. Well, I think it was in May, or perhaps it was in the fall. Yes; it was in the fall of 1925.

Mr. DE NEFFE. Senator Cameron, I believe you have the evidence there.

Senator CAMERON. Yes.

Mr. DE NEFFE. This was not here when I wanted to bring that question up. Mr. Barnes had testified that there had been something said that the people had been given to believe by the Forest Service that the $50,000 was forfeited about the time that the first extension was granted, which was March 3, 1925. I am referring to these vouchers.

Mr. MCGOWAN. Mr. De Neffe, will you pardon me for the suggestion: There is nothing in the record at all that there was a forfeiture of $50,000 immediately preceding or in connection with the first extension. The $50,000 came later. Let us get the record straight.

Mr. DE NEFFE. Well, I wanted to show that it should have been forfeited in 1925, and it was not forfeited until July 15, 1926.

Mr. MCGOWAN. Well, your position there is that you would differ with the administrative policy that was in force at that time.

Senator WALSH of Montana. Let us argue the conclusions at some other time. Let us get the facts now.

Mr. DE NEFFE. Yes. There is a great deal of leniency shown here in these forfeitures, that is all. That was the purpose.

Senator WALSH of Montana. This money was paid into the Treasury in 1926?

Mr. DE NEFFE. Yes; in July, 1926, almost a year after it should have been, according to this contract, and why this leniency? That is what I want to find out.

Mr. MCGOWAN. I do not want to take up time or make any argument on this proposition, but I believe the record should be clear. That contract was modified and the extensions granted, and that there was no forfeiture at the time of the first extension by reason of the fact that the extension was made by the Government. The $50,000 was exacted later from Mr. Herrick by reason of his failure to comply with certain of the construction provisions.

Mr. DE NEFFE. Then there was no forfeiture for default?

Senator WALSH of Montana. Well, when Colonel Greeley or somebody from the Forestry Service takes the stand they will tell us all about that.

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Mr. DE NEFFE. Yes.

Mr. MCGOWAN. Surely, but I did not want Mr. De Neffe's statement to go in unchallenged, because it was not quite straight.

Mr. DE NEFFE. Did you recently go over this railroad and down to the mill site near Burns?

Mr. WOLLENBERG. Yes, sir; I went down there. I was down there December the 19th.

Mr. DE NEFFE. What was the status of the work down at the mill site? What did you find?

Mr. WOLLENBERG. On the mill site proper there was nothing done.

Mr. DE NEFFE. Were there any buildings started?

Mr. HALLOCK. Pardon me, what date was that?

Mr. WOLLENBERG. December, 1926.

Mr. DE NEFFE. That was just this last December.

Mr. HALLOCK. There was nothing done with the mill site?

Mr. WOLLENBERG. The mill site proper; yes.

Mr. DE NEFFE. Who went with you?

Mr. WOLLENBERG, Mr. C. P. Haight and Dick Richards, our county agent.

Mr. DE NEFFE. Were there any buildings started on the mill site?

Mr. WOLLENBERG. Well now, I was told where the mill site proper would be, and there was a building started east of the proposed mill site, a cement building or a concrete building.

Mr. DE NEFFE. That is, in the vicinity where the mill site was?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. Was there a log pond excavated or partly excavated?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. Do you know about how much ground that excavation covered, Mr. Wollenberg?

Mr. WOLLENBERG. I think between 15 or {and} 20 acres.

Mr. DE NEFFE. And then what was the nature of the work on these buildings? What was the stage of their construction?

Mr. WOLLENBERG. Well, they were, I should judge, about—the walls were about half up.

Mr. DE NEFFE. About how large were those buildings?

Mr. WOLLENBERG. Well, I would judge they were about fifty by a hundred, the one building that was started.

Mr. DE NEFFE. Mr. Hallock, you have the plans and specifications of those buildings? We asked for them under subpoena.

Mr. HALLOCK. We wired for them under your subpoena.

Mr. DE NEFFE. Yes.

Mr. HALLOCK. And they may be here to-day, Mr. De Neffe. They were sent by express the evening of the day we got, your subpoena.

Mr. DE NEFFE. Then, also, the profiles were asked for. Will they be here?

Mr. HALLOCK. Yes; if they are not here already.

Mr. DE NEFFE. And I will have an opportunity, tomorrow to go over them.

Senator WALSH of Montana. I will have to go now.

The CHAIRMAN. The committee will recess until 10 o'clock Monday morning.

(Thereupon, at 1 o'clock p. m. Saturday, February 12, 1927, a recess was taken until 10 o'clock a. m., Monday, February 14, 1927.)

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HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREG.

MONDAY, FEBRUARY 14, 1927

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON PUBLIC LANDS AND SURVEYS,
Washington, D. C.

The subcommittee met at 10 o'clock a. m., pursuant to the recess on Saturday, February 12, 1927, in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (chairman), Cameron, Kendrick, and Walsh of Montana.

Present also: Colonel W. B. Greeley, Chief of the Forest Service, and D. F. MCGOWAN, attorney representing United States Forest Service; Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher; Frederick M. De Neffe, attorney representing Grant County, Oreg.

The CHAIRMAN. The subcommittee will be in order. I believe that Mr. Wollenberg was on the stand when we adjourned on Saturday.

TESTIMONY OF L. WOLLENBERG, OF GRANT COUNTY, OREG. — Resumed

(The witness was duly sworn by the chairman on taking the stand on Saturday.)

(Direct examination resumed by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Mr. Wollenberg, I believe —

Mr. HALLOCK (interposing). Mr. Chairman, I should like to again renew our request upon Mr. Barnes and his counsel for the production of the papers and documents constituting the files bearing upon the authorship of the Oregon memorial, the Senate resolution, and the correspondence addressed to citizens of Grant and Harney Counties by Mr. Barnes, and communications addressed to him from such citizens, in connection with these matters, so that we may be able to more intelligently cross-examine Mr. Barnes on some of these features; we having previously indicated in the record request for certain documents that we have been able to specify, with particularity.

Mr. DE NEFFE. Mr. Barnes has those telegrams. Do you want to look them over now?

Mr. HALLOCK. I am not interested in just a few telegrams. We wanted the privilege of examining your files, in the same way that we have extended the privilege to you with respect to our files.

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Mr. DE NEFFE. I told Mr. Barnes to look up everything. I do not know just what he has.

Mr. HALLOCK. We do not want any hand-picked documents. We want to have them all.

Mr. DE NEFFE. I do not know what calls for the statement about "handpicked documents." I told Mr. Barnes to furnish everything that he has. I think your remarks in that respect are uncalled for.

The CHAIRMAN. Now, gentlemen. I think we might pass of as rapidly as possible with the production of testimony. We will get along better if we do not have these discussions. If you want any of the papers or documents, we will get them.

Mr. HALLOCK. All right.

Mr. DE NEFFE. Mr. Wollenberg, did you ever know of Mr. Girard refusing to employ any responsible contractors in connect on with this work?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. Can you site some instance?

Mr. WOLLENBERG. In June, 1924, our people asked me to take Mr. Linholm, a contractor, and introduce him to Mr. Girard, as he had a big lot of equipment after getting through with the road contract. I took him down and introduced him to Mr. Girard, and they talked for some time, and Mr. Girard said that he was not ready to make contracts for a couple of years yet.

Mr. DE NEFFE. When was that?

Mr. WOLLENBERG. About June, 1924.

Mr. DE NEFFE. Where had Linholm been working, in what part of Grant County?

Mr. WOLLENBERG. Right adjoining the proposed railroad, on the road. The Bureau of Public Roads and Grant County built an expensive road into Bear Valley.

Mr. DE NEFFE. He had that work?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. Had he finished that road work?

Mr. WOLLENBERG. Yes, sir; he had about finished it.

Mr. DE NEFFE. What was the size of his contract for that work?

Mr. WOLLENBERG. About $80,000.

Mr. DE NEFFE. That was near Seneca as I understand it?

Mr. WOLLENBERG. Yes.

Mr. DE NEFFE. What did Mr. Girard say?

Mr. WOLLENBERG. He said —

Senator WALSH of Montana (interposing). He has answered that.

Mr. DE NEFFE, Yes; you answered that. Did he contract with Mr. Linholm?
Mr. WOLLENBERG. No, sir.

Mr. DE NEFFE. Do you know any other contractor that approached Mr. Girard on this matter?

Mr. WOLLENBERG. No, sir. I do not know of any personally. I know of contractors that I met with equipment, and I asked them what was the trouble, and they said they could not get any work on the railroad. Mr. Plant I knew in Wheeler County.

Mr. DE NEFFE. What about Mr. Plant?

Mr. WOLLENBERG. He was returning with a bunch of horses, and I met him in the road when I was carrying the mail. I asked him where he was going, and he said he was going home, as he could not get any work on the railroad. He had a very beautiful lot of teams.

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Mr. DE NEFFE. Did he take it up with Mr. Girard?

Mr. WOLLENBERG. I do not know about that.

Mr. DE NEFFE. Oh, I though you said he did. You do not know whether he took it up with Mr. Girard or not?

Mr. WOLLENBERG. I only know what he said.

Mr. DE NEFFE. Why were you people in Grant County insisting on the common-carrier clause applying to this railroad?

Mr. WOLLENBERG. We were very much concerned first when we found in February, 1923, that the Forest Office had attempted to eliminate this common-carrier provision, which would defeat the very purpose for which this project was intended. And we have been suspicious ever since, for the last four years.

Mr. DE NEFFE. What attempt did they make at that time?

Mr. WOLLENBERG. They asked the committee of 10 at Burns to agree to eliminate the common-carrier clause.[4]

Mr. DE NEFFE. Did the committee of 10 agree to that?

Mr. WOLLENBERG. No; the committee wired us, and sent us copies of telegrams that passed, and said for us to go to work and wire the Portland office, and Colonel Greeley, protesting against elimination of the common-carrier clause.

Mr. DE NEFFE. I believe you stated that this was a livestock country and that you wanted that common-carrier clause so that you could ship out your stock.

[4]First mention of the COMMITTEE OF 10.

Mr. WOLLENBERG. Most assuredly.

Mr. DE NEFFE. And to have it a passenger railroad so that passengers might go out of there?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. You may take the witness.

(Cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Wollenberg, you have known Mr. Barnes for several years?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. How would you characterize your acquaintance, as casual or more or less intimate and close?

Mr. WOLLENBERG. Well, on the start I was very much opposed to him. But I found that he was straight and a good, man, and I became better acquainted with him.

Mr. HALLOCK. So that your acquaintance at this time is more or less intimate, is it?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. To the extent that he discusses this particular controversy with you in detail, and has discussed it with you on many occasions, I assume?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. What are the facts as to whether or not you rarely ever talk to Mr. Barnes that he does not discuss this matter with you?

Mr. WOLLENBERG. Well, he talks about it frequently, and of course about other matters too.

Mr. HALLOCK. It has got to be a good deal of a mania with Mr. Barnes, has, it not?

Mr. WOLLENBERG. Yes; it is foremost in his thoughts I think.

Mr. HALLOCK. It is almost an obsession with him, is it not?

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Mr. WOLLENBERG. Well, I do not know as to that.

Mr. HALLOCK. But he does talk of it, and discusses it almost continually as far as you have been able to observe?

Mr. WOLLENBERG. Oh, no, not in that sense.

Mr. HALLOCK. And with a good deal of vigor, particularly in his comments regarding Mr. Herrick, is not that true?

Mr. WOLLENBERG. No, sir. Particularly in connection with this work.

Mr. HALLOCK. Would not you frankly say that Mr. Barnes has always manifested in his discussions of this matter a great deal of animosity toward Mr. Herrick and toward Colonel Greeley?

Mr. WOLLENBERG. No; only in the sense of the way that that work has been going on. I can truthfully say that.

Mr. HALLOCK. I am not seeking his motive.

Mr. WOLLENBERG. I do not want to quibble on this, but want to show you the plain facts as we see them in Grant County.

Mr. HALLOCK. I am sure you do, and all I want you to tell us is, whether when Mr. Barnes discusses Mr. Herrick and Colonel Greeley in connection with this and other matters, he does so with very evident animosity toward both of these gentlemen.

Mr. WOLLENBERG. I do not think that Mr. Barnes—well, the fact of the matter is, that we in Grant County admire Mr. Barnes for its action in this matter. He is the one I think who has saved us.

Mr. HALLOCK. Yes; I can understand that, and I do not want to pursue it at great length, other than that I should appreciate an expression from you, if you care to let us have it, in regard to that, whether Mr. Barnes's attitude toward Mr. Herrick and Colonel Greeley, in his discussions, discloses a vindictive attitude and much animosity toward these gentlemen.

Mr. WOLLENBERG. Well, he might, but I do not think he means anything, only in respect of this project.

Mr. HALLOCK. You spoke of certain property that you own in that country, I believe referring to Grant County. Are you associated with Mr. Barnes in your ownership of any of the property?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. Are you associated with him in any arrangement it whereby you are taking property under option, or anything of that sort?

Mr. WOLLENBERG. No, sir. I never had at any time and have not now.

Mr. HALLOCK. Do you know whether Mr. Barnes, or any of his associates, has any property in the vicinity of Seneca that it s planned to develop?

Mr. WOLLENBERG. No, sir. Not that I know of.

Mr. HALLOCK. I believe you were one of the delegates from Grant County who went to the Oregon Legislature in the matter of securing the memorial to Congress from that body?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. And you were delegated as I understood it, by Grant County?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Under what circumstances did you happen to be delegated to that work?

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Mr. WOLLENBERG. Well, we received a message from Mr. Barnes, which was a joint message I think to Mr. Patterson, to Judge Patterson and Mr. Haight and I, who were to proceed to Salem and try to get the memorial through with a view to an investigation of this matter.

Mr. HALLOCK. That came from Mr. Barnes?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Would you give us a copy of it? Have you that wire with you?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. Can you produce a copy of it?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. Where was it from?

Mr. WOLLENBERG. It was from Washington.

Mr. HALLOCK. You did not preserve the telegram as I understand you?

Mr. WOLLENBERG. I have it at home, and would have been glad to have brought it if I had thought of it.

Mr. HALLOCK. Do you mean here in the city?

Mr. WOLLENBERG, No, sir. Back in Oregon.

Mr. HALLOCK. Can you tell us the substance of the telegram?

Mr. WOLLENBERG. He said: I would like for you to proceed to Salem at once and see Archie McGowan, and wire me when you start.

Mr. HALLOCK. Was that the substance of it?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. How did you know what he was talking about then?

Mr. WOLLENBERG. I did not know.

Mr. HALLOCK. But you did proceed to Salem and to see Archie McGowan, as I understand?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Without any idea of what you were going for?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. You did not have any idea at all?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. You thought he might want you to go down there and see Archie McGowan about anything at all?

Mr. WOLLENBERG. I had no thought about the matter at all. But I knew it was important, though I didn't know what it was.

Mr. HALLOCK. Who is this man, Mr. Archie McGowan?

Mr. WOLLENBERG. Our representative in the State Legislature from Grant and Harney Counties.

Mr. HALLOCK. The man Mr. Barnes referred to as being associated with him to some extent in land at Burns?

Mr. WOLLENBERG. I do not know anything about that.

Mr. HALLOCK. You heard his testimony the other clay. I am merely trying to identify the man.

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. It is the same individual?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. It was the Archie McGowan who spoke for the Oregon memorial in the House of Representatives of Oregon at Salem, was it not?

Mr. WOLLENBERG. No, sir.

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Mr. HALLOCK. Was it, the Archie McGowan who introduced that resolution in the House?
Mr. WOLLENBERG. No, sir.

Mr. HALLOCK, Who did introduce it?

Mr. WOLLENBERG. No one, not in the House.

Mr. HALLOCK. Oh, you mean that it was a Senate resolution?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. It was not introduced in the House except as it was acted upon by the House?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. And Mr. Ralph Hamilton spoke for the resolution in the House, did he not?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Mr. Hamilton is associated in the town site venture at Burns, is he not?

Mr. WOLLENBERG. I do not know.

Mr. HALLOCK. Are not you acquainted with Mr. Hamilton?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Do not you know that he has a pretty substantial investment over there at Burns in that town site?

Mr. WOLLENBERG. No, sir. I do not. I never discussed it.

Mr. HALLOCK. You do know what property I am talking about, do you not?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. I am referring not only to the so-called town site, but also to approximately 2,000 acres lying south of the town of Burns and running down toward the mills site and surrounding the immediate property there. I am now handing you a little plat, and ask you if you can tell me whether the tract shown on the plat as hatched is the land we are referring to as you understand it?

Mr. WOLLENBERG. Well, I do not know anything about it. I am very familiar with the land there, as I have lived there 18 years, and I presume that Mr. Barnes and his associates own that land, but I do not know.

Mr. HALLOCK. That is the current talk in any event?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. And that is the land that we are talking about; the part that is hatched there on the plat?

Mr. WOLLENBERG. I presume so.

Mr. HALLOCK. Is it your understanding that it embraces some 2,000 acres?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. We would like to have this map introduced in evidence.

Mr. DE NEFFE. We have no objection.

The CHAIRMAN. That may be done.

(The said map headed "Map of the Burns country," was offered in evidence, and marked for identification "Exhibit No. 1, Wollenberg." See opposite page _____.)[5]

Mr. HALLOCK. Getting back to the matter of your going down to Salem. You received those telegrams you have told us about?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Had Grant County acted in the matter prior to that time?

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Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. By way of resolution?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Mr. Barnes, if I may be permitted to quote his testimony for the sake of accuracy, told us that —

> Judge Patterson called me up from Portland and told me they had best send a resolution calling for an investigation, and that if they did pass a resolution they might as well burn it up as to send it here without somebody with it.

Now, is it your understanding, Mr. Wollenberg, that Judge Patterson got in touch with Mr. Barnes after the senate resolution in Oregon was passed?

Mr. WOLLENBERG. No, sir.

Mr. DE NEFFE. Mr. Hallock, does that say senate resolution?

Mr. HALLOCK. Yes.
Mr. BARNES. Then they have it wrong.

Mr. DE NEFFE. That was before he came East. It was the livestock resolution, I think.

Mr. HALLOCK. This statement is obviously incorrect.

Mr. BARNES. Yes, sir.

Mr. DE NEFFE. I should like for permission for Mr. Barnes to read over his testimony. This is long before he came to Washington, and it could not have been that resolution.

Mr. HALLOCK. At any rate, when you got a wire from Mr. Barnes to go down to see Archie McGowan, and without knowing why you were going, you went down to see Archie McGowan. Now, what did you learn when you got there?

Mr. WOLLENBERG. Mr. McGowan told me that there was a memorial coming from Washington, by air mail, and that he would try to get what Mr. Barnes wanted in that line, and that he wanted me and others to help.

Mr. HALLOCK. He told you that a memorial was coming from Washington by air mail?

[5]The page number was never inserted into the transcript. Should have been page 160.

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. What was he referring to?

Mr. WOLLENBERG. To the memorial that was going to be introduced in the Oregon Legislature.

Mr. HALLOCK. That Mr. Barnes had prepared documents that he wanted the Oregon Legislature to adopt, by way of a memorial?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Did you see the draft of that document as Mr. Barnes had prepared it?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Could you produce it, or do you know what became of it?

Mr. WOLLENBERG. No, sir. That was introduced as memorial No. 3, first by Judge Davis, our senator, and then it was redrafted by the resolution's committee, and when it was reported out of the room the chairman of the resolution's committee asked for that memorial to be tabled indefinitely and substituted memorial No. 5.

Mr. HALLOCK. But what I am getting at is this: Do you know where the original document is that Mr. Barnes sent back there?

Mr. WOLLENBERG. No, sir. I never had possession of it.

Mr. HALLOCK. The document upon which the Oregon Legislature was asked to act?
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Mr. WOLLENBERG. No. The original document I am sure is in the files of the Oregon Legislature now.

Mr. HALLOCK. Did Mr. Barnes tell you, or indicate to you in any way, his reasons why he felt that you should get a resolution from the Oregon Legislature?

Mr. WOLLENBERG. No, sir. But he did to Mr. Patterson in a letter.

Mr. HALLOCK. Did you see the letter?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. What was the substance of it?

Mr. WOLLENBERG. He said that he could not get a start here in Washington, that it would be necessary for him to get a memorial from the legislature; that he thought maybe that would give him a start towards an investigation.

Mr. HALLOCK. Have you that letter?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. Do you know whether it is in Mr. Barnes's possession?

Mr. WOLLENBERG. No; he wrote that to Mr. Patterson, the county judge.

Mr. HALLOCK. It was not brought back here by any of you?

Mr. WOLLENBERG. No, sir. Not that I know of.

Mr. HALLOCK. Did this letter indicate the reasons why Mr. Barnes felt he could not make any progress here in Washington without such a resolution?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. What were the reasons that were assigned?

Mr. WOLLENBERG. Well, he said that Senator Stanfield was sick and that Senator McNary did not care to take hold of it, and that he could not get any place.

Mr. HALLOCK. And that he needed a resolution from the Oregon Legislature to get him started here?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. So he dictated that resolution and sent it on to you?

Mr. WOLLENBERG. I presume he did, but I don't know.

Senator WALSH of Montana. Mr. Chairman, I wish to interpose right here: Gentlemen, this is quite collateral to the questions here, as you must know, as to who was the author of those resolutions and what steps were taken to get them passed, and all that kind of thing. We are consuming a lot of time on perfectly collateral matters. That simply goes to the animus that Mr. Barnes may have had and I can of course appreciate the significance of it, but you are spending an awful of lot time on it.

Mr. HALLOCK. I am afraid I am, and perhaps I can express, if I may, the only particular point that I want to develop: That, as you gentlemen have observed, the Senate Resolution, which passed the Congress, makes no reference to any claim that there is any disposition on the part of anybody to avoid the common carrier status of this railroad, whereas that appears to be particularly featured in the memorial that passed the Oregon Legislature. I was endeavoring to develop the authorship of that, and then I intended to follow it up and determine what arguments were advanced at Salem, Oreg., with reference to that feature, and whether that was the controlling influence in the passage of that memorial. Perhaps that may

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be entirely too collateral, and therefore you gentlemen may not care to have him go into that.

Mr. DE NEFFE. We have no objection to the other side going into that. In fact, we would be glad to have them do it.

Senator WALSH of Montana. I understand.

The CHAIRMAN. It is consuming too much time.

Mr. DE NEFFE. I think the question as it has been asked carries an inference about that that should be made clear, and therefore I think that Mr. Wollenberg should be given an opportunity to explain what caused the Oregon Legislature to pass the memorial.

Mr. HALLOCK. If I may be permitted I will go on, then.

Senator WALSH of Montana. It seems to me to have very little significance. The only thing I call see in it is to show animus, ill will, resentment on the part of Mr. Barnes toward Mr. Herrick.

Mr. MCGOWAN. May I make an observation in that connection? The Senate resolution—that is, the resolution adopted by the Federal Congress—recites the memorial of the Oregon Legislature as one of the reasons why the Senate resolution should be passed, and as a matter of inducement toward that end.

Senator WALSH of Montana. That is a matter of no significance to us.

Mr. MCGOWAN. Then, coming back to the Oregon memorial: It states specifically that the common-carrier clause will be eliminated from this contract.

Senator WALSH of Montana,. That, it seems to me, is an entirely immaterial issue, as to what considerations induced the Oregon Legislature to pass that particular legislation.

Mr. MCGOWAN. And we were trying to establish, if we might—and I am going to drop this in just a moment

if you gentlemen do not wish us to go on with it—that the representations that were made to the Oregon Legislature, and which induced them to pass their memorial, and which in turn was to a great extent what influenced the Federal Senate to pass its resolution, were, in fact, incorrect. That is, to wit, that the common-carrier provision was to be eliminated by the Forest Service?

Senator WALSH of Montana. We are all interested in any efforts that were made to eliminate the common-carrier provision, on the part of anybody; but as to what induced the Oregon Legislature, or as to what induced the Senate of the United States to pass the resolutions they did adopt, it seems to me is utterly irrelevant.

Mr. MCGOWAN. All right.

Mr. HALLOCK. I will drop the matter after one more question, if I may, and I shall confine myself to that: Mr. Wollenberg, I have here a newspaper clipping from the Oregon Daily Journal, published at Portland. It is under the date line of January 21 of this year, and it reads in part as follows:

> Haight, together with County Judge Orin L. Patterson, of Grant County, and L. Wollenberg, of Canyon City, to be before {the} legislature. View of their community that Herrick should be granted no more extensions for fulfillment of his contract, and that above all his railroad must be operated as a common carrier. This latter point is stressed on the ground that otherwise * * *.

It goes on then and comments upon that situation. Now, just one question. Does that newspaper article set forth the situation correctly?

Mr. WOLLENBERG. Exactly.

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Mr. HALLOCK. That is all on that. Now, as I understood your testimony here the other day you said that no work had been done on the mill site when you were there on the 19th of January of last year?

Mr. WOLLENBERG. Of December.

Mr. HALLOCK. Of December I should have said. That is correct, is it?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. You were criticized by the citizens of Burns in a document that was published in the Portland Oregonian for having made a similar statement, were you not?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. For the sake of the record I should like to ask the witness if he will identify this little article and permit me to read it into the record.

Mr. WOLLENBERG. Yes, sir.
Mr. DE NEFFE. You better look it over, or are you familiar with it?

Mr. WOLLENBERG. I am very familiar with it.

Mr. HALLOCK. It is under the date line of Portland, Oreg., January 22, and published in the Portland Oregonian, Oregon's metropolitan newspaper, about that time, isn't that true?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. It is as follows:

COMMITTEE OF 10 NOT ACTING

BURNS, OREG., *January 22.*

> TO THE EDITOR: In an article published in the Oregonian recently, which refers to the attitude of the "committee of 10" toward the timber contract of Fred Herrick in the Malheur Forest and his activities in

building a railroad from Burns to Bear Valley, the reader is led to suppose that the "committee of 10" is taking an active part in the matter.

The fact is the "committee of 10" has taken no action whatever, has held no meeting to discuss this or any other subject for months, and at least some of the members do not want such an impression to go before the public. Mr. McGowan has not consulted with the "committee of 10" in asking the legislature to adopt a memorial to the Oregon delegation in Congress urging them to "insist upon a 'common-carrier clause,'" in Herrick's contract, as it is already there and, so far as the undersigned know, is not an issue at this time.

Mr. Wollenberg's assertion that "there was not a spadeful of dirt turned on December 19 at the mill site" is far from the truth, as at that time over $60,000 had been spent on the mill pond, fills, and concrete work, on the foundations and walls of the sawmill buildings.

I. S. GEER, *President*.
JULIAN BOYD,
BEN BROWN,
J. LAMPSHIRE,
LEON M. BROWN.

Senator WALSH of Montana. President of what is Mr. Geer?

Mr. HALLOCK. I was just reading it from the newspaper article, but I assume that it meant he was the president of the committee of 10.

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. What did he sign himself as the president of?

Mr. WOLLENBERG. Of the committee of 10.

Mr. HALLOCK. What was the committee of 10?

Mr. WOLLENBERG. The committee of 10 was formed in the early part to finance Mr. Barnes, and to furnish him with everything that

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he wanted toward bringing this matter up, of accomplishing the matter of putting this timber on the market.

Mr. HALLOCK. That was during the early days of this transaction?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. And that committee of 10 raised some ten or twelve thousand dollars which Mr. Barnes employed in the work, is not that true?

Mr. WOLLENBERG. I do not know what it was.

Mr. HALLOCK. You do not want this committee to get the impression, do you, Mr. Wollenberg —

Senator WALSH of Montana (interposing). I did not understand that. This is a committee of citizens of Burns who were raising money to help Herrick finance his project?

Mr. HALLOCK. Oh, no; to help Mr. Barnes finance his efforts to place the timber on the market.

Senator WALSH of Montana. Oh, I understand.

Senator KENDRICK. That is, as I understand you, as to the timber on privately owned lands?

Mr. HALLOCK. Perhaps I better interrogate the witness a little more fully about that, if he knows. I have some information on the subject, but I do not want to undertake to place that in the record unless the Senators desire a

statement from me.

Senator KENDRICK. All right, ask him.

Mr. HALLOCK. Mr. Wollenberg, are you acquainted with the history of the committee of 10, the reasons for its establishment, and the work that it did, and all that sort of thing?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Will you tell the Senators what that was?

Mr. WOLLENBERG. The first thing that we took notice of in this proposition particularly, was one Sunday Mr. Leon M. Brown, one of the committee of 10, who was acting secretary of the committee of 10 then, called me up and said that there was an attempt being made by the Government to eliminate the common carrier-clause, to defeat the very purpose of this project. I said: "Mr. Brown, we don't know much about this. I wish you would write me a letter and tell me and the committee of 10, and send me some of those telegrams." He did so. We were amazed at the telegram which was sent by Mr. Ames to the committee of 10 asking their consent to the elimination of the common-carrier clause.

Mr. HALLOCK. May I interrupt right there for a moment? That was back in 1922.

Mr. WOLLENBERG. In February, 1923.
Mr. HALLOCK. Before the timber was advertised.

Mr. WOLLENBERG. Before the timber was advertised the second time.

Mr. HALLOCK. All right.

Mr. WOLLENBERG. And we have been suspicious of the Forest Department ever since; and the subsequent matters that they have done, and told us, and told me personally—well, anyway it was common talk all over the county and all over, the eastern section, that they were trying to shun the common-carrier clause. And, lastly, what we thought was very dangerous, an article by Colonel Greeley carne out, that appeared in the Oregon Journal on the 30th of December last, wherein he said that it was necessary to —

Senator WALSH of Montana (interposing). Have you got that?

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Mr. WOLLENBERG. Yes, sir. That it was necessary to modify the contract owing to the bankers desiring it, that in order for them to loan him the money to build the project it would be necessary to modify the contract. And in the same article the terms read 50 miles north of Burns as a logging railroad, and that he would be ready to approve the modification in February of this year.

Senator WALSH Of Montana. I think this newspaper article better be read.

Mr. WALLACE,. The article that the witness refers to reads—first might it not be identified under some date line?

Senator WALSH of Montana. He has told us about the article.

Mr. WOLLENBERG. This is an article that was copied from the Oregon Journal by the Blue Mountain Eagle as of date of January 7, but the original article in the Journal was dated December 30th.

Mr. HALLOCK. I will read it:

> Fred Herrick who holds the Malheur Forest timber and railroad contract will be allowed further time to carry out his financing and construction plans; forest officials are convinced that forfeiture of his contract because of failure to complete certain work within the time originally fixed would be unfair to him and would delay completion of the road under way.
>
> Such is the substance of views expressed by Col. W. B. Greeley, Chief of the Forest Service, to Senator McNary, Wednesday.

Accordingly, Herrick will be granted a fourth revision of his contract, under which the railroad from Burns into the timber was to have been ready for operation by December 15 and the mill completed by March 1 next.

Failure to progress more rapidly, Colonel Greeley said, has been partly due to Herrick's financing his own way without a bond issue. Now he is planning a bond issue of half a million dollars to build and equip the mill. Bankers concerned with this prospective issue point out the need for modifications of the contract with the Government, and Greeley is ready to approve modification if assured under proper conditions that construction of the mill and railroad will go forward as rapidly as seasonal conditions permit.

As an offset to Herrick's failure to meet time conditions in the various contracts, it has been set forth that he has disbursed over $1,000,000 for labor and material and that Union Pacific trains now operate to Burns, that the logging road has been graded 50 miles from Burns and steel laid 30 miles and that the mill has been completed with the power house nearing completion.

Negotiations with Herrick to revise the contract are expected to be completed in February.

Senator WALSH of Montana. Let me ask you right there, Mr. Wollenberg: What was there in that article that led you to suspect that the common-carrier clause might be changed.

Mr. WOLLENBERG. We were fearful of the modification of the contract. We though in the modification they might eliminate the common-carrier clause, and then in the same article they used that term "a part of the railroad as a logging railroad."

Senator WALSH of Montana. It was the expression, "that the logging road has been graded 50 miles from Burns" that caused you to apprehend that the part of it was to cease to be a common-carrier road?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Have you finished, Senator Walsh?

Senator WALSH of Montana. Yes.

Mr. HALLOCK. Now, I believe we were discussing your statement quoted by the newspapers which also appears in this record now to the effect that no work had been done on the mill site.

Mr. WOLLENBERG. Yes, sir.

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Mr. HALLOCK. And I think I started to ask you if you wanted to leave the impression with this committee that no work has been done down there on the mill site?

Mr. WOLLENBERG. I want to leave the impression with the committee that the places where I was told that the mill proper would be that there never had been any work done on the mill site proper.

Mr. HALLOCK. Are you confining your testimony to the precise boundaries of the mill building as you understand it will be constructed, as distinguished from other structures, such as the mill ponds, tracks, power houses, and things of that sort?

Mr. WOLLENBERG. I do not want to quibble about this at all. I am simply saying
that on the site of the mill site proper there has never been any work done; that the land is in its native state.

Mr. HALLOCK. When were you down on that ground?

Mr. WOLLENBERG. December 19.

Mr. HALLOCK. When you say "the mill site proper " do you refer to these 320 acres which were purchased for and is held as a mill site?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. You mean the boundaries where this mill building proper was to be, the building where the logs will be sawed, where that is to be constructed, is that it?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Do not you think the statement, such as you make here, is a little bit unfair to Mr. Herrick as you have put it?

Mr. WOLLENBERG. I do not know what I could say that would be more fair. I want to state the truth as I see it.

Mr. HALLOCK. Yes. Then let us get at that. You saw there the mill pond.

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Which you say contains 15 or 20 acres?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Don't you know it to be a fact that that pond is 32.6 acres in extent?

Mr. WOLLENBERG. I do not know that. I was just guessing at it.

Mr. HALLOCK. Is it not a fact that that is the largest artificial mill pond you ever saw?

Mr. WOLLENBERG. I do not know about that. I am willing to grant you what you say, that there are 32 acres there, but I was giving my opinion when I said it was 15 or 20 acres.

Mr. HALLOCK. You saw a few railroad tracks around there on that mill site?

. Mr. WOLLENBERG. I do not know about that. There was a little snow on the ground. I do not believe that I noticed any railroad tracks.

Mr. HALLOCK. Don't you know that there is in the neighborhood of two miles of spurs and tracks and track layouts on that mill site?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. You do not know about that?

Mr. WOLLENBERG. Oh, I don't doubt that there is, if you say so.

Mr. HALLOCK. There was a little snow on the ground and you didn't see any of this?

Mr. WOLLENBERG. No, sir.

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Mr. HALLOCK. The power plant is practically completed and ready for the installation of machinery, is it not?

Mr. WOLLENBERG. Oh, no; it is far from that.

Mr. HALLOCK. I beg pardon, but I did not hear your answer.

Mr. WOLLENBERG. It is far from that.

Mr. HALLOCK. Did not you observe that they had steel then a for the roof structure, ready to place the roof on? Or was that there when you were down there on December 19.

Mr. WOLLENBERG. I do not think there was anything of that kind there. I did not see it if it was there. The concrete walls were up 7 or 8 or 10 feet, and that was all. And the forms for the concrete were in place.

Mr. HALLOCK. And they were pouring concrete?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. You say they were not?

Mr. WOLLENBERG. No, sir. Work had ceased.

Mr. HALLOCK. Did not you see forces of men down there working?

Mr. WOLLENBERG. Not one.

Mr. HALLOCK. Perhaps that was at a time when there was a freeze on, is that right?

Mr. WOLLENBERG. Well, it was somewhat winterish.

Mr. HALLOCK. Don't you know that if they discontinued work there on account of that freeze that they have resumed and are going right along with the work?

Mr. WOLLENBERG. I do not know that.

Mr. HALLOCK. You did not make much of an effort to find out about it, did you?

Mr. WOLLENBERG. I certainly did, and have been inquiring about it ever since.

Mr. HALLOCK. Who did you inquire of about that feature?

Mr. WOLLENBERG. Of everyone that I knew that came from Burns. That was on the last trip that I went to Burns.

Mr. HALLOCK. Name one, as I should like to know who it was who gave the impression that work was not going forward.

Mr. WOLLENBERG. I can not recall just now who it was.
Mr. HALLOCK. In any event you saw a reinforced concrete pump house 57 by 100 feet, didn't you?

Mr. WOLLENBERG. I seen that, but I didn't take any measurements.

Mr. HALLOCK. And a generator building 42 by 66 feet constructed of reinforced concrete.

Mr. WOLLENBERG. I don't recall that.

Mr. HALLOCK. You do know that you saw concrete structures there, and perhaps of the most substantial type that you had aver seen in your life, is not that true?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. Is it not?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. Do you know that a full trainload of concrete was poured in there?

Mr. WOLLENBERG. No, sir. I do not. I just went down mostly to look at the work.

Mr. HALLOCK. Well, you really do not know much about that, not such as would justify in making the statement as appears in the newspaper?

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Mr. WOLLENBERG. My interest in the matter was that the mill had not been started, and the mill is very essential in order for us to get what we wanted; and a common-carrier road in Bear Valley in spirit as well as in fact.

Mr. HALLOCK. In any event you did find that the people of Burns resented your statement?

Mr. WOLLENBERG. No; that is only as to part of it. The other five did not go on record in the matter.

Mr. HALLOCK. The other 5 of the committee of 10 did not happen to join in this communication, do you say?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Have you yourself undertaken to solicit telegrams to support your contention, having prepared such telegrams for the signatures of people you would like to have sign them?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. You have done a good deal of that?

Mr. WOLLENBERG. Some.
Mr. HALLOCK. You prepared a telegram for Mr. W. S. Phillips, of Izee, Oreg.?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. And in that telegram you again stressed the notion that there was some disposition to avoid the common-carrier status of this railroad?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. And when you went down to Salem in response to the telegram that you received from Mr. Barnes, for the purpose of talking to Mr. McGowan about this matter, you did not know then that you were going down there to undertake to secure the passage of a resolution in the legislature?

Senator WALSH of Montana. I am very sure that that has been developed.

Mr. HALLOCK. It is preliminary, but I am sure that is so. In any event, when you got down there you found that that was the plan and did it not occur to you that it might have been the courteous thing to extend some form of notice to Mr. Herrick or his people, or to the Forest Service or their people?

Mr. WOLLENBERG. Mr. Herrick or any of his people never showed courtesy in anything they were going to do. There was an article in the Oregonian of the 16th, Sunday, and in that article it twice says that the citizens of Grant County were going to ask for a memorial. That was plenty of notice for anyone who wanted it. And I saw yourself and Mr. Girard two days prior to that in the lobby of the Imperial Hotel, and —

Mr. HALLOCK (interposing). Yes, and I am glad you mentioned that, as I want to ask something about it. Just a day or two before you went to Salem you saw Mr. Girard and myself in the lobby of the Imperial Hotel in Portland?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. At that time the newspapers had published the fact that Mr. Barnes was here in Washington endeavoring to secure an investigation or something to that effect, had they not?

Mr. WOLLENBERG. I do not remember whether there were any articles at that time or not.

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Mr. HALLOCK. I do not care about them in detail. In any even t it was understood then that Congress was being asked to investigate this matter.

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK, Don't you recall that Mr. Girard stepped up to you in the hotel?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. And said to you: "Mr. Wollenberg, how are you getting along with the investigation?"

Mr. WOLLENBERG. No, sir. He didn't say that. He said, "How is Mr. Barnes getting along with the investigation?" I said, "I don't know." He says, "Now, if Mr. Barnes gets an investigation he is going to get the worst of this. He is the one that tried to keep down the stumpage, and Mr. Herrick was the only one that came in and bid." And just about that time you beckoned to him to come on with you. I had intended to tell him what we were after.

Mr. HALLOCK. What I am getting at is this: That at that time you did not tell Mr. Girard anything about your plan to secure this action by the Oregon Legislature.

Mr. WOLLENBERG. No; and I didn't get a chance. You took him away from me.

Mr. HALLOCK. I do not recall that, but anyway you were then on the way to Salem to secure this action?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. And you didn't know why you were going?

Mr. WOLLENBERG. I then had been to Salem.

Mr. HALLOCK. Well, to shorten the matter, neither the Fred Herrick interests, Mr. Herrick or his corporations or employees, nor Colonel Greeley or any of his organization, were invited to discuss this matter, with the resolution's committee of the Oregon Legislature, or the others there, so far as you know prior to the passage of that memorial?

Mr. WOLLENBERG. Not at all; no, sir. If you care to see that article I refer to of the 16th of January I have it here. The article stated that there would be a memorial asked for. It was on Sunday, and you had the Oregonian at your home Sunday forenoon.

Mr. HALLOCK. I did not see it, but I have no objection to the article being put in.

Mr. DE NEFFE. I think it ought to go in.

Senator WALSH of Montana. It seems to me so utterly irrelevant as to whether courtesy was exhibited or not.

Mr. HALLOCK. All right, I will go ahead. Mr. Wollenberg, on the matter of the location of the depot, or the location of the terminal of the railroad at Seneca: I wonder if you will look at this map here on the wall. You will notice that there is a point indicated "Seneca." Now, is that the Seneca that you are contending should constitute the terminus of this road?

Mr. WOLLENBERG. Grant County is contending, not particularly on the spot where the post office is, but we want the facilities in order to ship stock out of there, and to ship in and out anything we want to. But we think that is a minor matter; if you will give us the common carrier status in spirit as well as in fact that will take care of us.

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Mr. HALLOCK. I See. You are not concerned beyond that?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. Just one more question: Seneca is south of Bear Creek as indicated on that map, is it not?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. But the point you have been talking about as the location of Seneca is the Southworth ranch, somewhat, north of Bear Creek?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Now, just another question in that connection to clear up some misunderstanding. I understood you to testify that the post office had been in Seneca for 25 or 30 years past, at the Soutnworth ranch, to put it in

other words.

Mr. WOLLENBERG. That is my recollection.

Mr. HALLOCK. Don't you recall that at the time this appraisal was made of this timber, along in 1922, and for a period of four or five years prior to that date, there was no post office up in that Country.

Mr. WOLLENBERG. Yes; I recall that.

Mr. HALLOCK. You do recall that?

Mr. WOLLENBERG. Yes. I was the carrier on that service all that time.

Mr. HALLOCK. And there was no post office in there then?

Mr. WOLLENBERG. No, sir. There was not, but I think it was only for about a period of a year and a half or two years that there wasn't any post office there.

Mr. HALLOCK. Perhaps so, but the point I wanted to make is this: That when the Forest Service was assembling its data for the purpose of fixing up this prospectus, or I assume that is what it was, and getting the matter in shape, there was no post office at the Southworth ranch.

Mr. WOLLENBERG. That is a fact. But in addition to that I was required to go in there, and my contract called for Seneca no office, but I was required to go in there and deliver that mail.

Senator WALSH of Montana. To go in where?

Mr. WOLLENBERG. To go into the place in question.

Mr. HALLOCK. The Southworth ranch?

Mr. WOLLENBERG. Yes, sir.

Senator WALSH of Montana. How did you deliver it if there was no post office there?

Mr. WOLLENBERG. He had a private sack from the Canyon City office, which was delivered right to him, taken to the ranch.

Senator WALSH of Montana. How was the mail distributed?

Mr. WOLLENBERG. It was not distributed for patrons.

Senator WALSH of Montana. That is, how did the people around there get their mail?

Mr. WOLLENBERG. There was a store there, and the patrons would come there and get their mail, just as they could.

Senator WALSH of Montana. At the store.

Mr. WOLLENBERG. Yes, Sir; as they could do it, but with no post office there.

Senator WALSH of Montana. So although there was no postmaster there the service went on just the same.

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Mr. WOLLENBERG. Yes, sir. I was required to go in there every trip.

Mr. HALLOCK. Do you recall that at the time the timber was being cruised for this appraisal, those gentlemen who were engaged in that undertaking got their mail down at the Lincoln ranch, being the present terminus of the road?

Mr. WOLLENBERG. Well, I think the Lincoln ranch supplies a good many neighbors there. It is taken down there just the same.

Senator WALSH of Montana. When you carried the mail during this period of suspension where did you leave the mail for the Lincoln ranch?

Mr. WOLLENBERG. At the Lincoln ranch.

Senator WALSI1 of Montana. The route went by there, too?

Mr. WOLLENBERG. Yes, sir.

Senator WALSH of Montana. You left some mail at the Southworth ranch?

Mr. WOLLENBERG. Yes, sir.

Senator WALSH of Montana. And you left some more mail at the Lincoln ranch?

Mr. WOLLENBERG. Yes, sir.

Senator WALSH of Montana. You had a private package for each ranch?
Mr. WOLLENBERG. Yes, sir.

Senator KENDRICK. Was there a post office at the Lincoln ranch?

Mr. WOLLENBERG. No, sir. There never has been.

The CHAIRMAN. Was the Lincoln ranch known as Seneca at any time?

Mr. WOLLENBERG. No, sir. It is just a mile south of Seneca, which is on the road to Burns.

Mr. HALLOCK. It is on the location marked on the forest map as Seneca, the Lincoln ranch?

Mr. WOLLENBERG. Yes, Sir; within a mile or so of the Southworth ranch.

Mr. HALLOCK. I did not mean that. The Lincoln ranch is in the approximate location of the point of Seneca, as indicated on the Forest Service map, south of Bear Creek?

Mr. WOLLENBERG. Yes sir.

Mr. HALLOCK. Now, Mr. Wollenberg, I was interested in the statement you made yesterday, or I mean Saturday, and I read it for the sake of accuracy:

> The county claims it would cost them $100,000 for the road and the bridge over the Silvies River.

Mr. WOLLENBERG. No, sir. It should be $10,000.

Mr. HALLOCK. That is an error, is it?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. You do recall that there was some discussion about the added cost to the county of bridging the river to get to the present terminus, and that Mr. Girard, in behalf of the Fred Herrick Lumber Co., offered to do all that work for $2,500 and to put up a surety bond to guarantee its performance, and that he made that offer to the Grant County court.

Mr. WOLLENBERG. I do not know anything about that.

Mr. HALLOCK. You had not heard of that?

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Mr. WOLLENBERG. No, sir. In connection with that, if the subcommittee would like it, here is an exact copy of the resolution passed by the county court in reference to the subject that you are now on.

Mr. DE NEFFE. I think that should be introduced in evidence.

Senator WALSH of Montana. In due time I think that will be all right.

Mr. HALLOCK. I think you made some statement to the effect that people from Harney County had drifted over into your locality and had complained about the Fred Herrick Lumber Co. and the Malheur Railroad Co. that they had repudiated checks or something to that effect.

Mr. WOLLENBERG. No, sir. I said that there were checks that drifted over in the regular course of business over into Grant County. Or they might have originated in Grant County.

Mr. HALLOCK. I don't care about that feature: I am talking about whether they were supposed to be repudiated: checks issued by these companies?

Mr. WOLLENBERG. No, sir, not by the companies, but by the contractors. They were checks turned down at the bank.

Mr. HALLOCK. By the contractors?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. Oh, I misunderstood you. You mean that people employed by the Herrick interests as contractors to construct this railroad had drawn checks upon funds that were supposed to be in the banks, and that those checks were turned down, is that it?

Mr. WOLLENBERG. Yes, sir. I was going to make an explanation of that matter, how that came about, but the committee did not care to hear about it.

Mr. HALLOCK. Well, if that is the situation I do not care to pursue it. I thought you were intimating, that our checks were turned down.

Mr. WOLLENBERG. No, sir.

Senator WALSH of Montana. That was made perfectly clear, I thought.

Mr. DE NEFFE. Yes, and he went into the details of that.

Mr. HALLOCK. I did not understand that. I am sorry that I took the time about that, but I had not gotten the idea right. Now, you spoke of one contractor whom you were interested in, that you wanted employed over there. You do not know how much money that gentleman, whoever he was, asked the Fred Herrick Lumber Co. to pay him for the work that he expected to perform, do you?

Mr. WOLLENBERG. No; I was not interested in that. He had lots of equipment, and was a man who could rush the work through.

Mr. HALLOCK. But as to whether his bid was great or small you did not know?

Mr. WOLLENBERG. No, sir.

Mr. HALLOCK. I believe that is all I wish to ask.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. I have only about two questions, Mr. Wollenberg. You are familiar, I take it, with the prospectus that was issued by the Forest Service in connection with this timber sale, a copy of which is in the record.

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Mr. WOLLENBERG. Yes, sir.

Mr. MCGOWAN. And you are familiar with the fact that the contract stipulates that a common-carrier railroad must be built from the main line connection to Seneca.

Mr. WOLLENBERG. Yes, sir.

Mr. MCGOWAN. You are familiar with section 38 of the contract actually signed between Herrick and the Forest Service, in which it was required that a common carrier railroad should be constructed from Crane to the timber.

Mr. WOLLENBERG. I was not until just recently.

Mr. MCGOWAN. Just recently?

Mr. WOLLENBERG. Yes, sir.

Mr. MCGOWAN. You did not know, then, that in the contract there was such a requirement?

Mr. WOLLENBERG. We never could get hold of the contract, or any record of it. We did not know anything about what had happened until just recently, when you were kind enough to give us a copy of one.

Mr. MCGOWAN. You proceeded on the assumption, I take it, that the contract did contain in the first place, a provision for a common-carrier railroad?

Mr. WOLLENBERG. Yes, sir.

Mr. MCGOWAN. But you were apprehensive that the Forest Service would in some way modify that so that the common-carrier clause would be eliminated?

Mr. WOLLENBERG. Yes, sir.

Mr. MCGOWAN. Did you ever at any time inquire of any officer of the Forest Service to know what the Forest Service intended to do with reference to that clause?

Mr. WOLLENBERG. Many times.

Mr. MCGOWAN. Who was the officer?

Mr. WOLLENBERG. I inquired of Mr. Reed, supervisor and of Mr. Ewing, assistant supervisor, and several others, several different times.

Mr. MCGOWAN. Did either one of them say, or did any Forest Service officer at any time ever tell you, that Colonel Greeley or any of his subordinates would modify that clause of the contract so that the common-carrier provision would be changed?

Mr. WOLLENBERG. No, sir. But I want to say in this respect that the telegram of Mr. Ames's is what we have here.

Mr. MCGOWAN. That was before the contract was entered into?

Mr. WOLLENBERG. Yes, sir.

Mr. MCGOWAN. Did you ever inquire of Colonel Greeley as to what he would do in reference to this common-carrier clause?

Mr. WOLLENBERG. I never met the gentleman.

Mr. MCGOWAN. Are you a newspaper man?

Mr. WOLLENBERG. No, sir.

Mr. MCGOWAN. You are the president of the commercial club?

Mr. WOLLENBERG. Yes, sir.

Mr. MCGOWAN. Then as far as your own personal knowledge is concerned you do not know anything at all about what the Forest Service intended to do or not to do with reference to the common-carrier clause, is that correct?

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Mr. WOLLENBERG. That is about correct.

Mr. MCGOWAN. Of your own personal knowledge, I asked.

Mr. WOLLENBERG. Yes, sir.

Mr. MCGOWAN. I think that is all.

Mr. HALLOCK. May I have one more question, in order to correct the statement?

The CHAIRMAN. Yes.

Mr. HALLOCK. I learned from Mr. Girard, Mr. Wollenberg, that the workmen have not poured concrete on these structures that you told us about, since you were there. So I want to correct any impression that my inquiry made to the contrary. I was under the impression when I asked the question that they had poured concrete, and I want to place myself right in that respect since I have the information.

(Redirect examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. The county court of Grant County sent Mr. Barnes to the forest office to get a copy of this contract, did it not?

Mr. WOLLENBERG. I have been so told.

Mr. DE NEFFE., You do not know anything personally about it?

Mr. WOLLENBERG. No, sir.

Mr. DE NEFFE. Do you know whether Mr. Girard had any conversation with Mr. McGowan just recently about the elimination of the common-carrier clause?

Mr. WOLLENBERG. Only what Mr. McGowan told the committee that was down there.

Mr. D. F. MCGOWAN. Which Mr. McGowan do you refer to?

Mr. DE NEFFE. I refer to Mr. Archie McGowan.

Mr. MCGOWAN. All right.

Mr. DE NEFFE. Do you know what Mr. Girard told Mr. Archie McGowan?

Mr. WOLLENBERG. Only what Mr. McGowan told me.

Mr. DE NEFFE. What was that?

Mr. HALLOCK. I submit that that is hearsay.

Mr. DE NEFFE. We tried to have Mr. Archie McGowan subpoenaed, but, as heretofore explained, the chairman did not have the money to bring him here.

Senator WALSH of Montana. He might state what Mr. McGowan reported.

Mr. DE NEFFE. Might I ask what Mr. McGowan said Mr. Girard told him?

Senator WALSH of Montana. Yes.

Mr. DE NEFFE. Go ahead and answer it.

Mr. WOLLENBERG. He stated in a very recent conversation that Mr. Girard told him he would never haul a log over that road for anyone else nor haul any mail.

Mr. DE NEFFE. Over what road?

Mr. WOLLENBERG. Over the road from 50 miles north of Burns.

Mr. DE NEFFE. Why didn't he want to haul any mail?

Mr. WOLLENBERG. I don't know. It just confirmed our opinion held all the time that the elimination of the common-carrier clause was being attempted.
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Mr. DE NEFFE. I think that is all, except as to this resolution that you mentioned.
What is it?

Mr. WOLLENBERG. It is a resolution in regard to the terminal grounds.

Mr. DE NEFFE. We would like to have this go in. Does the committee want to read it? It is rather long.

Senator WALSH of Montana. What is it?

Mr. DE NEFFE. That was passed after it was learned that they were going to stop the line south of Seneca?

Mr. WOLLENBERG. Yes, sir.

Mr. DE NEFFE. And this was a resolution protesting against it stopping south of Seneca?

Mr. WOLLENBERG. Yes, sir.

The CHAIRMAN. When was this resolution passed?

Mr. WOLLENBERG. In December, 1925.

Mr. DE NEFFE. Wasn't it last year?

Mr. WOLLENBERG. No; in December, 1925.

Mr. DE NEFFE. That is when that matter came up.

Senator KENDRICK. In the original contract entered into between Mr. Herrick and the Government, the Forest Department, in connection with the location of the terminus of this road and the station, was there any official description of the land on which the station and the mill site was to be located?

Mr. DE NEFFE. No; it just said Seneca, as I remember it in the prospectus.

Mr. HALLOCK. That is correct.

Senator WALSH of Montana. That resolution is this:

> Be it remembered, that a regular term of the county court begun and held on Wednesday, November, 4, 1925, the same being the first Wednesday in said month and the time fixed by law for holding a regular term of said court, when were present the Hon. Orin L. Patterson; Judge George Yokom ; Commissioner Allen Porter; Commissioner J. M. Blank, district attorney, Bessie Powell, clerk.

Friday, December 4, 1925, the same being the fifth judicial day of the November, 1925, term, court met pursuant to adjournment, there being present the same judge and other officers as heretofore; whereupon the following proceedings were had in the matter of the construction of a railroad to Seneca:

Whereas, in the year 1923, the United States Department of Agriculture sold a body of pine timber in Bear Valley in Grant County, Oreg., to Fred Herrick, which timber-sale contract stipulates that a common-carrier railroad must be built from the main line of the Oregon Short Line at Crane, Oreg., to Seneca, Oreg., a distance of 80 miles; and

Whereas, as the grading for the said railroad nears completion, it develops that it is not the intention of Fred Herrick to construct the said railroad to Seneca, as outlined in the sale prospectus calling for bids on the Bear Valley timber unit, but, on the other hand, stop construction at Shirt Tail Creek, more than 1 mile distant from Seneca and on the opposite or west side of Silvies River from Seneca; and

Whereas it has been stated by J. W. Girard, the construction manager for Fred Herrick, that it is not the intention to construct a railroad to Seneca unless required to do so by the people of Grant County; and

Whereas, in January, 1924, the United States Department of Agriculture, through its Bureau of Public Roads, cooperating with Grant County, began the construction of a road known as the Bear Gulch Road, being a much needed highway over the mountain between the John Day Valley and Bear Valley; and

Whereas, due to additional funds provided by the county court of Grant County, Oreg., and excellent management on the part of the Bureau of Public Roads in the construction of the said Bear Gulch Road, sufficient funds were saved to justify the cooperators undertaking further construction, and at the

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request of the county court of Grant County, Oreg., made at its session on June 9, 1924, the United States Department of Agriculture, through its Bureau of Public Roads, extended the Bear Gulch Road to include an extension to Seneca, on Bear Creek, the terminus of the railroad provided for in the sale of the Bear Valley timber unit to Fred Herrick, and is at present engaged in putting rock surfacing on the said Bear Gulch Road and its Seneca or Bear Creek extension, cooperating with the United States Department of Agriculture order to make the said road passable at all seasons of the year and be of the greatest service to the people of Grant County in the shipping of livestock and agricultural products over the said railroad from Seneca; and

Whereas, dealing with the same United States Department of Agriculture in the construction of the Bear Gulch Road, with its extension to Seneca on Bear Creek, that made the sale of the Bear Valley timber unit to Fred Herrick which stipulated the construction of a common-carrier railroad from the main line of the Oregon Short Line at Crane to Seneca, the county court of Grant County had a right to expect that in its extension of the Bear Gulch Road to Seneca it was connecting with the terminus of the said railroad; and

Whereas, if the said Fred Herrick is not required to build his railroad to Seneca, but allowed to stop at Shirt Tail Creek, over a mile distant and on the opposite or west side of Silvies River, it will be necessary for Grant County to acquire a right of way and construct an expensive piece of road, including a bridge across Silvies River, from its highway at Seneca to Shirt Tail Creek, in order to enable the people of Grant County to enjoy the shipping facilities of this railroad: therefore be it

Resolved, That the county court of Grant County, Oreg., protests Fred Herrick making his railroad terminus at a point on Shirt Tail Creek as a place not contemplated by his contract, which stipulated that a common-carrier railroad must be built at Seneca, for the reason that it is isolated, inaccessible, and not intended to supply the shipping facilities to Grant County contemplated by the United States Department of Agriculture; be it further

Resolved, That the United States Department of Agriculture be and is hereby requested to require Fred Herrick to continue the construction of his railroad to Seneca, as stipulated by his contract.

Dated at Canyon City, Oreg., this 4th day of December, 1925.

ORIN L. PATTERSON, *County Judge*.
GEORGE YOKOM, *Commissioner*.
ALLEN PORTER, *Commissioner*.

Recorded in Volume I, pages 438 and 439, Commissioner's Journal, Grant County, Oreg.

STATE of' OREGON

County of Grant, ss:

I, Bessie Powell, county clerk for Grant County, State of Oregon, ex officio recorder and clerk of the county court for said county and State, do hereby certify that the foregoing copy of resolution of the county court in the matter of the construction of a railroad to Seneca has been by me compared with the original resolution and that it is a true and correct transcript of said original and of the whole thereof as the same

appears on file and of record at my office and in my official custody.

In testimony whereof I have hereunto set my hand and affixed my official seal this 5th day of February, 1927.

BESSIE POWELL, *Clerk*.
By HILDA MCCULLOCH, *Deputy*.

Mr. HALLOCK. I have one more question, and I know that I am taking up a lot of time, but I should like to ask it.

The CHAIRMAN. Very well.

(Recross-examination by Mr. Blaine HALLOCK, attorney representing Fred Herrick James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Wollenberg, you appreciate that the contract itself provides that the logging spurs of the Fred Herrick Lumber Co., which will reach out from the track of the common-carrier railroad, are not to be common carriers?

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Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. You understand that?

Mr. WOLLENBERG. Yes, sir.

Mr. HALLOCK. I thought you might have that confused.

Mr. WOLLENBERG. No, sir.

Senator WALSH of Montana. Have you that provision of the contract?

Mr. DE NEFFE. Yes; it is section 38.

Mr. HALLOCK. No; that is not the section. I can not find it right now, but —

Senator WALSH of Montana (interposing). Call our attention to it when you find it.

(Recross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Mr. Wollenberg, in the Senate resolution there is a whereas clause to the effect that Mr. Herrick has never been properly financed. Do you know anything about that?

Mr. WOLLENBERG. No, sir.

Mr. DE NEFFE. Has there been any evidence shown that—

Senator WALSH of Montana (interposing). Let us have the evidences.

Mr. DE NEFFE. Here is the reference in the prospectus, on page 5, "A 50-mile tap line from Burns to Seneca." This is described as a necessary railroad development, and then it describes the character of the route. I think Senator Kendrick's question was as to what the prospectus says —

Senator WALSH of Montana (interposing). No; what the contract says.

Senator KENDRICK. I wanted a description of the land as to which the railroad was bound to use as a terminus.

Mr. HALLOCK. I think that clause as to the noncommon-carrier {*sic*} railroad is what you want. Section 28 of the contract says:

Officers of the Forest service, fire fighters, and other regular and temporary employees shall be transported free of charge over logging roads operated in connection with this sale not common carrier, and shall be permitted to ride upon logging trains and engines or to operate speeders when traveling upon official business.

Mr. DE NEFFE. And here it says:

It is further agreed as a part of the consideration of this agreement that a common-carrier railroad for freight and passengers in accordance with the laws of the State of Oregon shall be constructed from the main-line connection at Crane, Oreg., to Seneca, Oreg.

That is all the description it gives. It does not say any particular section or township or range.
I believe that is all, Mr. Wollenberg.

The CHAIRMAN. You are excused.

(Thereupon Mr. Wollenberg left the stand.)

Mr. DE NEFFE. T wish to call Mr. Farre.

TESTIMONY OF WILLIAM FARRE, OF PORTLAND, OREG.

The CHAIRMAN. Mr. Farre, hold up your right hand. You do solemnly swear that the evidence which you are now about to give in the hearing being held by this Subcommittee of the Committee on

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Public Lands and Surveys of the United States Senate will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FARRE. I do.

(Direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. State your name.

Mr. FARRE. William Farre.

Mr. DE NEFFE. Where do you reside?

Mr. FARRE. Portland Oreg.

Mr. DA NEFFE. How long have you lived there?

Mr. FARRE. About a year.

Mr. DE NEFFE. And prior to that time where did you live?

Mr. FARRE. At Burns Oreg.

Mr. DE NEFFE. How long had you lived there?

Mr. FARRE. I lived in Burns for about 25 years.

Mr. DE NEFFE. Will you tell us what you did, starting from the time you went there?

Mr. FARRE. From March, 1902, until April, 1916, I was register of the United States land office at Burns.

Mr. DE NEFFE. For how long were you register?

Mr. FARRE. For 14 years.

Mr. DE NEFFE. Then there was a change of administration, you say?

Mr. FARRE. Yes, sir.

Mr. DE NEFFE. Then what did you do?

Mr. FARRE. I started in and was permitted to practice before all the bureaus of the Interior Department, except the Patent Bureau. And that was my particular occupation at that time; I built up an office practice.

Mr. DE NEFFE. Until you went to Portland?

Mr. FARRE. Yes, sir.

Mr. DE NEFFE. Have you any personal interest in this controversy one way or the other?

Mr. FARRE. Absolutely none.

Mr. DE NEFFE. Have you any property interests down there?

Mr. FARRE. Absolutely none.

Mr. DE NEFFE. Did you have anything to do with the preliminary matter of getting this timber sold?

Mr. FARRE. I did.

Mr. DE NEFFE. What did you have to do with it?

Mr. FARRE. I was secretary and manager of what was known at that time as the committee of 10.

Mr. De NEFFE. The committee of 10, as has been stated, were 10 representative citizens that took the active initiative in this matter, was not that it?

Mr. FARRE. They did.

Mr. DE NEFFE. And you were the secretary you say?

Mr. FARRE. Yes, sir.

Mr. DE NEFFE. And then the timber was put up and sold. Now, I want to go into the preliminary part of that. The community was united at that time was it not?

Mr. FARRE. Yes sir; reasonably so.

Mr. DE NEFFE. Did you keep track of Herrick's work after the contract was let?

Mr. FARRE. Yes; to some extent.

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Mr. DE NEFFE. You lived in Burns how long after the contract was let?

Mr. FARRE. The contract was let or that timber was awarded in April, 1923, and the contract was signed June 15, 1923. I lived in Burns until January 9 or 10, 1926.

Mr. DE NEFFE. Did work start immediately after the contract was signed?

Mr. FARRE. No. The work started just about the 1st of September 1923.

Mr. DE NEFFE. And did you observe what the nature of the work was the extent of it?

Mr. FARRE. The first I noticed was just about the time it started, and a day or two after it started there were one or two horse teams working right in the vicinity of Crane, at Crane, you might say.

Mr. DE NEFFE. Do you know whether the contract was let to one of the larger contractors?

Mr. FARRE. No; it was let to a number of different contractors.

Mr. DE NEFFE. Did they have any big machinery on the job?
Mr. FARRE. No. They had horses and scrapers, or whatever they call, them.

Mr. DE NEFFE. And that section from Crane to Burns, is it hilly or level or what?

Mr. FARRE. It is all level.

Mr. DE NEFFE. It is all valley?

Mr. FARRE. Yes, sir.

Mr. DE NEFFE. And the character of the soil is what?

Mr. FARRE. It is alluvial soil.

Mr. DE NEFFE. Any rock work?

Mr. FARM. Very little, if any. I think there is but very little rock work.

Mr. DE NEFFE. When was this 30-mile section finished?

Mr. FARRE. It was finished into Burns about the same tine the rail was laid, and it was completed immediately before the celebration of September 24, 1924.

Mr. DE NEFFE:. It took them a year, about, to finish that 30-mile section?

Mr. FARRE. Yes sir.

Mr. DE NEFFE. During the summer of 1924, had they pushed the work with a lot of crews?

Mr. FARRE. They did not push it.

Mr. DE NEFFE. Did the people there become restive at the apparent lack of diligence in the matter of prosecution of the work?

Mr. FARRE. Well, they felt more or less restive all the time, since the contract was let.

Mr. DE NEFFE. What was the cause?

Mr. FARRE. Because the work did not progress fast enough to suit some of them.

Mr. DE NEFFE. Did you ever talk to Girard about those delays?

Mr. FARRE. Very little. I had very little conversation with Mr. Girard about it.

Mr. DE NEFFE. Do you remember ever talking to him?

Mr. FARRE. Yes.

Mr. DE NEFFE. When was that?

Mr. BARNES. Well, I will show you the facts here if you will let me.

Mr. HALLOCK. Well, that is what I want you to do if you can.

Mr. DE NEFFE. Mr. Barnes, you are now looking at an exhibit. State what it shows on its back.

Mr. BARNES. It is marked "Exhibit No. 9."

Mr. DE NEFFE. And that is a copy of the contract between Mr. Herrick and the Forest Service, together with modifications and other papers, I believe?

Mr. BARNES. Yes, I believe so.

Mr. DE NEFFE. What are you reading from now?

Mr. BARNES. I have not found the place yet.

The CHAIRMAN. Maybe you can point it out.

Mr. DE NEFFE. I have here the first modification, signed March 3, 1925, and here is the heading "Stipulations covering the construction work." Shall I read it Mr. Chairman?

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Mr. FARRE. I had a talk with Mr. Girard about it after the first extension was granted, about July 1, 1925.

Mr. DE NEFFE. How did you come to talk to him at that time?

Mr. FARRE. At that time Mr. Byrd, the editor of the Times-Herald, was away, and he asked me to take charge of his paper during his absence. I went to Mr. Girard's office, and I said, "Mr. Girard, the extension granted in March of this year provided for a certain amount of money to be expended up until July 1, 1925, or 1926; now let me see —

Mr. DE NEFFE (interposing). How much was supposed to be spent?

Mr. FARRE. And I said to him: "I would like a statement from you. The people are interested in knowing, and I would like a statement from you, if you will, of what has been done." He promised that he would prepare one.

Mr. DE NEFFE. How much did the modification of the contract require to be sent from April 1 to July 1, 1925?

Mr. FARRE. $100,000.

Mr. NEFFE. Did he ever furnish you with that kind of statement?

Mr. FARRE. No. I called back at the office early or about noon of the 3d day of July, and I said: " I was wondering if you had prepared it, for the reason that I was anxious to have the paper set up, because the following day is a holiday, and I don't like to keep the force down in the office."

Mr. DE NEFFE. Did you ever ask the Forest Service at Portland for a report on the progress of the work and the expenditures made?

Mr. FARRE. I did. I want to supplement my statement a little bit there, however, the former statement: At the time I went down to see Mr. Girard on the 3d day of July, when I went into his office Mr. Huffman {Hoffman}, from the Portland office of the Forest Service was there, and while I was talking to Mr. Huffman Mr. Girard came in. He entered into a brief conversation, and while we talking the bookkeeper brought in a large sheet of paper. Mr. Huffman turned it toward me, indicating that I might look at it. I said "No, Mr. Huffman, I take it that you are probably making a confidential report to your chief, and the newspaper might comment upon it, and I don't want to take any advantage." And so he just turned it back.

Mr. DE NEFFE: Then after that did you ask the Forest Service officials at Portland for any report?

Mr. FARRE. After that Mr. Girard handed me a brief statement of what had been done but no figures.

Mr. DE NEFFE. And just saying that they had graded so many miles

Mr. FARRE. I forget now, but anyhow he handed a written statement to me; which was printed in full in the issue of July 4, 1925.

Senator WALSH of Montana. Have you there the provision in relation to which the witness is speaking, concerning the requirement of the modification as to expenditures?

Mr. DE NEFFE. It is the condition for the first extension. One of the stipulations covering construction work in the modification signed March 3, 1925:

> Construction work on the railroad shall be resumed at the earliest practicable date and on a scale which will require expenditures, to be evidenced

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> by paid vouchers or paid and canceled checks, for railroad construction between Burns and Seneca * * *.

I want to call the subcommittee's attention to the fact that it mentions Seneca there, and goes on:

> exclusive of equipment purchases, purchases of unapplied {*sic*} construction material, and engineering and overhead, all as defined by the Interstate Commerce Commission in its instructions for railroad accounting, to the amount of at least $100,000 between April 1, 1925, and July 1, 1925 ; and on July 1, 1925, the purchaser shall make a complete statement of his expenditures, as defined in this paragraph, to the Forest Supervisor * * *.

That was the condition as you understood it under which this modification was granted?

Mr. FARRE. It was.

Mr. DE NEFFE. Then did you ask the Forest Service officials for a statement?

Mr. FAIRE. I wrote a letter, signed the Times-Herald, asking the Forest Service in Portland to send "a copy of your report as furnished by the investigating officer, Mr. Huffman." I did not get any reply to that. Later on I insisted that Mr. Byrd write down there, and he wrote two letters asking for it, and on August 18, 1925, the Times-Herald received a letter from Mr. Ames, in Portland.

Mr. DE NEFFE. Have you that letter?

Mr. FARRE. I have not the original. I gave that to Mr. Byrd.

Mr. DE NEFFE: Have you a copy of it?

Mr. FARRE. I have a copy of it.

Mr. DE NEFFE. Will you produce it?

Mr. FARRE. Here it is.

Mr. DE NEFFE. I should like to read this if there is no objection.

Mr. HALLOCK. There is none, I am sure, as far as we are concerned.

Mr. MCGOWAN. And I have none.

Mr. DE NEFFE. It is as follows:

FOREST SERVICE.
NORTH PACIFIC DISTRICT,
Portland, Oreg., August 7, 1925.

Mr. JULIAN BYRD,
The Times-Herald, Burns, Oreg.

DEAR SIR: Reference is made to Mr. Granger's letter of July 28. Mr. Granger is now in the field, so I am writing to you in regard to the action decided upon in the Herrick sale. The Forester has decided that even though the compliance of the purchaser with the stipulations, as of July 1, was not entirely satisfactory, the best interests of the Government and all concerned will be served by waiving those requirements and looking to the purchaser for increased activity in his construction work, which will enable him to comply with the remaining stipulations on the various dates specified. Substantial assurance will be given by the purchaser by making his bond forfeitable {*sic*} in case of noncompliance. I feel confident that you will see construction work pushed from now on in a manner which will demonstrate the good faith of the purchaser.

Very truly yours,

FRED AMES,
Assistant District Forester.

Senator WALSH of Montana. Was that letter sent in response to your request for a copy of the report?

Mr. FARRE. Yes, sir.

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Senator WALSH of Montana. You asked for a copy of the report of money expended?

Mr. FARRE. Yes, sir.

Senator WALSH of Montana. And that is the reply that you got?

Mr. FARRE. That was the reply.

Senator WALSH of Montana. Have you a copy of your letter making the request?

Mr. FARRE. No; I have not.

Mr. DE NEFFE. At this time I should like to ask the Forest Service to produce a copy, or the original statement, that Mr. Huffman had prepared. I think it is in their records.

Mr. MCGOWAN. What was your request?

Mr. DE NEFFE. About that time Mr. Huffman prepared a statement showing how much money had been expended. I should like to have that statement or a copy of it.

Mr. MCGOWAN. We have that report, Mr. De Neffe, and wish to say that it has been open to your inspection for the last two or three days that we have been here.

Mr. DE NEFFE. I do not question that. I had not just come to the matter of sifting it out.

Mr. MCGOWAN. And what do you request?

Senator WALSH of Montana. He is requesting the Huffman report made concerning the expenditures under the provision of the contract just read. Tell us what it shows.

Mr. MCGOWAN. It is a four-page report going into the details of the construction work.

Senator WALSH of Montana. The contract required the expenditure of $100,000, and what does the report show as to compliance therewith?

Colonel GREELEY. It showed that approximately 50 per cent of compliance had been made.

Mr. MCGOWAN. I think perhaps it would be well to put a copy of this report into the record.

Senator WALSH of Montana. I think that better be done.

Mr. DE NEFFE. I should like to have it done.

The CHAIRMAN. That may be done.

(The report referred to is here made a part of the record, as follows:

BURNS, OREG., *July 2,1925*.

REPORT ON TIMBER SALE AGREEMENT REQUIREMENT PERIODIC CONSTRUCTION

After spending a day on the railroad location with Manager J. W. Girard and reviewing the company's records, I find the following conditions as to railroad construction for the month of April, May and June of this year.

Work accomplished: There are now about 100 men at work in 13 crews on the line between Burns and Seneca, building grade and fencing the right of way (one small crew on the latter work). Practically 7 miles of new grade has been built since April 1. About 1 mile of this is in heavy construction. The new Diesel shovel is making good progress in heavy work on Poison Creek, working on two 8-hour shifts. It is the plan to add another 6-hour shift with this machine. The other grading is being done largely with Fresno scrapers. Excavation of the north portal of the tunnel is about completed and the tunnel crew is on the ground expecting to complete the tunnel (ahead of our expectation) by December 1 or 30 of this year.

The outstanding feature of the work so far is the splendid character of the construction, including grade, curvature, width of grade, and finish. The

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grade surface is being built to 14 to 16 feet in width, which is comparable to main trunk line railroad specifications. Every detail of the construction indicates intentions of building a very high class railroad that can be cheaply operated.

Another important feature of the work is the efficient type of contractors employed. Those handling the harder problems are old and experienced at railroad work. The work is being done very cheaply, too. The contractors are making good at rates from 25 to 50 per cent below the usual cost at the present time. This together with the exhaustive and careful engineering and careful planning of the construction work should stand out as a real mark of distinction and accomplishment for Messrs. Girard and Klobucher.

Capital paid out: The paid vouchers to date are as follows —

Grading, bridges and culverts, fencing, and ties		$44,571.45
(About $1,400 of the above is for ties.)		
Equipment-Diesel shovel and air compressors		19,291.30
Right of way	5,358.12	
Unapplied grade material	69.96	
Total	69,290.83	
Engineering and overhead, approximate		6,000.00
Total expenditures (paid) approximate		75,290.83

Liabilities: The unpaid bills for labor, supplies, equipment, etc., for the three month period are as follows —

Due contractors, wages, supplies, and materials which are in grade		$20,724.53
Due on Diesel shovel, approximate	10,000.00	
Due on overhead, right of way, etc., approximate	2,400.00	
Total	33,124.53	
Cash in bank to-day,	$7,000.	

Mr. Herrick has promised $10,000 additional funds after July 4. This will take care of all necessary disbursements for the next few days only. All of the work has been confined to the road between Burns and Seneca.

Mill site: No work done or plans made.
Grade between Burns and mill site: Nothing done.

Delay due to bad weather in April: The exceedingly wet spring prevalent over eastern Oregon this year was keenly felt here. In rushing the Diesel shovel to its working point, serious difficulty and delays were met and the extremely muddy roads and grading places were the means of delay in several other places, On a time basis, it is estimated that the delay due to the above cause accounts for an expenditure deficiency of about $25,000 in grading, etc. On the other hand, nothing was done following the wet spell to speed up the work. It is understood, after questioning the local representatives of the company, that the lost time could have been almost completely made up by July 1.

Possibility of meeting October 1 requirement of contract: The work is so laid out that the work on the railroad can be easily pushed, such that the October 1 requirement can be readily complied with. To accomplish this it will be necessary to add to each construction crew now on the job. It is my opinion that this added speed will not materially affect economy. This is concurred in by the company's local representatives.

Mill-site improvements: In order to take advantage of nonfreezing weather, the mill foundations should be started not later than August 1 and in addition, the pond should be excavated before December 1.

Necessary capital to fulfill construction. requirements of October 1, 1925: At least $50,000 should be available on the first of each month—August 1, September 1, and October 1. This will cover the mill site improvements in addition to the railroads.

Conclusions and recommendations: It seems obvious that Mr. Herrick is serious in his intention to go through with this project. The work can be feasibly carried to its completion within the time allotted. The work must, however, be materially speeded up in order to fulfill the service requirements. All that is necessary to accomplish the desired results is a more free supply of funds. As has been stated previously, this should be at least $50,000 at the first of each

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following month—August 1, September 1, and October 1. The amount necessary following October 1 can be more accurately determined at that time.

Additional information.—At the present time there are practically 31 miles of grade completed (between Burns and Seneca) except for limited stretches of finishing. It is estimated that one month's work for one crew of five or six men with teems would completely finish this ready for steel. Existing contracts, covering the greater portion of the heavy grading and the tunnel, stipulate completion by January 1 or before.

It is Mr. Girard's plan (provided ample funds are provided) to lay steel, say from Burns to the tunnel, before January 1. This would greatly facilitate completion of the road (including laying of the rails) early next summer. If steel is laid to the tunnel, or further, this fall and that portion of the track placed in such shape that it can be operated with light traffic, it would seem no more than fair that it be considered as a fulfillment of the contract in lieu of some other work, such as the building of the cement work for the mill foundations. This should not affect the pond excavation, mill plans, excavation for mill foundations, etc., changing of county highway front Burns to Mill Site, etc., which should be done this fall.

While I feel that it is unnecessary to elaborate on the fine character of the policies and practice being followed by the local management, in regard to cooperation with the service, including the protection of timber and reproduction along the right of way, clearing of the right of way, sanitation of camps, etc., it is well to emphasize the high standard of the work in general, and consider that if the work continues as it is now being done, the Government will have the benefit of an excellent railroad.

The liabilities include the customary 25 per cent (approximately) reserve held back by the company for satisfactory finishing of contracts between the company and their contractors.

BRUCE E. HOFFMAN, *Logging Engineer*.

BURNS, OREG., *July 3, 1925*.

DISTRICT FORESTER,
Portland, Oreg.

DEAR SIR: There is inclosed confirmation copy of telegram sent you yesterday and report on the present status of the construction work accomplished by the company from April 1 to July 1 of this year.

Due to the advisability of saving time in this matter I have taken the liberty of direct correspondence with you rather than through the usual proper channel of the supervisor.
Supervisor Dutton kindly gave his consent to this procedure by phone.

My wire stated that $10,000 had been promised by wire from Mr. Herrick to-day. This was an error; it should have been "after the 4th."

Although the local management has made splendid progress with the limited funds advanced, and have

the work so started and laid out that it can be pushed to completion to the satisfaction of the contract, there is still the usual lag in supplying funds.

I am quite well convinced that Mr. Herrick still feels that he can delay the construction of the mill even as much as a year beyond October, 1926.

To insure the protection of the service without the granting of further modifications, is it believed that Mr. Herrick should be firmly pressed. As near as can be estimated, an increase in his monthly allotments to this project to $50,000 for the July, August, and September period will be ample.

Although I have entirely avoided any indication of soliciting information or advice from local people, I have talked with two prominent men (locally) who seem to know that the required expenditure has not been made, and the general sentiment is one of anxiety for the work to be pushed more speedily. As near as I have been able to learn, very few seem to know what has actually been accomplished on the railroad, even though there has been around 100 men on the job for some time. The town developments are apparently at a standstill awaiting developments on the mill. This seems to be the only point of immediate concern and when work is started on the site or the changing of the highway between Burns and the site of the mill, or even work on the logging railroad from Burns to the mill, I think most of the anxiety will be quieted.

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I have heard of no serious complaint from contractors. I have met several of them, particularly those handling the most important jobs and they are working without apparent uncertainty. I have observed that they get sufficient funds to work on. This would obviously not be true, however, if the local management were plunging ahead with larger expenses while funds are deficient. I am fully convinced that with a 25 to 30 per cent increase in the labor force that the remaining construction requirements of the contract can be readily met and in view of the actual physical accomplishments made during the past three months it is my opinion that the company should be allowed to proceed, under pressure for more speed at once.

Although local residents are not frantic, they are very much concerned and curious to know what the service will do under the circumstances. In view of this I would suggest some form of statement for local publication as soon as it is believed advisable to do so.

I have attempted to state only facts in all details and hope that the information is sufficient for you to make a clear decision. Will be here on the forest for three weeks or more so that I can be readily reached if any further points need clearing up.

Very truly yours,

B. E. HOFFMAN, *Logging Engineer*.

P. S.: Copies of all correspondence and the report are being forwarded to Mr. Dutton for such comment or recommendations as he may wish to make. B. E. H.

Mr. DE NEFFE. Now, then, after that did the people protest very much about those delays and lack of being able to get any knowledge of what was going on?

Mr. FARRE. Some of them were getting restless, and I published an article in the Times-Herald, over my own signature, not representing anybody but my own views, but perhaps the consensus of opinion of the town, criticizing the tardiness with which the work was progressing.

Mr. DE NEFFE. Do you refer to the fact that you were not able to get any report or figures from the Forest office?

Mr. FARRE. I did that in a later article, the 1st of October.

Mr. DE NEFFE. Have you a copy of those articles with you?

Mr. FARRE. I have them up at the hotel.

Mr. DE NEFFE. Will you produce them for the record. I do not want to delay the examination now, but you will produce them hereafter.

Mr. FARRE. I Will.

(The newspaper articles requested by counsel, and as afterwards furnished, are here made a part of the record, as follows:)

FORTY YEARS IN THE WILDERNESS

[From the issue of April 7, 1923]

Active settlement of Harney Valley may be said to have commenced in 1883. Prior to that time the established settlers were few and far between. For 40 years the people living here have had visions of transportation and development only to be disappointed. We have lived in a rich but remote and isolated part of Oregon, and until the advent of the automobile it required two days or more to reach the nearest railroad point. It has been a country the "Lord forgetting" and "by the world forgot." Its sturdy people have lived 40 years in the wilderness, often disappointed but never discouraged.

July 23, 1902, the National Government withdrew temporarily from sale or other disposal under the public land laws, all the timbered area north of Harney Valley; later the withdrawal made permanent and the Malheur National Forest established, thus hemming in and rendering valueless the timber in private ownership—because, within itself it was not sufficient in quantity to justify the building of a railroad for its removal.

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In 1916, James Weston had a dream of a railroad from Crane to Burns. He entered into negotiations with one David Miller, of Boise, for the building of such a road, had a survey made and secured the right of way between the two towns. Section 112 of the charter of the city of Burns was amended ,August 1, 1916, so as to authorize and empower the common council to buy, build, equip, acquire, maintain, and operate railways, and to issue negotiable warrants or bonds of the city to the aggregate amount of $125,000 to aid and encourage the enterprise, but the war come on, Miller left Boise under a cloud, while Weston was turning the first spade of earth on the new grade. The dream came to naught—it was not in the cards.

Enter E. W. Barnes in August, 1919. His experienced eye quickly perceived the value of both quantity and quality of the timber in our virgin forest and he, in his characteristic style, took his coat off and got busy. The first move was to secure a county cruise of the timber in private ownership from which to base an estimate of the timber in the reserve tributary to Burns; the cruise was completed and, fortified, with this, together with his own estimate, he went East and succeeded in interesting a lumber company in the proposition, which expended many thousands of dollars investigating the field.[1]

About Christmas, 1920, the clouds commenced to gather over Barnes when, owing to sickness of the boss extraordinary, the eastern concern decided to retrench instead of expanding and thus left Mr. Barnes to his own resources. Without making his disappointment known and dauntless, he continued operations at his own expense for an entire year.

The cost of finishing up the job in order to present a convincing showing and interest large capital in the project exhausted Mr. Barnes's surplus, and no wonder. This included engineering, cruising, compilations, traveling expenses, securing right of way from Crane to Bear Valley, and the options on timber in private ownership. No company would undertake to purchase the Government timber without being assured that it could also obtain the privately owned timber at reasonable figures, nor would it undertake to negotiate with individual owners of timber or right of way itself.

Having completed the preliminaries, a petition to the Department of Agriculture asking for cooperation by the Forest Service in the matter, together with its assent to an act of Congress authorizing the exchange of lands within the exterior boundaries of the Malheur National Forest, was largely signed by the people of Grant and Harney Counties. With this Mr. Barnes left for Washington, D. C., in January, 1922, financed by the people of Burns.

Supported by the untiring efforts of the Oregon delegation in Congress, the valuable assistance of W. D. B. Dodson, general manager of the Portland Chamber of Commerce, and Col. E. E. Faville, member of the Portland Chamber and personal friend and classmate of Secretary of Agriculture Wallace, also by Ralph Williams and James L. Copley, the vigilant personal attention of Mr. Barnes secured the passage of this essential bill by the House of Representatives on February 20, by the United States Senate on March 1, and the signing by the President on March 10, 1922. All within a record breaking period.[2]

Before leaving Washington Mr. Barnes secured from Col. W. B. Greeley, Chief Forester of the United States, the promise that the Forest Service would cruise and appraise the timber within the proposed unit on Silvies River watershed, with the view of offering it for sale and complete the work prior to July 1, 1922. With such effective work accomplished, Mr. Barnes returned to Burns.

[1]How could the identity of this "lumber company" be determined????

[2]What was this BILL??

By this time the general conditions throughout this section of country were most unsatisfactory, with our main industries on the toboggan; three irrigation districts languishing because of financial depression and lack of confidence in the future, our only choice appeared either to go to heaven in rags or to hell in embroidery. There remained yet much to be accomplished which required ready money, so on April 30, in response to a general invitation by the president of Burns Commercial Club to attend a meeting for the purpose of devising ways and means to finance and promote the well-laid plans of Barnes, the following 10 men met and organized a special and executive committee with Hon. I. S. Geer as chairman: I. S. Geer, L. M. Brown, James Lampshire. E. H. Conser, Ben Brown, Archie McGowan, Joe Thompson, Julian Byrd, Nollie F. Reed, and A. C. Welcome.

Nothing is difficult to a willing mind and, although money had almost ceased to circulate, these men personally guaranteed $200 per month for an indefinite period for that purpose.

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With, this pledged fund as a nucleus Barnes, at the completion of the Government cruise, returned to Washington about July 1 for the purpose of getting the cruised unit placed on the market, but found Chief Forester Greeley out on a tour of inspection of National Forests. However, through Secretary Wallace, a meeting between Mr. Greeley and Barnes was arranged for at Portland on July 25, which was attended by a delegation from Burns headed by I. S. Geer. The friendly influence of Portland at that meeting was felt by the presence of such men as C. H. Stewart, Col. E. E. Faville, Charles Dyette, F. E. Andrews, W. D. B. Dodson, as well as Governor Olcott.

Colonel Greeley at that meeting made the definite promise that he would sell the timber and thus help in giving this great undeveloped country the needed railroad transportation so as to make agricultural development possible. Subsequent events proved that Mr. Greeley's word was irrevocable and, on August 15, 1922, the first advertisement appeared offering the timber for sale, followed by extensive publicity throughout the United States.

Grass never grew under Mr. Barnes's feet; for two months prior to February 15, the last day for the filing of bids, he was in the East trying to interest people with sufficient capital to take hold of the proposition, and when the announcement was made that no bids had been received, he lost no time in securing the best offer obtainable, together with a certified check for $25,000, and hurried to Washington to place the same before Colonel Greeley.[3]

A resolute man cares nothing for difficulties and notwithstanding certain objections, hurried meetings between officers of the Forest Service, Mr. Barnes, and prospective bidders at Minneapolis and Chicago, and the ever-loyal support from our congressional delegation, friends in Portland and elsewhere, together with the insistent local demand, resulted in the forestry department accepting the bid obtained by Mr. Barnes as satisfactory. Colonel Greeley, big and broad-minded, recognizing that the Government had an interest in our welfare, remained faithful to his promise given in July. Republication of notice for sale of the timber for a period of 30 days followed and Barnes had won.

TAKES US TO TASK

[Oct. 3, 1905]

To the EDITOR

The attitude of the local Burns newspapers, maintaining that the activities of Fred Herrick under his contract with the Government for logging of the Bear Valley timber are progressing satisfactorily, may be commendable and attributed to the laudable motive of "help and not hinder," but with others is the abiding conviction that the progress is not such as it ought to be.

It must be admitted by all, even by Mr. Herrick himself, that he utterly failed to comply with the terms of the original contract and that through the combined good will of the community and leniency of the Forest Service he was granted an extension of time for one year, on certain definite conditions, in which to complete and bring the project into operation. Has Mr. Herrick complied with these conditions in the past; is he doing so at the present, and does he intend, in good faith, to do so in the future?

A competent engineer of the Forest Service checked up and reported on the construction work of the project for the period ending June 30, 1925, and this report the district forester was requested to publish or to furnish a copy thereof, but declined. However, in a letter dated August 7, the assistant district forester says in part in response to repeated requests for same:

"The Forester has decided that even though the compliance of the purchaser with the stipulations as of July 1, was not entirely satisfactory, the best interest of the Government and all concerned will be served by waiving those requirements and looking to the purchaser for increased activity in his construction work which will enable him to comply with the remaining stipulations on the various dates specified."

[3] I don't think this is correct; there were no bids the first time around.

"Not entirely satisfactory" and the "waiving of those requirements" by the Forester implies that Mr. Herrick did not comply with the terms of the modified contract in the past, or up to July I any more scrupulously than he did with the original contract.

To the discerning eye and mind it is obvious that Herrick is not complying with the terms of that contract at present and that the showing required as of October 1 will comparatively be no better than that made, on July 1, and in

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such an event will the Forest Service, in the face of further unsatisfactory showing, again waive the stipulated requirements? If so, it will create the suspicion that there were secret understandings and promises prior to the sale, awarding and signing of contract, and be interpreted to mean that a contract entered into by the Forest Service on behalf of the United States does not mean much, if anything.

Why does the Government investigate the progress made by Mr. Herrick? Merely a method of getting at the truth. But why withhold the ascertained truth or facts from the people? If it can not endure under the light of an intelligently formed public opinion, then the remedy provided for in the contract should be applied. Is this not a joint venture wherein the community is vitally interested? Is it not the community that provides the natural resources which made this undertaking possible, and is it not eminently just that all parties in interest should be considered so that the real status of the situation be fully understood in order that they may arrange their plans accordingly?

What is needed is, not a denial of the supervisory authority of the Forest Service, but that it take the community into its confidence instead of merely asking it to trust unfaltering in its wisdom. To the people this is public and not private business, and in the absence of the principle of representation in a manner which has regard for the interest of all concerned, we may as well concede only three masters in this world—God above, the devil below, and the Forest Service on earth.

Several miles of railroad grade between Burns and Seneca that will cost from $35,000 to $45,000 per mile to construct have not been touched yet, and owing to the now advanced season will not be completed this year so as to settle this winter and be ready for ties and rails and permit of transportation there over next fall. Hence the conclusion that the "satisfactory progress" as heralded by the local papers is merely the servile dissemination of soft-soap propaganda, and that there is no present expectation or intention on the part of Mr. Herrick to comply with the terms of the contract in the future.

At the present rate of progress years will be required to bring the project into actual operation, and when the inevitable does occur, that further extension becomes imperative and is asked for, will the Forest Service stand ready to continue its protection and comply with the request?

Time will tell. Sooner or later the truth will come to light, and why not let us know it now?

WM. FARRE.

BURNS, *September 30, 1925*

Mr. DE NEFFE. Was Mr. Barnes around there soon after the contract was let, around Burns I mean?

Mr. FARRE. No; not immediately after the contract was let—Oh, do you mean after the contract was let to Mr. Herrick?

Mr. DE NEFFE. I will ask you this question: Did Mr. Barnes help Mr. Herrick to get any rights of way, or do you know?

Mr. FARRE. Yes.

Mr. DE NEFFE. State what was done by him.

Mr. FARRE. A short time after —

Mr. HALLOCK (interposing). May I interrupt right there: Is he referring to rights of way that Mr. Herrick employed and used, or rights of way not used at all?

Mr. FARRE. It is right of way Mr. Herrick employed and used.

Mr. HALLOCK. All right.

Mr. DE NEFFE. That is to say, that Mr. Barnes did what?

Mr. FARRE. It was during the haying season of 1923, and I assisted Mr. Barnes in getting rights of way through several ranches there. Mr. Patterson, and Mr. Haight, and Mr. Joe Hall and a number of others went down in the hayfield to see them, and to induce them to grant the right of way. We went with Mr. Barnes to assist him, because I knew some of the people better than he did.

Mr. DE NEFFE. He asked them for right of way, did he?

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Mr. FARRE. He did.

Mr. DE NEFFE. Did he get it?

Mr. FARRE. In some cases, yes.

Mr. DE NEFFE. Was anything paid for the right of way?

Mr. FARRE. In some cases some little was paid, I believe, and in other cases nothing.

Mr. DE NEFFE. Did you know of any contractors applying to Mr. Girard for contracts on this work?

Mr. FARRE. I know what people said, that they had applied for contracts, yes.

Mr. DE NEFFE. Who were they? Can you name any?

Mr. FARRE. Gatley Bros., pretty good road contractors that lived in Harney County, and Herbert Powell in Grant County, who had done considerable road work for the Forest Service and the Bureau of Public Roads on the new road from Canyon City into Bear Valley.

Mr. DE NEFFE. Were they responsible parties and having large equipment?
Mr. FARRE. Oh, yes, they had equipment.

Mr. DE NEFFE. Did they get any of those contracts?

Mr. FARRE. They told me not.

Mr. DE NEFFE. Was the right of way crowded with workmen at the time, with contracts?

Mr. FARRE. Oh, no.

Mr. DE NEFFE. There was work for them to do there, was there?

Mr. FARRE. Ample work.

Mr. DE NEFFE. You were secretary of the Committee of Ten? —

Senator KENDRICK (interposing). Right there: If I am not mistaken one of the other witnesses testified that a great part of the construction work along the line of this railroad was given to local, people, is that true?

Mr. FARRE. I believe so, yes.

Mr. HALLOCK. Might I ask a question right there that is suggested by Senator Kendrick's question? That was at the request of you people there, was it not?

Mr. FARRE. Well, I can not say. I never interfered with Mr. Girard's arrangements in that matter at all. I never made any suggestion to him that I remember of.

Mr. DE NEFFE. Did you ever get any telegrams from Mr. Fred Ames of the Portland office of the Forest Service in regard to the common carrier clause?

Mr. FARRE. Yes and I had a talk with him in the office about it.

Mr. DE NEFFE. Here are some telegrams. Have you such a telegram, or copy of it, with you?

Mr. FARRE. I have a telegram from Mr. Ames directed to I. S. Geer, of Burns, of February 24, 1923, in reference to the common carrier clause.

Mr. DE NEFFE. Will you produce it?

Mr. FARM. Here it is.

Mr. DE NEFFE. We offer this in evidence.

Mr. HALLOCK. That was before the contract was made?'

Mr. FARRE. Yes.

Mr. HALLOCK. And before the second advertising?

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Mr. FARRE. Yes, sir.

Mr. DE NEFFE. This telegram is dated at Portland, Oreg., February 20, 1923, and is as follows:

I.S. GEER, *Burns*.

Since common carrier railroad clause is undesirable that feature of contract to operators, it would facilitate further negotiations if we could have expressions of whether would be satisfactory to community if common carrier requirements made to apply as far as Burns only. Immediate action desirable.

AMES.

Mr. MCGOWAN. Will you let me look at that?

Mr. DE NEFFE. Certainly.

Senator WALSH of Montana. Is Mr. Ames here?

Mr. MCGOWAN. Oh, yes, Senator Walsh, he is present here in the room.

Mr. HALLOCK. I am wondering if it might expedite matters a little for us all to frankly admit that there was a question that was moot and discussed prior to the second advertisement, as to whether they could induce buyers to come in by eliminating the common carrier clause. We all admit that, and there is a lot on that.

Mr. DE NEFFE. That is a touchy question, and I want that for the foundation for something that is to come later.

Mr. HALLOCK. We are prepared to concede that much.

Senator KENDRICK. The contract was signed with the provision that the road should be common carrier to the end of the line.

Mr. HALLOCK. To Seneca, absolutely.

Mr. DE NEFFE. That is the way it started out.

Mr. MCGOWAN. In that connection I think the committee might very well take judicial notice of the fact that the Forest Service was not obligated as a matter of law to construct a common carrier in there, but notwithstanding that fact the common carrier clause was put in the contract, and it was put in there on that basis.

Mr. HALLOCK. We have no objection to your developing anything you have, Mr. De Neffe.

Senator WALSH of Montana. The Forest Service was under no obligation of law to put in any provision about a railroad, as far as that is concerned.

Mr. MCGOWAN. No; but the common-carrier clause, as we understand it, and I am not trying to make any argument by way of justification one way or the other, but am trying to present it as a question of fact, that Colonel Greeley had the desire to be of assistance in opening up that country, and so finally when the contract was actually signed, he required that a common-carrier clause should be inserted in it, and it is in there to-day, and never has been modified, and he has never considered for one moment the question of changing that and of relieving the contractor from the common-carrier provision.

Senator WALSH of Montana. We will get to that in due course.

Mr. DE NEFFE. We will see whether you were just sneaking up on it gradually.

Senator KENDRICK. Well, if I may say so, it is apparent that the proposed contractors had the right of either negotiating to make the best terms they could or of accepting the proposition, and it would

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be patent to all that a road which was not a common carrier would be more profitable to them than one that imposed that condition. Now, that is not the point in my mind, even if it be conceded that this was all discussed, for the thing that we are concerned with as, a subcommittee is, whether or not that provision was finally written into the contract.

Mr. DE NEFFE. Yes; it was, and if no modification had been made whereby that common-carrier feature was gradually, by degrees, fading away, all right; but it is modification after modification that we were fearing and objecting to.

Senator KENDRICK. Without prolonging the discussion here at this point, is it true that it has faded away or is it still in the contract?

Mr. DE NEFFE. There is certain language in there that is being questioned.

Senator KENDRICK. By the operation of the contract, or by any concessions made by the Forest Department?

Mr. DE NEFFE. In the modification, yes.

Senator KENDRICK. In the modifications of the contract.

Mr. HALLOCK. It is a little premature but I had intended to offer the contract of the Union Pacific Railroad, which positively require the construction and maintenance of that road as a common carrier.

Senator WALSH of Montana. We are anticipating a little.

Mr. HALLOCK. That is what I said, but I was a little afraid of this "fading away."

Senator KENDRICK. Pardon me, Senator Walsh, but while I have not the legal or technical knowledge of the law in such hearings that would enable me to proceed to a conclusion here with the same skill that an able attorney would, yet I am trying to determine the value of this testimony as I proceed.

Senator WALSH of Montana. Let me remark if I interpret the thing aright: It is contended that these various modifications of the contract contain language which more or less weakens or eliminates that provision of the original contract. Reference is made to the logging road out of Burns to Seneca, and the apprehension was that, when the term "logging road" was used it militates against the provision of the original contract for a common carrier railroad.

Senator KENDRICK. But you do not contend that it would do so, as a lawyer, do you?

Senator WALSH of Montana. No, I am merely trying to state what, I understand to be the position, of those

who are contesting this matter. They are introducing evidence, if I understand it aright, for the purpose of showing a disposition on the part of the Forest Service to accomplish that change.

Senator KENDRICK. But you would not concede that any well-informed citizen, and I want to use the word "any," would have any right to interpret that sort of designation as an abandonment of the provisions of the contract, would you?

Senator WALSH of Montana. I do not undertake at this time to express any view as to whether it does or whether it, does not.

Mr. HALLOCK. Pardon me right there, but if I would be permitted to make a premature offer I will say that I have a confirmation from the Forest Service of that feature. But that is perhaps a little premature.

Mr. DE NEFFE. That would be your case when you come to it.

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Senator WALSH of Montana. I am sure that the Forest Service will give us their views a little later on.

Mr. MCGOWAN. Mr. De Neffe has just offered what purported to be a copy of a telegram from Mr. Ames to Mr. Geer of February 20, 1923, in connection with this so-called common carrier provision, and we object to it on the ground that it is not a copy of the telegram that was sent.

Mr. DE NEFFE. Will you produce a copy of the telegram that was sent?

Mr. MCGOWAN. Here it is, and I suggest that you read it.

Mr. DL NEFFE. I shall be glad to read it, and it is as follows:
Since common carrier railroad clause is undesirable feature of contract to operators * * *.

Mr. MCGOWAN. Now, I believe the "to operators" is what is left out of our telegram.

Mr. De NEFFE. No; it is here. I will let Senator Walsh look at the telegram I offered while I read the one you gave me.
Senator WALSH of Montana. Now go ahead.

Mr. DE NEFFE. It is as follows:

> Since common carrier railroad clause is undesirable feature of contract * * * —

Senator WALSH of Montana (interposing). The only difference there is that, the word "that" is in this telegram that Mr. De Neffe introduced and which I am holding and is not in the one that Mr. McGowan furnished. Suppose you just read yours in full.

Mr. DE NEFFE. All right, I will read it again:

> Since common carrier railroad clause is undesirable feature of contract to operators, it would facilitate further negotiations if we could have expressions of whether would be satisfactory to community if common-carrier requirements made to apply as far as Burns only. Immediate action desirable.

Senator WALSH of Montana. The only difference is the word "that," which is in this copy.

Mr. MCGOWAN. All right; that mixed me up in reading it.

Senator WALSH of Montana. It apparently is in there by mistake, as it is not necessary to the meaning.

Mr. DE NEFFE. Have you any copy of telegrams received or sent after this telegram was received?

Mr. FARRE. From anyone, do you mean?

Mr. DE NEFFE. Yes.

Mr. FARRE. I have them here.

Mr. DE NEFFE. Hand them to me. I had them arranged chronologically. These telegrams that I hold in my hand are telegrams or copies that came into your possession as secretary of the committee of 10?

Mr. FARRE. Yes, sir.

Mr. DE NEFFE. That is how you came to have them?

Mr. FARRE. Yes, sir.

Mr. DE NEFFE. If there is no objection, I should like to read these—or Mr. Hallock, do you want to look at them?

Mr. HALLOCK. I have no objection, except to repeat the statement that I made that those negotiations took place and they were disposed of by the making of the contract, as I understand it.
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Mr. DE NEFFE. Here is something about Mr. Barnes. Maybe I better ask him a question right here.

Senator WALSH of Montana. Oh, no; go ahead and read it.

Mr. DE NEFFE. It is dated February 20, but the year is not given. It is from Mr. Geer to Mr. Barnes, in Washington, D. C.:

> Portland, forestry office asks advice, eliminate common carrier railroad clause Burns to Seneca. Wire quick.

What year was that?

Mr. FARRE. 1923.

Senator KENDRICK. Was that telegram addressed to Mr. Barnes?

Mr. DE NEFFE. Yes; at Washington, D. C.

Senator WALSH of Montana. After the receipt of the telegram introduced in evidence the people in Burns telegraphed to Mr. Barnes in Washington the substance of that telegram.

Mr. DE NEFFE. Yes; asking his advice.

The CHAIRMAN. You may go ahead.

Mr. DE NEFFE. Next I have a telegram from Burns, Oreg., Feb. 21, 1923, signed by I. S. Geer, and addressed to W. D. B. Dodson, Portland Chamber of Commerce, Portland, Oreg., and is as follows:

> Have wired Portland forest office that we want common-carrier clause retained Burns to Seneca, and urging that tentative offer now in Washington be accepted. Request support of Portland chamber in urging forest office to keep their promise of last summer. Time is important as advertising under new offer must commence March 1.

Mr. HALLOCK. What was the tentative offer referred to there?

Mr. DE NEFFE. Was that when Mr. Barnes had had an offer?

Mr. FARRE. I don't know. I was in Salem at that time, and that is the reason why these telegrams did not come into my possession until after I returned from Salem. I was down there on the legislative session.

Senator KENDRICK. These telegrams related to negotiations pending between Mr. Barnes and the Forest Department for the purchase of this timber, did they?

Mr. DE NEFFE. May I ask a question of Mr. Barnes here, so it will tie it in?

Senator WALSH of Montana. You better recall him later.

Mr. DE NEFFE. Next I have a telegram from E. W. Barnes, dated at Washington, D. C., February 21, 1923, and addressed to I. S. Geer, at Burns, Oreg.:

> Replying your wire 20. Wire Portland office that you want common carrier and demand that offer be accepted and timber be advertised at once. Confidential and for your own information, people making offer will not pay more for timber if clause is eliminated. Good faith should be kept with people of Bear Valley and Canyon City. If we lose this offer will not get any other one. I know what I am doing. Have Wollenberg at Canyon City wire the same to Portland office.

Senator KENDRICK. Who sent that telegram?

Mr. DE NEFFE. E. W. Barnes, from Washington, D. C.

Senator KENDRICK. What offer did he have reference to when he made that statement?

Mr. DE NEFFE. I think this matter came up and was explained when you were not present, Senator Kendrick. This was the situation: That the timber had been advertised and there were no bids. Then Mr. Barnes was in Chicago and started west, and stopped at

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Stillwater, Minn., to see his folks. While there he got a wire from somebody saying no bids had been received. Then he received a wire from Mr. Ames, from the Portland office, asking if he knew anybody who would make an offer on the timber. Then he went to Doctor Brooks —

Senator KENDRICK (interposing). Then he refers to an offer made by the Brooks Lumber Co.?

Mr. DE NEFFE. Yes, sir; by the Brooks-Scanlon Lumber Co. Then he wrote to Colonel Greeley telling him he would make an offer if he would advertise it for 30 days. Then Mr. Barnes came on to Washington, and was in conference with Colonel Greeley—am I right about that, Mr. Barnes?

Mr. BARNES. Yes, sir.

Senator KENDRICK. He stated that if the department let this offer go by it would not, receive any other offer.

Mr. DE NEFFE. Well, yes.

Senator KENDRICK. That he knew what he was talking about?

Mr. DL NEFFE. Yes; that was his opinion. Then on February 21, and this telegram does not give the year, but it is dated at Burns, Oreg., and is addressed to Fred E. Ames, United States Forestry Once, Portland, Oreg., and is signed by I. S. Geer, president of the Commercial Club:

> We feel common-carrier clause should be retained Burns to Seneca, in good faith with Bear Valley and Grant County citizens, as that is part of original development plans. Tentative offer now in does not require elimination. We earnestly urge its acceptance.

Then here is a telegram dated February 23, with no year shown, from I. S. Geer, to E. W. Barnes, care Hon. N. J. Sinnott, House of Representatives, Washington, D. C.:

> Wired Portland office as per your instructions.

Then here is a telegram dated at Washington, D. C., March 1, 1923, addressed to I. S. Geer, president Commercial Club, Burns, Oreg., from E. A. Sherman, acting forester:

Bear valley timber will be readvertised for 30 days at two dollars; under definite agreement Brooks-Scanlon Co. to submit bids. Railroad to Seneca to be common carrier.

Mr. MCGOWAN. May I make an observation that that was a telegram from Sherman in which he states that the common-carrier provision would be insisted upon by the Forest Service, is that correct?

Mr. DE NEFFE. Yes. Because Doctor Brook's tentative offer did not require elimination of the common-carrier clause, and it was satisfactory to them to have it,

Mr. MCGOWAN. All right.

Mr. DE NEFFE. Mr. Farre, did you ever hear Mr. Herrick any time make any statement regarding this common-carrier feature?

Mr. FARRE. Once.

Mr. DE NEFFE. When and where?

Mr. FARRE. It was during the month of May, 1923.

Mr. DE NEFFE. That was after the bids had been opened?

Mr. FARE. After the time the timber had been awarded to him.

Mr. HALLOCK. But before the contract had been prepared or signed?

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Mr. FARRE. Yes, sir.

Mr. DE NEFFE. Where were you?

Mr. FARRE. I was in the hotel in Burns, Oreg., looking to interview a man by the name of Crane. I was standing up at the head of the stairway, and as the stairway leads out it has storm doors, and you pass through them. While I was standing at the railing near those doors, there were Mr. Barnes and Mr. Herrick. As I came on between there and the top of the stairway I was leaning against the stairway waiting for Mr. Crane, and I was not 5 feet away from either one of them, and I heard Mr. Herrick say to Mr. Barnes:

Barnes, I will never haul a log over that road except Herrick's. I will send {*sic*; maybe the word should be "sell"} the road or go into the hands of a receiver first.

Or words to that effect.

Mr. DE NEFFE. You may take the witness.

(Cross examination by Mr. Blame Hallock, Attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. I believe you assisted Mr. Barnes to some extent in securing or renewing options on the timber he later sold to Mr. Herrick?

Mr. FARRE. I don't know whether he sold it later to Mr. Herrick or not. I assisted him to get options, to get his title after he took the options, and in getting his abstracts and was in Bear Valley on several occasions.

Mr. HALLOCK. Do you know whether he paid as low as 50 cents a thousand for a lot of that timber?

Mr. FARRE. I do not know about that.

Mr. HALLOCK. Do you recollect whether or not any representative of the Brooks-Scanlon Lumber Co. had at any time told you that Mr. Barnes had misled them into believing that there would be no other bids submitted, and that their bid of 2.05 would buy this timber, or something to that effect?

Mr. FAIRE. I did not understand your question. Will you please read it to me.

(The question was read by the shorthand reporter to the witness.)

Mr. FARRE. Well, not exactly that. A man by the name of Huffman, a millwright, was in my office in Burns, Oreg., and said that if they had understood it —

Mr. HALLOCK. Yes, go ahead.

Mr. FARRE. That they wanted to bid.

Mr. HALLOCK. Won't you make that a little clearer, what he said to you about the matter, how he put it?

Mr. FARRE. He came into my office some time, I forget now just when but I think it was during 1923, and he said that Mr. Brooks was disappointed in not getting that bid, for several reasons, not getting the timber. One reason was that he had a brother up in British Columbia who was in a worked-out project, and that he had a little bit too much time for social affairs, and a son, also a very capable man, in the same position, and that he, Doctor Brooks, wanted to get down there and get them busy on a project like that, that it just suited him. That he wanted, if he could, to buy the proposition, Mr. Herrick's interest in the contract, or acquire an interest in that contract. I told him I did not know; the only thing I knew was that Mr. Herrick at one time had told Mr. Hanley going

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upstairs at the irrigation meeting, or asked him rather, "What would you think about me selling out for six figures?" And Mr. Hanley said "I believe I would." Mr. Herrick said, "No." That is the only thing I ever heard about selling the contract. And he told me, or Mr. Huffman did, that he did not think that Doctor Brooks would care about the six figures for the reason that they had ample money, and the concern was one of fathers and sons and daughters and uncles and aunts, and one thing and another; but what he was concerned about was getting his brother and his son properly placed, and kept busy. And he wanted to know how Mr. Herrick could be approached, and I told him I didn't know, that I would be glad to do it provided that Doctor Brooks would authorize me to do so or request me to do it. And I told him that if it was agreeable I would suggest it to Mr. Girard, and I did, and Mr. Girard's attention was called to it.

Mr. HALLOCK. Just one more feature in that connection: In that conversation did you understand that Doctor Brooks had claimed that Mr. Barnes had misled him and his organization into believing their bid would buy the timber?

Mr. FARRE. Yes, that was my inference, that Mr. Barnes said that he held the most of the good timber, and that the Government timber was not as good as his.

Mr. HALLOCK. Did the conversation further indicate that the Brooks-Scanlon Lumber Co. was to take the Barnes timber at this price, $2.05?

Mr. FARRE. Nothing was said about that.

Mr. HALLOCK. But that they had been misled by the statement of Mr. Barnes, the statement that he made or his talk, that there would be no adverse bids, and that theirs would buy the timber.

Mr. FARRE. Their proposition was this, that this matter came up during the winter months and they could not cruise that timber to any advantage, and that they did not get the information that they were after until he following summer, when they sent men over there. Then after they got their report the project had appealed to them.

Mr. HALLOCK. Then you for one, Mr. Farre, are not at all disposed to subscribe to the claim that is indicated in some of these resolutions and memorials that Mr. Herrick was a speculator with that project?

Mr. FARRE. I have nothing to do with these resolutions whatsoever.

Mr. HALLOCK. I understand that but am getting your idea as to whether you believed at all that Mr. Herrick was a speculator with this contract?

Mr. FARRE. Well, that all depends. There is to my mind an indication of speculation in that contract all the way

through.

Mr. HALLOCK. You understood that he had a chance to sell out for six figures, but that he declined it?

Mr. FARRE. That was stated.

Mr. HALLOCK. Have you other information of his entertaining seriously or otherwise any proposition to sell out his interest or any part of it?

Mr. FARRE. No; I don't know about that.

Senator KENDRICK. You made the statement a moment ago that Mr. Brooks had said that Mr. Barnes misinformed him as to the

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situation, or in substance that was it. There was nothing in that statement to indicate that he had done so knowingly, was there?

Mr. FARRE. No, sir; not so far as I know. It might have been Doctor Brooks's misunderstanding of the proposition.

Mr. HALLOCK. Mr. Farre, on the occasion when Mr. Barnes was assisting the Herrick organization getting right of way, as you have told us, he was on Mr. Herrick's pay roll working as an employee, was he not?

Mr. FARRE. I could not say. He might have been. I don't know anything about it.

Mr. HALLOCK. You do not want to leave the impression that that work was volunteered gratis?

Mr. FARRE. I do not know whether Mr. Barnes was on his pay roll or not.

Mr. HALLOCK. You were in Salem, as I recollect, when I went down there and addressed the resolution's committees of the legislature in the matter of the action that had been taken in regard to memorializing Congress.

Mr. FARRE. Yes.

Mr. HALLOCK. Do you recall, Mr. Farre, that on the occasion of that meeting I read to the members of those resolutions committees a telegram from Mr. Sherman, acting forester, on the common-carrier feature?

Mr. FARRE. I do not recall it just now, Mr. Hallock.

Mr. HALLOCK. I wish you would glance at this paper and see if you recall my having read that telegram to those gentlemen on that ,occasion?

Mr. FARRE. Very likely you did. There was something to that effect.

Mr. HALLOCK. From what was said there among those gentlemen you got the impression, did you not, that the matter turned almost entirely upon the apprehension regarding the common carrier feature?

Mr. FARRE. Yes, sir; that was the burden of it.

Mr. HALLOCK. I wanted to assure those gentlemen that we had no intention of abandoning it, and so far as I knew the forest department did not, and I undertook to get a telegram by way of showing the situation. Here is the telegram which I wish to offer in evidence:

WASHINGTON, D. C., *January 25,1927.*

BLAINE HALLOCK, *State House, Salem, Oreg.:*

Under no circumstances would the Herrick contract common carrier requirements be modified since

the primary purpose of sale was to open up country.

E. A., SHERMAN, *Acting Forester*.

You spoke, as I understand your testimony, of some delay in the matter of constructing the line from Crane to Burns, the first 30-odd miles that were constructed. Do I understand that you were criticizing the work as having been delayed on that Unit?

Mr. FARRE. Not on that particular unit. That was completed at the time that I criticized it. My criticism came out in the paper July 1, 1925, nine months after the road was completed into Burns.

Mr. HALLOCK. You did not criticize it as to the building of the first unit?

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Mr. FARRE. No. But I was in the meeting in Burns in February, 1925, at the time Mr. Carter and his party were there and the extension was practically agreed on at that time.

Mr. HALLOCK. Do you not recall, apropos of this matter of local work there, Mr. Farre, that the community insisted that Mr. Herrick give employment to the local people on that construction program wherever possible?

Mr. FARRE. I understood that that was going to be his policy.

Mr. HALLOCK. And he responded to that request as you understood it?

Mr. FARRE. That is true. But the two contractors I spoke of were local people, one from Grant County and the other from Harney County.

Mr. HALLOCK. He did employ a great many local people?

Mr. FARRE. Yes, sir.

Mr. HALLOCK. Farmers and Indians and people there in that community who wanted employment?

Mr. FARRE. Yes, sir.

Mr. HALLOCK. Had you heard anyone except Mr. Barnes accuse Mr. Girard or Mr. Klobucher of any conspiracy or collusion or fraud in any of these matters?

Mr. FARRE. I don't know that they have accused any particular man. Mr. Girard or Mr. Klobucher, they are not parties to the contract with the Government. It is signed by Mr. Herrick.

Mr. HALLOCK. I appreciate that, and that is why I have asked the question. What are the facts, sir, as to whether you have heard anybody cast any reflection upon either of those gentlemen with respect to their being conspirators or in some collusion or having attempted in ,any way to defraud anybody in connection with this transaction?

Mr. FARRE. I have heard merely suspicions of it. People seem to think that because of certain former connections with the Forest Service that there might be.

Mr. HALLOCK. I was just wondering, Mr. Farre, if you could name any of those people to us, except Mr. Barnes.

Mr. FARRE. That has been pretty general throughout that whole section of the country.

Mr. HALLOCK. But you can not recall any names right now? I think that is all.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Mr. Farre, when you asked the Forest Service for the report in connection with the project of construction work you were serving in a capacity as substitute, as I understand it, for Mr. Byrd of the Times-Herald?

Mr. FARRE. Just for one week. When he came back he wrote two letters himself.

Mr. MCGOWAN. You do not know what information the Forest Service gave Mr. Byrd, who was the editor of the Times-Herald subsequent to the date that you were there as a sort of pinch hitter, as it were?

Mr. FARRE. Well, Mr. Byrd and I have always been very good friends, and he has always —I have always understood from him that that was the only answer that he got at that time.

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Mr. MCGOWAN. I am asking you if you know.

Mr. FARRE. No.

Mr. MCGOWAN. In this Senate Resolution 332 the charge is made that Mr. Herrick was not properly financed. Do you know anything about that of your own personal knowledge?

Mr. FARRE. Of my own personal knowledge, no.

Mr. MCGOWAN. Of your own personal knowledge do you know whether or not there was any fraud or collusion between the Forest Service and any officials of the Herrick Co.? I am asking of your own personal knowledge, not hearsay.

Mr. FARRE. If I can refer to your own records—I am familiar with that prospectus, and that one prepared there [indicating contract].

Mr. MCGOWAN. Can't you just answer the question yes or no? Then if you have an explanation, go ahead with it.

Mr. FARRE Yes.

Mr. MCGOWAN. There is fraud?

Mr. FARE. Certainly. What other inference would you give, to —

Mr. MCGOWAN. I am asking as to your own personal knowledge, not suspicions.

Mr. FARRE. If I could have your own records for it, your own printed matter and other matters furnished, yes.

Mr. MCGOWAN. Go ahead and tell us what you regard as the fraud of this situation, because we would like to know.

Mr. FARRE. All right. The prospectus itself states that the successful bidder for this timber shall enter with the United States into one specific contract and the contract is set forth in this prospectus. It provides in section 3. It provides that the cutting and removal of the timber from the tract included in the agreement shall be done from a certain date until a certain date. The contract actually signed by Mr. Herrick does not read the same way as the section 3 set forth in the prospectus, and it grants him the right to cut 40,000,000 feet more over the first period and 40,000,000 feet more the second period than the contract or sales agreement printed in the prospectus.

Furthermore, there is a proviso in the contract that he actually signed—the contract as actually signed by Mr. Herrick provides for a different amount of timber, which would indicate that there is a great amount in excess of 890,000,000 feet of timber on that unit. There is a proviso attached to that —

Mr. MCGOWAN. Just point out the clause of the contract that you are referring to, Mr. Farre, please.

Mr. FARRE. All right. That is on page 4 of the contract, section 3, second paragraph, and the proviso to it.

Senator KENDRICK. Would not the violation of those conditions you have named then point more directly to collusion between Mr. Herrick and Colonel Greeley and the others in the department?

Mr. FARRE. Yes, absolutely; not between the department and the other signers of the contrasts.

Senator KENDRICK. It would not point directly to the men who are charged with collusion?

Mr. FARRE. No. Mr. Herrick is the man who signed the contract, and Mr. Greeley must be charged with knowledge of what happened
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in his own department, especially in a matter of this kind, of this magnitude.

Senator WALSH of Montana. Let me get this clear that you are speaking about. The prospectus, upon which the bids were made, provided for the cutting of how much?

Mr. FARRE. Of certain amounts of timber, between certain times, from a certain time to a certain time. This [indicating contract] provides for a different amount for the first two seasons, which would, of course, reduce your overhead.

Senator WALSH of Montana. How much difference is there?

Mr. FARRE. There is 40,000,000 feet for each period; there is more than that contract calls for [indicating prospectus].

Senator KENDRICK. But the aggregate amount to be out remains the same?

Mr. FARRE. No. The proviso to section 3 in the contract that Mr. Herrick actually signed, the second section —

Senator WALSH of Montana. Read the proviso.

Mr. FARRE (reading)

> *Provided*., That whenever the district forester is satisfied that the cut from thin sale area will exceed 890,000,000 feet, board measure, log scale, he shall increase the maximum amounts which may be cut prior to each of the above-named dates which have not previously passed by such amounts as will permit the purchaser to cut thereafter an average annual amount sufficient to complete the cutting of the remaining timber covered by this sale, as the remaining cut may be estimated at that date, by June 1, 1945.

Senator WALSH of Montana. That was not in the prospectus?

Mr. FARRE. No.

Senator KENDRICK. Does that materially change the plan of the prospectus, or was it the original intent to sell all of the timber included in a certain acreage?

Mr. FARRE. The original contract provides for the sale of 890,400,000 feet that they can cut, specifically.

Senator KENDRICK. Does it describe the land on which the timber was located?

Mr. FARRE. Yes, sir.

Senator KENDRICK. I want to get the right point of view. My understanding is that it was to include all of the timber on that acreage.

Mr. FARRE. No. The original, contract provided for the sale of 890,000,000 feet and provides that he may cut so much timber during a certain period—not less than so much nor more than so much.

Senator KENDRICK. That he may cut 890,000,000 feet—no more and no less?

Mr. FARRE. Eight hundred and ninety million feet in the aggregate during the life of that contract.

Senator KENDRICK. In the aggregate?

.Mr. FARRE. Yes. But this second paragraph of section 8 reads different. That would indicate—if you want it read I can read it.

Mr. MCGOWAN. I would like to help the witness there by suggesting that you read the first page of the contract signed between the Forest Service and Herrick.

The CHAIRMAN. Is this the original contract?

Mr. MCGOWAN. Yes, sir; the original contract, a copy of which is in the record now.

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Mr. FARRE. This is the contract as signed by Mr. Herrick.

Mr. HALLOCK. That clause does not appear in the prospectus?

Mr. FARRE. Yes; the first difference appears in section 3.

Mr. HALLOCK. Now, as Mr. McGowan has suggested, read the first paragraph, in response to Senator Kendrick's request for more information as to the description of what was purchased—what was in fact purchased.

Mr. FARRE. Oh, I see.

Senator WALSH of Montana. I have it before me; let me read it. [Reading:]

> I, Fred Herrick of St. Maries, State of Idaho, hereby agree to purchase from an area of about 67,400 acres to be definitely designated on the ground by a forest officer prior to cutting in township 15 south, ranges 29, 30, and 31 east; township 16 south, ranges 29, 30, 31, and 32 east; township 17 south, ranges 29, 30, and 31 east, Willamette Meridian; in the Silvies River watershed, as designated on the attached map which is hereby made a part of this agreement within the Malheur National honest, at the rate or rates, hand in strict conformity with all and singular the requirements and conditions hereinafter set forth, all the dead timber standing or down and all the live timber marked or designated for cutting by a forest officer, merchantable as hereinafter defined, for sawlogs. The estimated amount to be cut under the methods of marking described in section 6 is 770,000,000 feet board measure of western yellow pine, live and dead saw timber, more or less, and an unestimated amount of saw timber of Douglas fir, western larch, white fir, lodge pole pine and other species. The cutting of other species than western yellow pine shall be optional with the purchaser.

Senator KENDRICK. And it is your opinion that the words "more or less" were not a part of the contract?

Senator WALSH of Montana. The "more or less," Senator, refers to —

Senator KENDRICK. The estimated amount?

Senator WALSH of Montana. The "more or less " refers to pine. The sale is from an area of 67,404 acres, and then it says the estimated amount to be cut under the methods of marking described in section 5 is 770,000,000 feet board measure of western yellow pine, live and dead saw timber, more or less.

Mr. FARRE. Yes; that is; exactly the way I understand it.

Senator WALSH of Montana. And an unestimated amount of other timber.

Senator KENDRICK. Yes; but I do not understand from the reading of that and I want to get the idea correctly, in an unbiased way—that the description or the estimate fixed an absolutely arbitrary number of feet. As an illustration, if I may suggest what is in my mind, suppose there were 67,000 acres of timber. The question in my mind is whether or not the department intended to have Herrick cut all of the merchantable timber from those 67,000 acres of land.

Mr. HALLOCK. All designated timber; it must be designated.

Mr. MCGOWAN. Not all the live timber, Senator Kendrick, but, as stated on page 1, all the dead timber, standing, or down, and all the live timber marked or designated for cutting by a forest officer, merchantable as hereinafter defined.

Senator WALSH of Montana. Where is that provision?

Mr. MCGOWAN. On the first page (Exhibit No. 9), Senator Walsh, in the print, after the words "Malheur National Forest":

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> At the rate or rates, and in strict conformity with all and singular the requirements and conditions hereinafter set forth, all the dead timber standing or down, and all the live timber marked or designated for cutting by a forest officer, merchantable as hereinafter defined, for sawlogs. The estimated amount to be cut under the methods of marking discussed in section 5 is 770,000,000 feet b. m. of western yellow pine, live and dead sawtimber, more ,or, less. [Etc.]

Senator KENDRICK. Directly connected with that question, with a view of determining its consistency with this later paragraph read by the witness: It seems to me the later paragraph would simply provide for an increase of the amount that could be cut at any particular time, or should be cut at any particular time as facts developed the amount of timber on the land.

Mr. HALLOCK. I think that is absolutely correct, Senator.

Mr. MCGOWAN. Colonel Greeley will be delighted to answer that question for you, but you have the answer already.

Senator KENDRICK. I do not care to pursue that discussion further. I wanted to be clear on that point, whether or not the contract as written was consistent with the advertised plan of the contract.

Senator WALSH of Montana. That is all we are interested in.

Mr. HALLOCK. May I add one word? The clause that Mr. Farre says was changed read in the prospectus:

> Unless such amounts are changed in writing by the district forester.

Senator KENDRICK. Is that in the prospectus?

Mr. HALLOCK. That is in the contract as printed in the prospectus.

Mr. MCGOWAN. Then, Mr. Farre, this extension —

Senator WALSH of Montana. Mr. Farre has not concluded the statement he started to make.

Mr. FARRE. Do you care about reading —

Senator WALSH of Montana. You have called our attention to that feature of it. Now, answer Mr. McGowan's question as to what other circumstances seem to you worthy of notice.

Mr. FARRE. There has been a great deal said about extensions of time, and on the face of the record itself, one extension having been granted on top of the other, it would indicate that there was an understanding —

Mr. MCGOWAN. That is a conclusion, if you please, Mr. Farre.

Senator WALSH of Montana. Well, you ask him what leads him to think that there, might be collusion.

Mr. MCGOWAN. Very well. Let him answer.

Mr. FARRE. On the face of the statement that I have heard made by Mr. Herrick himself—I did not hear Mr. Herrick make that himself, but that other people have heard him say—and on the face of the record itself, that one extension is granted on top of another and still further extensions granted, that would indicate that there had been some understanding before that contract was signed unknown to any other bidders on the contract which would have induced any other bidders to come in of the same footing as Mr. Herrick.

Mr. HALLOCK. Do I understand you to say that other people have heard Mr. Herrick say that there was some such understanding?

Mr. FARRE. Yes.

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Mr. HALLOCK. Other people —

Mr. FARRE. Have told me.

Mr. HALLOCK. Other people have told you that Mr. Herrick said there was some such understanding?
Mr. FARRE. Yes.

Mr. HALLOCK. I do not want to interrupt, but I think it is highly important. Can you name any person who claims to have heard Mr. Herrick make such a statement?

Mr. FARRE. Not directly, but I can —

Mr. HALLOCK. Can you give us the name of anybody?

Mr. FARRE. I Will.

Mr. HALLOCK. Well, do that now.

Mr. FARE. Sure, I Will. Mr. W. L. Blott, in Burns, whose wife was employed in Mr. Herrick's office, told me that Mr. Herrick made that statement in his own office, that Mr. Greeley promised him all the extensions he wanted.

Mr. HALLOCK. Are there any others, please?

Mr. FARRE. That is most direct I have; I have heard it indirectly.

Mr. HALLOCK. Are there any others that claim Mr. Herrick made such a statement?

Mr. FARRE. I have heard others assert it, but then I don't know.

Mr. MCGOWAN. Of your own personal knowledge, confined to what you know about it yourself, personally, not the country-side gossip, is that confined to the observations that you have just made with reference to these clauses in the contract? Can you answer that yes or no?

Mr. FARRE. It has reference to a clause in the contract; Yes, sir.

Mr. MCGOWAN. To the extent of your own personal knowledge, you may call it, your criticism is directed to the so-called difference in these clauses in the contract?

Mr. FARRE. Yes.

Mr. MCGOWAN. That is the extent of your own knowledge? Is that correct?

Mr. FARRE. Yes; the extensions granted, according to the records in the case; Yes, sir.

Mr. MCGOWAN. Flavored, as it were, with what folks said that somebody else had told somebody else?

Mr. FARRE. Well, it is not direct testimony, but those things are really susceptible of direct proof.

Mr. MCGOWAN. On the question of the common carrier: Have you any personal knowledge, Mr. Farre, as to what the attitude of the Forest Service is or has been with reference to this common-carrier clause?

Mr. FARRE, I have.

Mr. MCGOWAN. Since the contract was signed'?

Mr. FARRE. Before the contract was signed.

Mr. MCGOWAN. I am asking you, since the contract was signed.

Mr. FARRE. Not except what appears in this modification of the original contract, which would mean —

Mr. MCGOWAN. Oh, you are going to construe the contract; now?

Senator WALSH of Montana. Let him answer.

Mr. MCGOWAN. Very well, sir.

Mr. FARRE. The modification, as to the common-carrier clause in here, would mean indefinite suspension of the operation of the com-

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mon-carrier clause; whereas in the original contract, as this said he would be required to enter into, there would be a definite time limit when that common-carrier road would be in operation. Under this modified contract he could claim to keep this road under construction for 10 years or so and say it was still under construction as a common carrier, and thereby make the contract a means to an end in itself so far as bringing that common-carrier road into Grant County.

Mr. MCGOWAN. Do I understand this to be your position, that under your construction of the terms of the contract it might be possible to construe some part of the contract in such a way that Colonel Greeley might have the power to relieve the contractor of the obligation that the road be a common carrier? Is that your point?

Mr. FARRE. No; not at all. Under your modification of the contract Mr. Herrick can keep that road under construction indefinitely. He can just keep one man with a broken shovel on that road for 10 years if he wants to, and say he is not ready to operate it or turn it over as a common carrier, and he can practically bottle up the whole country.

Mr. MCGOWAN. Very well. But of your own personal knowledge, have you ever inquired of the Forest Service with reference to what their attitude would be on the common-carrier clause?

Mr. FARRE. Prior to the time the contract was signed; Yes, sir.

Mr. MCGOWAN. I say, subsequent thereto?

Mr. FARRE. Not subsequent thereto; No, sir.

Mr. MCGOWAN. That is all.

(Further cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK, May I have one more question? Mr. Farre, you do not claim, do you, that Section 38 of the contract, requiring that this road be a common-carrier railroad, was ever modified by any extension agreement or otherwise?

Mr. DE NEFFE. Mr. Farre, give him the paragraph that you are referring to.

Mr. FARRE. Paragraph 4 of the stipulation, on page 29.

Mr. HALLOCK. I think I understand your construction of that.

Senator WALSH of Montana. Well, let us have it.

Mr. HALLOCK. To make my question clearer, I wonder ii the witness can point to any extension agreement or stipulation or anything that by its trend purports to eliminate section 38 or to modify section 38.

Mr. DE NEFFE. That is what you asked him, and he is just going to answer.

Mr. HALLOCK. That is what I wanted.

Mr. FARRE. That agreement or stipulation is set forth on page 29.

Mr. DE NEFFE. Pardon me; those are numbers that I put on there myself. For convenience I have numbered them, you see. There was no consecutive numbering. So you will have to refer to —

Mr. FARRE. You refer to the proper page number so the committee can find it. I don't know how it is arranged.

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Mr. DE NEFFE. It is on page 3 of the first modification of the contract, which modification was signed on March 10, 1925. That identifies it.

Mr. HALLOCK. May I read the section that I wanted him to refer to?

Senator WALSH of Montana. No; let him answer your question. You asked him if there was anything that modified that, and he is trying to answer. Let him go on.

Mr. HALLOCK. If he knows the section I am talking about.

Senator WALSH of Montana. Just call the attention of the committee to it and tell us what you think there is about that that is a modification of that provision in section 38.

Mr. FARRE. It appears on page 3 of the stipulation entered into between Mr. Granger, district forester, on the 3rd day of March, 1925, and Fred Herrick on the same date, governing the construction work. And appearing on page 3 of that stipulation, section 4 —

Senator WALSH of Montana. Now, read the provision that you think changes section 38.

Mr. FARRE. Shall I read the whole section?

Senator WALSH of Montana. Very well.

Mr. FARRE (reading):

> On April 1, 1926, the railroad grade from Burns to the point near the south line of sec. 34, T. 16 S., R. 31 E., Willamette Meridian, being station 2520 of the railroad survey, including all cuts, fills, tunnels, bridges, trestles, or other structures, excavations, or movements of earth or rock necessary for the laying of ties and steel for a permanent standard-gauge railroad track suitable for use in hauling logs in trains, shall have been completed: Provided, That this requirement shall not be construed to require completion of the widening of cuts or fills or other minor work which., in the judgment of the Forest Supervisor, may be done most economically after permanent steel has been laid and can be used for transportation purposes.

Senator WALSH of Montana. What is there in that that you think operates as a modification of the common-carrier provision?

Mr. FARRE. As long as that road is under construction he can not, under the Oregon laws, be compelled to turn it over and use it as a common carrier.

Senator KENDRICK. The matter that you quoted there indicated that it was to be used for transportation purposes.

Mr. FARRE. Transportation of logs, but not as a common carrier.

Senator KENDRICK. That is your construction?

Mr. FARRE. That is my construction; Yes, sir. I want that understood, that that is simply my construction.

Mr. HALLOCK. Mr. Farre, you know that the railroad company has exercised the right of eminent domain in condemning rights of way all along that line?

Mr. FARRE. Yes, sir.

Mr. HALLOCK. You know all about that?

Mr. FARRE. I do. That does not prevent them from keeping the road under construction for 10 years; and until it is completed they can not compel them to male it a common carrier.

Senator WALSH of Montana. As I understand it, they can not economically or commercially cut any timber until the road is completed?

Mr. FARRE. Yes; they can carry logs over this railroad. They can run logs over it, but they can not compel them to haul miscellaneous

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freight or stock or anything, and they can bottle up the entire Harney County and everybody would be at their mercy.

Mr. HALLOCK. So that I may understand it: If we are a common carrier from the fact that we exercised the right of eminent domain and acquired these rights of way, and if our contracts both with the forest Service and with the Union Pacific require it to be a common carrier, and if our articles of incorporation, our charter and documents of that sort fix that status, do you take the position that under that clause we can abandon that status, even though we have exercised it?

Mr. FARRE. I should say not.

Senator WALSH of Montana. He has made himself perfectly clear on that. I do not see why we should repeat that.

Mr. HALLOCK. I think it may be carrying it to too great length. That is all.

Senator WALSH of Montana. The way I understand the testimony of the witness, it is that this road is chartered as a common-carrier road, and it has a contract with the Union Pacific as a common-carrier road and that sort of thing, but he contends that that provision of the contract simply requires that it shall be completed as a road for hauling logs and that there is no provision in there with respect to the time at which it shall be completed by the contractors and turned over as a completed common-carrier road.

Mr. DE NEFFE. That is the point.

Mr. HALLOCK. That there is no provision for a turnover? That there is no reference to some turnover to an operating company?

Mr. FARRE. He can keep it that way for 25 years if he wants to keep anybody else from running it.

Mr. MCGOWAN. I think it may be helpful in clearing up that point that Mr. Farre makes to say that under the stipulations which were signed on July 1, 1926, in connection with the construction work and these stipulations are part of the record now—under paragraph 3 thereof it is stated that, by December 15, 1926, the railroad from the mill to the timber shall be ready for operation. It shows on the face of it that that contemplates a reasonable completion of the road. You will recall the railroad from Crane to Burns has been in actual completion for several years, and the mill would be at Burns, running up to the timber. So under that stipulation, which is a part of the record, it does not seem to me that there is very much to the point made by Mr. Farre, if you will pardon the suggestion.

Senator WALSH of Montana. We are now just getting Mr. Farre's view about it.

Mr. MCGOWAN. I beg your pardon.

Mr. FARRE. Mr. McGowan, the object of the Grant County people and your committee of 10 was to have the timber resources of the United States to aid in the development of the neighboring agricultural territory. The

terminal of that road in Seneca, in Bear Valley, is the center of the stock range in Grant County. It contains a large body of timber of the same quality as Mr. Herrick bought, but in private ownership and which he does not own, and if he can prevent that road from being a common carrier and carrying merchandise in and out of Grant County, and livestock and logs and

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lumber for other people, he can bottle up the whole territory and it is just the same as though we had no railroad, absolutely. He can buy timber at his own figures because nobody can move it.

I would like to make an explanation as to the timber itself. I was not given an opportunity to fully explain. I want the committee to understand it. It is in reference to the second section of section 3 and the proviso to it.

Mr. DE NEFFE. Of the original contract?

Mr. FARRE. Of the original contract signed by Mr. Herrick, but not in the prospectus.

Senator WALSH of Montana. That is another provision that is ins the contract, but not in the prospectus 2

Mr. FARRE. Yes; it is different from the prospectus; and the proviso is not in the prospectus.

Senator WALSH of Montana. Oh, another proviso?

Mr. FARRE. A proviso heretofore referred to, but not explained by me.

Senator WALSH Of Montana. We have had this.

Mr. FARRE. It merely shows the cutting of different amounts of timber. It provides for the cutting prior to June, 1927, of at least 750,000,000 feet of this lumber and from then on 520,000,000, which would indicate that there is a great deal more timber there on the unit than the survey has indicated. Now, if they had knowledge of that fact and other buyers or intending buyers had no knowledge that there was much more timber on that unit than the original advertisement indicated then they did not have a fair shakeout.

Senator WALSH of Montana. Did not the prospectus give these figures of 750,000,000 and 520,000,000?

Mr. FARRE. They gave a certain definite amount that they could cut, not less than and not more than a certain amount within a certain time. This contract provides the difference; this is absolutely new. I just want to call the committee's attention to it.

Mr. HALLOCK. I would like to direct Mr. Farre's attention to the fact that the paragraph in the contract as appears in the prospectus, immediately preceding the one which you say was changed, has reference to the times before which the timber privately owned within this unit shall commence to be cut, and the time within which the Government timber within this unit shall commence to be cut. Now, Mr. Farre, haven't you overlooked the fact that when the contract was prepared for the prospectus nobody knew how much privately owned timber the successful bidder might acquire, and that when the contract was fixed up here it was discovered that with the privately owned timber and the Government timber there was something like a billion feet in there, much of which, as far as the privately owned timber was concerned, Mr. Barnes had contracted and covered by his options for the successful bidder, as he tells us?

Mr. FARRE. The timber and private ownership had nothing to do with the 890,000,000 feet sold by the Government.

Mr. HALLOCK. No, but you will find that they are right in there together, Mr. Farre, if you will analyze it carefully. It apparently has reference to the entire cutting there.

Mr. FARRE. Well, the Government could not make any provision for the cutting of timber under private ownership.

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Senator WALSH of Montana. The point Mr. Farre is intending to make is that paragraph 3 of the contract is

essentially different from paragraph 3 of the prospectus.

Mr. HALLOCK. It permits him to cut more percentages of timber in each unit of time than the prospectus indicated.

The CHAIRMAN. What difference do you think that may have made with other bidders?

Mr. FARRE. It may have made a very vital difference if they knew they could have cut 40,000,000 more in three years, and 80,000,000 feet more in the second period, so as to reduce the overhead—they had the same investment, and they had the equipment to do it with, and if they were restricted in cutting timber, why, they could not make the same profit as they could by having the larger cut. Is that clear to you, Senator?

The CHAIRMAN. Yes; thank you.

Senator WALSH of Montana. Is there anything further from this witness?

Mr. MCGOWAN. Just one question.

(Further cross-examination by Mr. D. F. McGowan, representing the United States Forest Service.)

Mr. MCGOWAN. Mr. Farre, the original prospectus was the prospectus that was followed before the opening of the bids?

Mr. FARRE. Yes, sir.

Mr. MCGOWAN. And then the timber was readvertised ?

Mr. FARRE. Yes, sir.

Mr. MCGOWAN. Do you know as a fact that, following the readvertisement, the advertisement, contained the provision that full and complete information regarding the timber as readvertised could be had by all persons upon application to the district forester at Portland, Oreg.?

Mr. FARRE. Yes—and referred to the prospectus as heretofore issued, I think.

Mr. MCGOWAN. Do you know that to be the fact?

Mr. FARRE. I am pretty positive that that was in there: I presume, of course, that this is a copy of the second advertisement, and I am positive, Mr. McGowan, that it referred to that prospectus.

Mr. MCGOWAN. You are just as positive of that as you are —

Mr. FARRE. I am reasonably so. It is a long time ago and I would not be able to say positively, but my memory is that they referred to the prospectus.

Mr. MCGOWAN. There was full and complete opportunity for anybody and everybody that was interested in this proposition, following the second advertisement, to go to the Forest Service in Portland, Oreg., and get the full and complete 100 per cent details of the entire transaction? Isn't that correct?

Mr. FARRE. The original prospectus; Yes, sir.

Mr. MCGOWAN. Plus any additional information that they had on it?

Mr. FARRE. Did they know of the change of any of these conditions at that time, the conditions to be ranted, modifications to be granted later, or anything of that kind?

Mr. MCGOWAN. There is no question about modifications to be granted in the prospectus, is there?

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Mr. FARRE. I don't know—would any prospective bidder have any further information than this prospectus provided? Did he know that the Forest Service would modify the contract itself?

Senator WALSH of Montana. We are consuming an awful lot of time on this. You have the advertisement there, I suppose, Mr. McGowan?

Mr. MCGOWAN. I just wanted to lay a foundation for it.

Senator WALSH of Montana. We will certainly be glad to have that information.

Mr. DE NEFFE. Are there any further questions?

Mr. HALLOCK. No more as far as I am concerned.

Mr. MCGOWAN. That is all.

(Redirect examination by Mr. Frederick M. De Neffe, representing Grant County, Oreg.)

Mr. DE NEFFE. I have some redirect. I will have quite a few questions.

Senator WALSH of Montana. Let us finish with this witness.

Mr. DE NEFFE. Mr. Girard had cruised this timber for the Government, had he not?

Mr. FARRE. I understand he was in charge of it; Yes, sir.

Mr. DE NEFFE. Do you know whether there is much more commercial timber in this Bear Valley unit than 890,000,000 feet?

Mr. FARRE. From talking to the cruisers out there I have got the impression that there is considerably more than 890,000,000 feet.

Mr. DE NEFFE. How much would you say there was up there?

Mr. FARRE. Oh, I wouldn't say.

Mr. DE NEFFE. And it was on the basis of Mr. Girard's report, after cruising it as an employee of the Government, that this timber was offered for sale, was it not?

Mr. FARRE. I presume so.

Mr. DE NEFFE. And it was after the timber was offered for sale and Mr. Herrick became a bidder that Mr. Girard resigned from the Forestry Service and went into Mr. Herrick's employ; is not that right?

Mr. FARRE. That is the way I understand it; Yes, sir.

Mr. DE NEFFE. And then was in Mr. Herrick's employ before this contract was signed or drafted; is that it?

Mr. FARRE. I do not know anything about that.

Mr. DE NEFFE. Now, would you say that this modification here allowing an increase in cut over certain periods, starting at —

Mr. FARRE. Periods of three years each.

Mr. DE NEFFE (continuing). That that would give Mr. Herrick a better proposition than had been advertised to the world by the prospectus that anybody who bid would get on the proposition?

Mr. FARRE. I think so. If a man has an investment of a million dollars, and he has the equipment, and his overhead is the same, if he can make an increased cut it will naturally reduce his overhead.

Mr. DE NEFFE. And he will make more money?

Mr. FARRE. Naturally so.

Mr. DE NEFFE. In other words, it is more desirable in contracts of this kind that he be permitted to cut as much as he wants to? Is, that it?

Mr. FARRE. That will be apparent to anyone.

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Mr. DE NEFFE. And usually in selling timber the Government tries to limit the cut per year in order to conserve the timber over a long period of years? Is not that the object usually?

Mr. FAIRE. That was the argument that was made.

Mr. DE NEFFE. As I understand, there are other units in there? Is that right.?

Mr. FARRE. That is it.

Mr. DE NEFFE. And then when this unit was cut off they would put on the market another unit and another unit?

Mr. FARRE. That is the usual plan of the Government.

Mr. DE NEFFE. And under the plan of conservation they would cut down the maximum cut and restrict it on each of these units, so that when they get the timber cut off the last unit it will be 75 or a hundred years that the timber on the first unit will be growing up, and then they can start cutting on that? Is not that the purpose of conservation?

Mr. FARRE. Yes. In units of that size the estimate is better than 10,000,000,000 feet on that unit on the watershed tributary to Burns by cruisers; I think it is conceded by the Forest Service, but I don't know. But if they will take 10 periods of 20 years each it will be 200 years before they will go back over that that he is going to start in on now.

Mr. DE NEFFE. So that instead of being only a billion feet, as I understand was contemplated, there is a billion feet here, 110,000,000 feet is left for seeding purposes? Was that what you understood?

Mr. FARRE. They do not cut the small trees; they are restricted in cutting to trees of a certain size. They must protect the young trees so far as they can to make the basis of a new forest.

Mr. DE NEFFE. Suppose, for example, in the Bear Valley unit, instead of there being 890,000,000 feet there is about a billion and a half feet. Under the contract here this 890,000,000 feet was to be cut of in 20 years, wasn't it?

Mr. FARRE. Yes.

Mr. DE NEFFE. Then by changing this paragraph 3, allowing them to increase the size of the maximum cut, even though it is increased it must all be cut off by June 1, 1945?

Mr. FARRE. Yes.

Mr. DE NEFFE. A billion and a half feet would be cut off in 30 years?
Mr. FARRE. Apportioned throughout the entire period of the contract.

Mr. DE NEFFE. Yes. Now, you spoke about the modifications. Under the first modification of paragraph 4, in which you say there is a proviso which would allow them to keep a man there doing work and keep the road from being a common carrier indefinitely, do you think a similar provision appeared in the third modification? Do you know? I wish you would examine the third modification, signed, I think, on July 6, 1926.

Mr. FARRE. Yes. [Reading:]

> On September 15, 1926, the railroad grade from Burns to the point near the South line of sec. 34, T. 16, S., R. 31 E., Willamette meridian, being station 2520 of the railroad survey, including all cuts, fills,

tunnels, bridges, trestles, or other structures, excavations, or movements of earth or rock necessary for

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the laying of ties and steel for a permanent standard-gauge track suitable for use in hauling logs in trains, shall have been completed; *Provided*, That this requirement shall not be construed to require completion of the widening of cuts or fills or other minor work which, in the judgment of the forest supervisor, may be done most economically after permanent steel has been laid and can be used for transportation purposes.

It is a similar clause.

Mr. DE NEFFE. Colonel McGowan called your attention to paragraph 3 of that modification, which reads:

On December 15, 1926, the railroad from the mill to the timber shall be ready for operation.

Do you contend that, notwithstanding paragraph 3, requiring the railroad to be in operation by December 15, 1926, they could, still have some men working there, claiming it was under construction, and prevent anyone front compelling them to haul logs over the railroad?

Mr. FARRE. Sure. They could haul their own logs for 10 years and refuse to haul anybody else's.

Mr. DE NEFFE. Do you know of any instance in that country where that sort of thing was done?

Mr. HALLOCK. Are we charged with the sins of our brothers?

Mr. DE NEFFE. No; only I believe you know about it. I believe you are attorney for them?

Mr. HALLOCK. If I am a party to any pernicious arrangement of that kind, I wish you would develop it. I do not want any charges or conclusions of that kind; I don't like it.

Mr. DE NEFFE. No; I am not making a charge. We will develop that through another witness.

About this private timber, there is a provision in the prospectus, and it also appears in the original contract, that the cutting of the private timber must begin by April 1, 1925, and of the Government timber by October 1, 1925?

Mr. FARRE. Yes; the private timber on the sane operating unit.

Mr. DE NEFFE. In the Bear Valley unit, then, there is also private timber?

Mr. FARRE. Yes, sir.

Mr. DE NEFFE. Do you know what the reason for that purchase was?

Mr. FARRE. Why, you can't get into the main body of Government timber; you have got to pass through the privately owned timber.

Mr. DE NEFFE. About how many miles, approximately?

MI'. FARRE. It varies. The privately owned timber in Bear Valley, around the outskirts of that, is in strips.

Mr. DE NEFFE : Was it contemplated that if he ever bought this timber he would probably buy this private timber in front of the Government timber?

Mr. FARRE. Yes, sir. They were pretty nearly compelled to, in order to get in and out and operate.

Mr. DE NEFFE. Did Mr. Herrick acquire that timber?

Mr. FARRE. So I understand; I don't know.

Mr. DE NEFFE. I think that is all.

(Further cross-examination by Mr. Blaine Hallock, representing: Fred Herrick, James W. Girard, and Frank J. Klobucher.)

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Mr. HALLOCK. I have one or two more questions, if you please. Mr. Farre, in the matter of making more money for Mr. Herrick, as you have explained it to counsel in response to his questions: The modification or the change that you complain of required Mr. Herrick to cut more timber in each three-year period than was specified in the contract which appears in the prospectus? Is that correct,?

Mr. FARRE. It did not require him to. It permitted him to.

Mr. HALLOCK. Well, it required him to cut not less than 150,000,000 feet in three years instead of 110,000,000 feet, did it not?

Mr. FARRE. Yes.

Mr. HALLOCK. Now, all right. That would work, we will say, to his advantage and profit on an attractive market, wouldn't it?

Mr. FARRE. Yes, sir.

Mr. HALLOCK. But if, on the contrary, he was on such a market as has prevailed in that country for the least three years it would just, about break him, wouldn't it?

Mr. FARRE. I do not know anything about that.

Mr. HALLOCK. But you do know that it would result in loss instead of profit?

Mr. FARRE. I could not enter into that phase of it, because I do not know what may happen. If a man is operating at a loss or runs up against a poor market he can not have the same advantage as on a good market.

Mr. HALLOCK. To put it another way, in any event, the contract which Mr. Herrick signed and which you say was somewhat changed, requires that lie cut a minimum amount every three years which exceeds the minimum amount previously named.

Mr. FARRE. Yes, sir.

Mr. HALLOCK. So that if he is to operate at a loss his loss would thereby be increased, and if he operated at a profit the profit would thereby be increased? Is that it? That is just a matter of deduction, isn't it?

Mr. DE NEFFE. That is simply speculation as to the future market.

Mr. FARRE. It says at least 150,000,000, and no more than —

Mr. HALLOCK. I mean he is limited on both ends of it, isn't he?

Mr. FARRE. He is limited to 150,000,000, but he does not have to cut over 60,000,000. But he is permitted to cut 40,000,000 more the first period than he was in the contract as advertised in the prospectus.

Mr. HALLOCK. Do you know, as a matter of fact, what has happened to the pine market since Mr. Herrick signed this contract?

Mr. FARRE. I know the lumber market is very poor at this time.

Mr. HALLOCK. It has gone off from $7 to $10 a thousand since he signed the contract?

Mr. FARRE. I don't know.

Mr. HALLOCK. Wouldn't you say that it has gone off from $7 to $10 a thousand on pine since this contract

was signed?

Mr. FARRE. I don't know.

Mr. DE NEFFE. If the market was not very good, then he would just cut the minimum cut?

Mr. FARRE. That is it.

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Mr. DE NEFFE. But if the market was good —

Mr. FARRE. He could cut 30,000,000 feet less in the three years. He would be at perfect liberty to do that.

The CHAIRMAN. Is that all?

Mr. DE NEFFE. That is all of this witness.

The CHAIRMAN. The committee will recess until 10 o'clock tomorrow morning.

(Whereupon, at 12.50 o'clock p. m., the committee recessed to meet to-morrow, Tuesday, February 15, 1927, at 10 o'clock a. m.)

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HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREG.

TUESDAY, FEBRUARY 15, 1927

UNITED STATES SENATE.
SUBCOMMITTEE OF THE
COMMITTEE ON PUBLIC LANDS AND SURVEYS,
Washington, D.C.

The subcommittee met at 10 o'clock a. m., pursuant to the recess on yesterday, in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (chairman), Cameron, Kendrick, and Walsh of Montana.

Present also: Senator Dill of Washington; Col. W. B. Greeley, Chief of the Forest Service; and D. F. McGowan, attorney representing United States Forest Service; Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher; Frederick M. De Neffe, attorney representing Grant County, Oreg.

The CHAIRMAN. The subcommittee will be in order.

Mr. HALLOCK. Mr. Chairman, may I make a statement, if the committee please?

The CHAIRMAN. Yes.

Mr. HALLOCK. I should like the record to show that in response to our telegraphic request there arrived here on yesterday, and are now available in this room, the books, records, cancelled disbursement vouchers, plats, engineering data, and all matter of that kind requested by Mr. Barnes and his counsel.

The box in which these records and other data, are contained weighs perhaps 50 or 75 pounds, and these documents, etc., have been turned over to counsel for Mr. Barnes for his inspection and for the inspection of any of these gentlemen here.

I should also like to direct the attention of the subcommittee to the fact that, in response to our request for the production of documents, there have been produced some documents but which documents do not give us the specific information that we sought. We should like again to direct attention of counsel to the fact that we would

appreciate receiving the letter which Mr. Barnes refers to in his testimony, and which he stated he believed he received from Salem, to the effect that this railroad was not to be a common carrier. That matter is reported on page 204 of the transcript of the proceedings.

Then Mr. Barnes testified to the effect that he had received responses from the telegram sent to citizens of Burns, dated February 4, in which a certain document that he desired to have them sign was incorporated. Those responses have not yet been produced.

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And it is my understanding that he advised us that he had retained a copy of the draft of the Oregon memorial which he had prepared and sent to Mr. Arch McGowan. If these gentlemen can produce those documents we would very much appreciate it.

Mr. DE NEFFE. Mr. Chairman, Mr. Barnes tells me that he has made a search, and that he has some telegrams, which we have shown to Mr. Hallock. Mr. Hallock has looked them over, and the subcommittee is at liberty to see them if they wish. Mr. Barnes suites that those are all that he has been able to find.

Now, Mr. Chairman. and gentlemen of the subcommittee, Mr. Barnes tells me that he wrote a lot of his telegrams and letters, and did not keep copies of them, that there were no carbon copies kept of his letters, he says, so he can not produce them.

Mr. HALLOCK. I was referring to the transcript where he indicated in his testimony that he has these documents. Of course I do not want to request that Mr. Barnes shall produce something that he has not got. I do not want to be understood as attempting to embarrass him at all. I simply want the documents that his testimony indicated he had. I may be mistaken in my interpretation of his testimony, but it seems quite clear, and I refer to the testimony that I now have before me. As I have said, I do not want to embarrass Mr. Barnes at all by asking for something that he can not produce. If he has not got it, all right.

Mr. DE NEFFE. It does not embarrass him to produce anything that he has. Does the subcommittee want us to hand over these telegrams and to put them in evidence?

Senator WALSH of Montana. I think you better defer that until they are called for.

Mr. DE NEFFE. Very Well. I now produce a certified copy of the articles of incorporation of the Malheur Railroad Co., and also of the Fred Herrick Lumber Co., to be known, as heretofore noted, as Exhibit No. 10.

(The said two papers, being articles of incorporation of the Malheur Railroad Co. and of the Fred Herrick Lumber Co., are made a part of the record, as follows:)

EXHIBIT NO. 10

STATE OF OREGON,
Corporation Department.

I, W. E. Crews, corporation commissioner and custodian of the seal of the corporation department of the State of Oregon, do hereby certify—

That I have carefully compared the annexed copy of articles of incorporation, annual report for the year ending June 30, 1924, annual report for the year ending June 30, 1925, annual report for the year ending June 30, 1926, and information blank and affidavit of exemption of the Malheur Railroad Co., with the originals now on file in nay office, and that the same is a correct transcript therefrom, and of the whole thereof. I further certify that this authentication is in due form and by the proper office.

In testimony whereof, I have hereunto set my hand and affixed hereto the seal of the corporation department of the State of Oregon.

Done at the capital at Salem. Oreg., this 2d day of February, 1927.

[SEAL.] W. E. CREWS,
Corporation Commissioner

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We, the undersigned, whose names are hereunto subscribed, do hereby associate ourselves together for

the purpose of forming a corporation under and by virtue of the laws of the State of Oregon, and pursuant thereto do hereby make, sign, and acknowledge these articles of incorporation:

ARTICLE 1

The name of said corporation shall be Malheur Railroad Co.

ARTICLE 2

The purposes for which it is to be formed are as follows:

1. To construct, conduct, equip, maintain, and operate a standard gauge common carrier railroad from the mill site of the Fred Herrick Lumber Co. at a point near Burns, Oreg., to a point near Seneca, Oreg., and to buy, or acquire in any way such lands as may be necessary for rights of way, sidings, depot sites, warehouse sites or whatsoever other lands are necessary to carry into effect the business of constructing, equipping, conducting, maintaining, and operating a common-carrier railroad.

2. To purchase, lease, rent, mortgage, sell, or otherwise acquire or dispose of rolling stock, rails, ties and all such equipment as may be necessary for the operation and maintenance of a common-carrier railroad.

3. To purchase, sell, lease, own, and operate all kinds of real estate; to lay out town sites and to construct any and all kinds of improvements thereon or to be used in connection therewith: to purchase, sell, hold, control and operate easements, franchise, rights of way, mill sites and to construct and operate for profit power plants.

4. To buy, own, construct, build, erect, maintain, lease, sell, or otherwise acquire or dispose of plants for the manufacture or repair of engines, motors, dynamos, cars, trucks, rolling stock of all kinds, machinery, mechanical devices of every kind and nature for the furtherance of the purposes herein named.

5. To own, buy, lease, build, erect, construct, maintain, and own telegraph sand telephone lines and to buy and sell all kinds of property both personal and real in relation to such lines.

6. To own, handle, and control letters patent and such inventions as may come within the purposes for which this corporation is organized.

7. To act as agent or in any other fiduciary capacity.

8. To borrow money, issue bonds, promissory notes, and other evidences of indebtedness.

9. To own, buy, mortgage, hypothecate, pledge, sell, or otherwise acquire or dispose of property of all kinds as well as capital stock and shares of the corporation and that of other corporations and to vote any shares owned by it the same as a natural person would do, and to enter into such agreements, contracts, and stipulations and make such arrangements as may be or seem necessary to carry out the same and obtain the objects and purposes for which the corporation is organized.

10. To sell light, power, fuel of any kind by any feasible means or method to any and all persons, public or private, wherever either may be desired, including the including the manufacture and supply of electricity and electric machinery, appliances and fixtures for the purpose aforesaid.

11. To acquire by purchase, subscription, or otherwise, or to hold or dispose of stocks, bonds, or any other obligations of any corporation formed for or then or thereafter engaged in or pursuing any one or more of the kinds of business purposes, objects, or operations indicated herein, or of any corporation owning or holding any property of the kinds mentioned herein, or of any corporation owning or holding the stocks or obligations of any such corporations;: and in the acquisition or purchase of property, business, rights, or franchises, or for additional capital, or for any other object in or about its business or affairs, and without limit as to amount, to incur debt and to raise, borrow, and to secure the payment of money in any lawful manner, including the issuance and sale of bonds, warrants, debentures, obligations, negotiable and transferable instruments, and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust, or otherwise.

12. To construct, maintain, own, lease, and operate station houses, depots, warehouses, terminals, terminal facilities, hotels, restaurants, places of recreation or amusement, parks, and to conduct a general transportation business

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in all its branches, without in any particular limiting any of the objects or purposes of the corporation; the business or purposes of the corporation to be from time to time to do any one or more of the acts set forth, and all other such acts, things, or businesses in any manner connected therewith or necessary incident or auxiliary thereto, or calculated directly or indirectly to promote the interests of the corporation or enhance the value of, or render profitable any of its property or rights as such a corporation may lawfully do in carrying on its business or for the purpose of attaining or furthering any of its objects.

13. To do any and all acts or things and to exercise any and all power which a natural person could do and exercise and which now or hereafter may be authorized by law and either as or by or through its principals, agents, attorneys, trustees, contractors, factors, lessors, lessees, or otherwise, either alone or in conjunction with others; and in addition, to have and to exercise all of the rights, powers, and privileges now and hereafter belonging to or conferred upon a corporation organized under the provisions of the law authorizing the formation of such corporations, except that nothing in these articles. contained shall be construed to authorize the corporation to conduct the business of a bank, insurance company, or trust company.

ARTICLE 3

The amount of the capital stock is $500,000.

ARTICLE 4

The number of shares of which the capital stock shall consist is 5,000 shares of the par value of $100 per share, and the corporation shall begin business with the total amount of capital stock paid up.

ARTICLE 5

The principal place of business of the corporation is to be located in the city of Burns, Oreg., but the corporation shall have the power to maintain an office at the city of St. Maries, Idaho, and the books and meetings of the board of directors may be kept and held at either of said offices.

ARTICLE V

The duration of the corporation is to be perpetual.

In witness whereof we, the undersigned, have hereunto set our hands and seals in triplicate this 31st day of October, 1923.

[SEAL.] FRED HERRICK.
[SEAL.] JAMES W. GIRARD.
[SEAL.] FRANK J. KLOBUCHER.

Witnesses:
J. PALMER,
OSCAR G. HOLEN,
(To the signature of Fred Herrick).

J. W. BIGGS,
MARY L. BLOTT,
(To the signatures of James W. Girard and Frank Klobucher)

STATE OF IDAHO,
County of Benewal, ss:

Be it remembered, that on the 31st day of October, A, D. 1923, before me, the undersigned, a notary public in and for the said county and State, personally appeared the within-named Fred Herrick who is known to me to be the identical individual described in and who executed the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[NOTARIAL SEAL.] M. P. FREDERICKS,
Notary Public for Idaho.

My commission expires April 19, 1926.

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STATE OF OREGON,
County of Harney, ss:

Be it remembered, that on this 3d day of November, A. D. 1923, before me, the undersigned, a notary public in and for said county and State, personally appeared the with-named James W. Girard and Frank Klobucher, who are known to me to be the identical individuals described in and who executed the foregoing instrument and acknowledged to me that they executed the same freely, and voluntarily and for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[NOTARIAL SEAL.] MARY L. BLOTT,
Notary Public for Oregon.

My commission expires March 28, 1924.

(Indorsed : 26394. Articles of incorporation of Malheur Railroad Co. Filed the office of the corporation commissioner of the State of Oregon at 2.30 o'clock p. m. the 5th day of November, 1923. W. E. Crews, corporation commissioner.)

INFORMATION BLANK FOR THE CORPORATION DEPARTMENT
OF THIS STATE OF OREGON

1. Full name of company Malheur Railroad Co., an Oregon corporation.
2. When organized? November 16, 1923.
3. The nature, and general plan of the business to be followed: To build a railroad from Burns, Oreg., to Seneca, Oreg.

4 The authorized capital stock, $500,000, consisting of 5,000 shares; par value, $100 each.
5. The amount thereof subscribed at time of organization and election of officers, $500,000 ; the amount remaining unsubscribed, none.
6. Will any of the above stock be for sale by the company to any person, copartnership, or corporation other than those participating in the incorporation and initial organization of this company? Not at this time.
7. Mention what, if any bonds, notes, contracts or other securities are to be issued by the company: None at this time.
8. The officers and directors, and their addresses, are as follows: Fred Herrick, St. Maries, Idaho, president; James W. Girard, Burns, Oreg., vice president; Frank J. Klobucher, Burns, Oreg., secretary-treasurer.

JAMES W. GIRARD, *Vice President*.
FRANK J. KLOBUCHER, *Secretary.*

BURNS, OREG., *November 20, 1923.*

AFFIDAVIT OF EXEMPTION

STATE OF OREGON,
County o f Harney, ss:

I, James W. Girard, and I, Frank J. Klobucher, being first duly sworn, depose and say:

That I, James W. Girard, am the duly elected, qualified, and acting vice president, and that I, Frank J. Klobucher, am the duly elected, qualified, and acting secretary of Malheur Railroad Co., a corporation formed under and by virtue of the laws of the State of Oregon; that I am fully conversant with, and qualified and authorized to speak of, the affairs of the said corporation; that the said corporation does not intend to deal in any stocks, bonds, notes, contracts, or other securities covered by Chapter II, Title XXXIX, Oregon laws, as amended, within the State of Oregon, underwriting or purchasing such securities and reselling to any person or persons within the State of Oregon at a commission or profit; that the said corporation does not now come under and within the definition, scope, or practice of a dealer as defined and set out A Chapter II, Title XXXIX, Oregon laws, as amended.

That no stock, bonds, notes, contracts, or other corporate securities of this corporation will be sold, transferred or issued to any person, copartnership or corporation, other than those participating in the incorporation and initial organization of this company, without first having obtained from the Corporation

Commissioner a permit so to do; provided, this affidavit shall in no way
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prejudice any sale, by the bona fide owner of such corporate securities, not made in the course of repeated and continuing transactions of a similar nature.

JAMES W. GIRARD, *Vice President.*
FRANK J. KLOBUCHER, *Secretary.*

Subscribed and sworn to before me by tile said James W. Girard and the said Frank J. Klobucher, above named, on this 20th day of November, 1923, at Burns, Oreg.

[NOTARIAL SEAL.] MARY L. BLOTT,
Notary Public for the State of Oregon.

My commission expires March 28, 1924.

ANNUAL REPORT TO THE CORPORATION DEPARTMENT FOR THE YEAR ENDING JUNE 30, 1924, OF MALHEUR RAILROAD CO., A CORPORATION ORGANIZED AND EXISTING, UNDER AND PURSUANT TO THE LAWS OF THE STATE OF OREGON

The location of its principal office is at No. _____ Street, in the city of Burns in the State of Oregon.
The names and addresses of principal officers, with the post-office address of each, are as follows:
Fred Herrick, president, St. Maries, Idaho.
James W. Girard, vice president, Burns, Oreg.
Frank J. Klobucher, secretary-treasurer, Burns, Oreg.
The date of the annual election of officers is first Monday in January annually. The date of the annual election of directors is first Monday in January annually.

Amount of authorized capital stock $500, 000
Number of shares of authorized capital stock 5,000
Par value of each share $100
Amount of capital stock issued for cash None.
Amount of capital stock issued for property (personal or real) None.
Amount of capital stock paid up None.

Price at which no par value stock issued: —
State amount of capital, represented by stock of no par value, with which the corporation began business: —

In witness whereof I, James M. Girard, vice president of said corporation, have signed this report this 10th day of June, A. D. 1824.

[SEAL.] JAMES W. GIRARD.

STATE OF OREGON,
County of Harney, ss:

I, James W. Girard, of the above and foregoing named corporation, being first duly sworn, depose and say, upon oath, that the foregoing report is a full, true, and correct statement of the matters therein contained, according to the best of my information, knowledge, and belief.

JAMES W. GIRARD.

Corporation department, State of Oregon. Received June 12, 1924.
Subscribed and sworn to before me this 10th day of June, A. D. 1924.

[SEAL.] VELLA M. WELCOME,

Notary Public for Oregon.

My commission expires May 27, 1927.

ANNUAL REPORT TO THE CORPORATION DEPARTMENT FOR THE YEAR ENDING JUNE 30, 1925, OF MALHEUR, RAILROAD CO, A CORPORATION ORGANIZED AND EXISTING UNDER AND PURSUANT TO THE LAWS OF THE STATE OF OREGON

The location of its principal office is in the city of Burns, it the State of Oregon.

The names and addresses of the principal officers, with the post-office address of each, are as follows:

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Fred Herrick, president, St. Maries, Idaho.
Frank J. Klobucher, secretary, Burns, Oreg.
Frank J. Klobucher, treasurer, Burns, Oreg.

The date of annual election of officers is second Tuesday in January. The date of the annual election of directors is second Tuesday in January.

Amount of authorized capital stock $500,000
Number of shares of authorized capital stock 5,000
Par value of each share $100
Amount of capital stock subscribed $500,000
Amount of capital stock issued for cash None.
Amount of capital stock issued for property (personal or real) None.
Amount of capital stock paid up None.

Price at which no par value stock issued: —

State amount of capital, represented by stock of no par value, with which the corporation began business: —

In witness whereof, I, Frank J. Klobucher, of said corporation have signed this report this 26th day of June, A. D. 1925.

[SEAL.] FRANK J. KLOBUCHER.

STATE OF OREGON,
County of Harney, ss:

I, Frank Klobucher, of the above and foregoing named corporation being first duly sworn, depose and say, upon oath, that the foregoing report is a full, true, and correct statement of the matters therein contained according to the best of my information, knowledge, and belief.

FRANK J. KLOBUCHER.

Subscribed and sworn to before me this 26th day of June, A. D. 1925.

[SEAL.] E. H. CONSER,
Notary Public for Oregon.

My commission expires March 23, 1929.

Corporation department—Received July 1, 1925, State of Oregon. Corporation Department—Received July 30, 1925, State of Oregon.

ANNUAL REPORT TO THE CORPORATION DEPARTMENT FOR THE YEAR ENDING JUNE 3O, 1926, OF MALHEUR RAILROAD CO., A CORPORATION ORGANIZED AND EXISTING UNDER AND PURSUANT TO THE LAWS OF THE STATE OF OREGON

The location of its principal office is at No. _____ Street, in the city of Burns, in the State of Oregon.

The names and addresses of principal officers, with the post-office address of each, are as follows:

James W. Girard, vice president, Bums, Oreg.
Frank J. Klobucher, secretary, Burns, Oreg.
Frank J. Klobucher, treasurer, Burns, Ore.
The date of annual election of officers is first Monday in January each year. The date of the annual election of directors is first Monday in January each year.

Amount of authorized capital stock $500,000
Number of shares of authorized capital stock 5,000
Par value of each share $100
Amount of capital stock subscribed All.
Amount of stock issued for cash All.
Amount of capital stock issued for property (personal or real) None.
Amount of capital stock paid up All.

Price at which no par value stock issued: —
State amount of capital represented by stock of no par value, with which the corporation began business: —

In witness whereof, I, Frank J. Klobucher, secretary-treasurer of said corporation has signed this report, this 23d day of June, A. D. 1926.
[SEAL.] FRANK J. KLOBUCHER.
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STATE OF OREGON,
County of Harvey, ss:

I, Frank J. Klobucher, secretary-treasurer of the above and foregoing-named corporation, being first duly sworn, depose and say, upon oath, that the foregoing report is a full, true, and correct statement of the matters there contained, according to the best of my information, knowledge, and belief.

FRANK J. KLOBUCHER.

Corporation department, State of Oregon. Received June 28, 1926.

Subscribed and sworn to before me this 23d day of June, A. D. 1926.

[SEAL.] J. S. COOK,
Notary Public for Oregon.

My commission expires June 29, 1928.

Corporation department, State of Oregon. Received July 6, 1926.

STATE OF OREGON,
CORPORATION DEPARTMENT.

I, W. E. Crews, corporation commissioner and custodian of the seal of the corporation department of the State of Oregon, do hereby certify:
That I have carefully compared the annexed copy of articles of incorporation, certificate, and copy of resolution increasing the capital stock, annual report for the year ending June 30, 1924, annual report for the year ending June 30, 1926, annual report for the year ending June 30, 1926, and information blank and affidavit of exemption of the Fred Herrick Lumber Co. with the originals now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. I further certify that this authentication is in due form and by the proper officer.
In testimony whereof I have hereunto set my hand and affixed hereto the seal of the corporation department of the State of Oregon.
Done at the Capitol, at Salem, Oreg., this 2d day of February, 1927.

[SEAL.] W. E. CREWS,
Corporation, Commissioner.

ARTICLES OF INCORPORATION

We, the undersigned, whose names are hereunto subscribed, do hereby associate ourselves together for the purpose of forming a corporation under and by virtue of the laws of the State of Oregon, and pursuant thereto do hereby make, sign, and acknowledge these articles of incorporation.

ARTICLE 1

The name of said corporation shall be Fred Herrick Lumber Co., and its duration shall be perpetual.

ARTICLE 2

The enterprise, business, or pursuit for which this corporation is formed is for the purpose of engaging in the general lumber, timber, milling, and allied interests, together with the building of such railroads, logging roads, and other things necessary in the full and complete operation thereof. It shall have power—

1. To manufacture, purchase, sell, and deal in lumber, boxes, sash and doors, standing timber of whatsoever kind, and all such other products and byproducts as are incidental thereto.

2. To purchase or otherwise acquire, hold, sell, and deal in landed property in the United States of America or in any State or dependency thereof and to develop the resources and to turn to account the lands, buildings, and rights for the time being of the company in such manner as may be deemed desirable, and in particular by logging off and reforesting said land.

3. To construct, conduct, equip, and maintain and own railway lines, and to buy or acquire in any way such lands as may be necessary for rights of way, sidings, depot sites, warehouse sites, or whatsoever other lands are

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necessary to carry into effect the business of constructing, equipping, conducting, maintaining, or owning a common-carrier railroad.

4. To purchase, lease, mortgage, own, operate, sell, or otherwise acquire dispose of rolling stock, rails, ties, and all kinds of equipment necessary the operation and maintenance of railway lines.

5. To construct, equip, own, maintain, buy, sell, lease, or otherwise acquire or dispose of sawmills, mill ponds, drying kilns, box factories, sash and door factories, or any other means of manufacturing lumber or any of the products or by-products thereof.

6. To construct, maintain, operate and own, sell, lease, or otherwise acquire or dispose of logging roads, chutes, flumes, and artificial waterways and other ways for the transportation of logs and other timber products.

7. To acquire water by purchase, development, or otherwise; to construct dams, reservoirs, water towers and water ways, laying of water mains, pipes, gates, valves, and hydrants; to furnish and sell water to manufactories, private corporations, associations, firms, and individuals for fire protection, manufacturing, power, irrigating, and domestic purposes; and to collect payment of rentals for the same.

8. To construct, equip, improve and develop, buy and sell public and private works of all kinds, including sewerage, drainage, gas, electric-supply power works, warehouses and buildings, public or private, tunnels, bridges, conduits, viaducts, and all other works of public or private use or utility, and to collect payment of rentals for same.

9. To acquire the good will, rights, and property of any person, firm, association or corporation and to pay for the same in cash, stocks of this company, bonds, or otherwise, and to hold or in any manner dispose of the whole or any part of the property so purchased; or to conduct in any lawful manner the whole or any part of the business so acquired, provided such business is within the authorization of the corporation law of the State of Oregon.

10. To apply for, obtain, register, purchase, lease, or otherwise to acquire and to hold, use, operate, and introduce, and to sell, assign, or otherwise dispose of any trade-marks, trade names, patents, inventions, improvements, and processes used in connection with or secured under letters patent of the United States, or elsewhere or otherwise, and to use, exercise, develop, or grant licenses in respect thereto.

11. To purchase, acquire, hold, dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its stocks, bonds, or other obligations, and while owner of such stock, bonds, or other obligations to possess and exercise in respect thereto all the rights, powers, and privileges of individual owners or holders thereof, and to exercise any and all voting power thereon.

12. To make, purchase, or otherwise acquire, deal in, and to carry out any contracts for or in relation to

any of the foregoing businesses that may be necessary and lawful under the act pursuant to which this corporation is organized.

13. To make any guaranty respecting dividends, stocks, bonds, contracts, or other obligations so far as the same may be permitted by corporations organized under said act governing the organization of corporations.

14. To do all and everything necessary, suitable and proper for the accomplishment of any of the purposes of the attainment of any of the objects or the furtherance of any of the powers hereinbefore set forth, either alone or in association with other corporations, firms, or individuals, and to do every other act or acts, thing or things, incidental or appurtenant to or growing out of or connected with the aforesaid business or powers or any part or parts thereof, provided the same be not inconsistent with the laws under which this corporation is organized. However, it is expressly provided that nothing in these articles shall be construed to authorize the corporation to conduct the business of banking, insurance, or trust company.

ARTICLE 3

The amount of capital stock is $500,000.

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ARTICLE 4

The number of shares of which the capital stock shall consist is 5,000 of the par value of $100 and the amount of capital stock with which said corporation will begin business is $500,000.

ARTICLE 5

The principal place of business of the corporation is to be located in the city of Burns, Oreg., but the corporation shall have the power to conduct its business in all its branches, or any part thereof, in any of the States or dependencies of the United States; to have one or more offices therein, to hold, purchase, mortgage, and convey real and personal property without limit as to amount in any such State or dependency but always subject to the laws thereof.

In witness whereof, we, the undersigned, have hereunto set our hands and seals in triplicate this 31st day of October 1923.

FRED HERRICK. [SEAL.]
JAMES W. GIRARD. [SEAL.]
FRANK J. KLOBUCHER. [SEAL.]

Witnesses:
J. C. PALMER,
OSCAR G. HOLEN,
(To the signature of Fred Herrick).

J. W. BIGGS,
MART L. BLOTT,
(To the signatures of James W. Girard and Frank Klobucher)

STATE OF IDAHO,
County of Benewal, ss:

Be it remembered, that on this 30th day of October, A. D. 1923, before me, the undersigned, a notary public in and for said county and State, personally appeared the within-named Fred Herrick, who is known to me to be the identical individual described in and who executed the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.] M. P. FREDRICKS,
Notary Public for Idaho.

My commission expires April 19, 1926.

STATE OF OREGON,
County of Harney, ss:

Be it remembered, that on this 3d day of November, A. D. 1923, before me the undersigned, a notary public in and for said county and State, personally appeared the within-named James W. Girard and Frank Klobucher, who are known to me to be the identical individuals described in and who executed the foregoing instrument, and acknowledge to me that they executed the wine freely and voluntarily and for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.] MARY L. BLOTT,
Notary Public for Oregon.

My commission expired March 28, 1924.

(Indorsed:) 20395. Articles of incorporation of Fred Herrick Lumber Co. Filed in the office of the corporation commissioner of the State of Oregon at 2.30 o'clock p. m. the 5th day of November, 1923.

W. E. CREWS,
Corporation Commissioner.

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INFORMATION BLANK FOR THE CORPORATION DEPARTMENT OF THE STATE OF OREGON

1. Full name of company: Fred Herrick Lumber Co., an Oregon corporation.
2. When organized: November 16, 1923.
3. The nature and general plan of the business to be followed: Manufacture and sale of lumber and all allied businesses.
4. The authorized capital stock: $500,000, consisting of 5,000 shares; par value $100 each.
5. The amount thereof subscribed at time of organization and election of officers, $500,000; the amount remaining unsubscribed, none.
6. Will any of the above stock be for sale by the company to any person, copartnership, or corporation other than those participating in the incorporation sand initial organization of this company? Not at this time.
7. Mention what, if any, bonds, notes, contracts, or other securities are to be issued by the company: None at this time.
8. The officers and directors, and their addresses, are as follows: Fred Herrick, St. Maries, Idaho, president; James W. Girard, Burns, Oreg., vice president; Frank J. Klobucher, Burns, Oreg., secretary-treasurer.

BURNS, Oreg., November 20, 1923.

(Kindly fill out the above, signed by two of the principal officers of the company, and return at once to the corporation commissioner. No fee is required for this blank. If the corporation is a close corporation, and no securities are to be issued of any kind whatsoever to any other than the organizers, the following should be executed also:)

AFFIDAVIT OF EXEMPTION

STATE OF OREGON,
County of Harney, ss:

I, James W. Girard, and I, Frank J. Klobucher, being first, duly sworn, depose and say:

That I, James W. Girard, am the duly elected, qualified, and acting vice president, and that I, Frank J. Klobucher, am the duly elected, qualified, and acting secretary of Fred Herrick Lumber Co., a corporation formed under and by virtue of the laws of the State of Oregon; that I am fully conversant with and qualified and authorized to speak of the affairs of the said corporation; that the said corporation does not intend to deal in any stocks, bonds, notes, contracts, or other securities covered by Chapter II, Title XXXIX, Oregon laws, as amended, within the State of Oregon, underwriting or purchasing such securities and reselling to any person or persons within the State of Oregon at a commission or profit; that the said corporation does

not now come under and within the definition, scope, or practice of a dealer as defined and set out in Chapter II, Title XXXIX, Oregon laws, as amended.

That no stocks, bonds, notes, contracts, or other corporate securities of this corporation will be sold, transferred, or issued to any person, copartnership, or corporation other than those participating in the incorporation and initial organization of this company, without first having obtained from the corporation commissioner a permit so to do: Provided., This affidavit shall in no way prejudice any sale, by the bona fide owner of such corporate securities, not made in the course of repeated and continuing transactions of a similar nature.

_____ _____ President.
_____ _____ Secretary.

Subscribed and sworn to before me by the said _____ _____ and the said _____ _____ above named, on this day of _____ 192 ___, at _____, Oreg.

[SEAL.] _____ _____ ,
Notary Public for the State of Oregon.

My Commission expires _____ 192____.

CERTIFICATE OF INCREASE AND DECREASE OF CAPITAL STOCK

Certificate and copy of resolutions increasing capital stock of Fred Herrick Lumber Co., a corporation.

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I, Frank J. Klobucher, Secretary of Fred Herrick Lumber Co., a corporation organized and formed under and by virtue of the laws of the State of Oregon, hereby certify that at a meeting of the stockholders of said corporation, duly and legally called and held at the principal office of said corporation at Street, in the city, of Burns, County of Harney, State of Oregon, at 1 o'clock p. m., on the 3d day of January, 1927, due and legal notice having been given of such meeting, which meeting was called for the purpose of increasing the capital stock of such corporation, that a majority of the stock of said corporation was present at such meeting of the stockholders thereof and voted; that the following is a full copy of the resolutions authorizing the increase of capital stock of said corporation:

Resolved, That the capital stock of this company be increased from 5,000 shares of the par value of $100 per share to 20,000 shares of the par value of $100 per share.

Such resolution was adopted by a vote of the majority of the stock of such corporation.

Witness my hand and the seal of said corporation affixed this 20th day of January, 1927.

[CORPORATE SEAL.] FRANK J. KLOBUCHER, *Secretary*.

STATE OF OREGON,
County of Harney, ss:

I, Frank J. Klobucher, being first duly sworn, upon my oath depose and say that I am secretary of Fred Herrick Lumber Co., a corporation; that the foregoing statement is true, and that the resolution therein as a full and complete copy of the resolution adopted at the meeting of the stockholders of said corporation, held at its principal office at _____ Street, in the city of Burns, State of Oregon, at 1 o'clock p. m. on the 3d day of January, 1927, which said meeting was called for the purpose of increasing the capital stock of said corporation; that there was present, either in person or by proxy, a majority of the stock of said corporation; and that said resolution increasing the capital stock of the Fred Herrick Lumber Co., a corporation from $500,000 to $2,000,000 was duly adopted by a vote of the majority of the stock of such corporation.

FRANK J. KLOBUCHER.

Subscribed and sworn to before me this 20th day of January, 1927.

[NOTARIAL SEAL.] J. S. COOK,
Notary Public for Oregon.

My commission expires June 29, 1928.

ANNUAL REPORT TO THE CORPORATION DEPARTMENT FOR THE YEAR ENDING JUNE 30, 1924, OF FRED HERRICK LUMBER CO., A CORPORATION ORGANIZED AND EXISTING UNDER AND PURSUANT TO THE LAWS OF THE STATE OF OREGON

The location of its principal office is at No. _____ Street, in the city of Burns, in the State of Oregon.

The names and addresses of principal officers, with the post-office address of each, are as follows:

Fred Derrick, president, St. Maries, Idaho; Frank J. Klobucher, secretary-treasurer, Burns, Oreg.; James W. Girard, vice president, Burns, Oreg.

The date of the annual election of officers is first Monday in January, annually. The date of the annual election of directors is first Monday in January, annually.

Amount of authorized capital stock $500,000
Number of shares of authorized capital stock 5,000
Par value of each share $100
Amount of capital stock subscribed $500, 000

In witness whereof I, James W. Girard, vice president of said corporation, have signed this report this 10th day of June, A. D. 1924.

[INCORPORATE SEAL.] JAMES W. GIRARD.

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STATE OF OREGON,
County o f Harney, ss:

I, James W. Girard, vice president of the above and foregoing named corporation being first duly sworn, depose and say, upon oath, that the foregoing report is a full, true, and correct statement of the matters therein contained, wording to the best of my information, knowledge, and belief.

JAMES W. GIRARD,

Subscribed and sworn to before me this 10th day of June, A. D. 1924.

[NOTARIAL SEAL.] VELLA M. WELCOME,
Notary Public for Oregon,

My commission expires May 27, 1927.

(Corporation department, State of Oregon. Received June 12, 1924.)

ANNUAL REPORT TO THE CORPORATION DEPARTMENT FOR THE YEAR ENDING JUNE 30, 1925, OF FRED HERRICK LUMBER CO., A CORPORATION ORGANIZED AND EXISTING UNDER AND PURSUANT TO THE LAWS OF THE STATE OF OREGON.

The location of its principal office is at No. _____ Street, in the city of Burns, in the State of Oregon.

The names and addresses of principal officers, with the post-office address of each, are as follows:

Fred Herrick, president St. Maries, Idaho; Frank J. Klobucher, secretary, Burns, Oreg.; Frank J. Klobucher, treasurer, Burns, Oreg.

The date of the annual election of officers is second Tuesday in January. The date of the annual election of directors is second Tuesday in January.

Amount of authorized capital stock $500,000
Number of shares of authorized capital stock 5,000
Par value of each share $100
Amount of capital stock subscribed $500,000
Amount of capital stock issued for cash $235,000
Amount of capital stock paid up $235,200

In witness whereof I, Frank J. Klobucher, of said corporation, have signed this report this 26th day of June, A. D. 1925.

[CORPORATE SEAL.] FRANK J. KLOBUCHER.

STATE OF OREGON,
County of Harney, ss:

I Frank J. Klobucher, of the above and foregoing named corporation, being first duly sworn, depose and say, upon oath, that the foregoing report is a full, true and correct statement of the matters therein contained, according to the best of my information, knowledge, and belief.

FRANK J. KLOBUCHER.

(Corporation department, State of Oregon. Received July 1, 1925.)

Subscribed and sworn to before me this 26th day of June, A. D. 1925.

[NOTARIAL SEAL.] E. H. CONSER,
Notary Public for Oregon.

My commission expires March 23, 1929.

(Corporation department. State of Oregon. Received July 20, 1925.)

ANNUAL REPORT TO THE CORPORATION DEPARTMENT FOR THE YEAR ENDING JUNE 30, 1926, OF FRED HERRICK LUMBER CO., A CORPORATION ORGANIZED AND EXISTING UNDER AND PURSUANT TO THE LAWS OF THE STATE OF OREGON

The location of its principal office is at No. _____ Street, in the city of Burns, in the State of Oregon.

The names and addresses of principal officers, with the post-office address of each, are as follows:

James W. Girard, vice president, Burns, Oreg.; Frank J. Klobucher, secretary, Burns, Oreg.; Frank J. Klobucher, treasurer, Burns, Oreg.

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The date of the annual election of officers is first Monday in January each year. The date of the annual election of directors is first Monday in January each year

Amount of authorized capital stock	$500,000
Number of shares of authorized capital stock	5,000
Par value of each share	$100
Amount of capital stock subscribed	All.
Amount of capital stock issued for cash	All.
Amount of capital stock issued for property (personal or real)	None.
Amount of capital stock paid up	All.

In witness whereof I, Frank J. Klobucher, secretary-treasurer of said corporation, have signed this report this 23d day of June, A. D. 1926.

[CORPORATE SEAL.] FRANK J. KLOBUCHER.

STATE OF OREGON,
County or Harney, ss:

I, Frank J. Klobucher, secretary-treasurer of the above and ,foregoing named corporation, being first duly sworn, depose and say upon oath that the foregoing report is a full, true, and correct statement of the matters therein contained, according to the best of my information, knowledge, and belief.

(Corporation department, State of Oregon. Received June 28, 1926.)

FRANK J. KLOBUCHER.

Subscribed and sworn to before me this 23d day of June, A. D. 1926.

[NOTARIAL SEAL.] J. S. COOK,
Notary Public for Oregon.

My commission expires June 29, 1928.
(Corporation department, State of Oregon. Received July G, 1926.)

Mr. DE NEFFE. I will now call Mr. Biggs.

TESTIMONY OF JOHN W. BIGGS, OF BURNS, OREG.

The CHAIRMAN. Mr. Biggs, you do solemnly swear that the evidence which you are about to give in the hearing now being held by this Subcommittee of the Senate Committee on Public Lands and Surveys will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BIGGS. I do.

The CHAIRMAN. You may just take the chair opposite the committee reporter.

(Direct examination lay Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Will you state your name, Mr. Biggs, if you please.

Mr. BIGGS. John W. Biggs.

Mr. DE NEFFE. And where do you reside?

Mr. BIGGS. At Burns, Oreg.

Mr. DE NEFFE. How long have you lived there?

Mr. BIGGS. Since 1892.

Mr. DE NEFFE. What is your business or profession?

Mr. BIGGS. Lawyer.

Mr. DE NEFFE. And how long have you been practicing in Burns?

Mr. BIGGS. Since October, 1894.

Mr. DE NEFFE. And prior to that time did you practice law?

Mr. BIGGS. No; I was admitted to practice at that time.

Mr. DE NEFFE. What has been the nature of your practice?

Mr. BIGGS. Well, it has been a general practice. I have not specialized in anything particularly.

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Mr. DE NEFFE. During the course of your practice have you had occasion to prepare and construe or to have much to do with contracts?

Mr. BIGGS. Quite a bit.

Mr. DE NEFFE. Have you been in close touch with the Herrick project since its inception?

Mr. BIGGS. Yes.

Mr. DE NEFFE. Now, starting with after the contract was let had you any occasion to observe anything about how the work was going forward?

Mr. BIGGS. I was interested as any other person in that country would be in the progress of the work at all times.

Mr. DE NEFFE. You have property interests there?

Mr. BIGGS. Yes, sir; some.

Mr. DE NEFFE. Your family and relatives have property interests there?

Mr. BIGGS. Yes, sir.

Mr. DE NEFFE. And as a citizen and owner of property you were naturally interested in having the country developed and the work go on as fast as possible, I take it.

Mr. BIGGS. Yes, sir.

Mr. DE NEFFE. Did you have occasion to drive over this proposed right of way north of Burns at any time?

Mr. BIGGS. Yes; during the summer time I passed over the full length of the road practically once a week. I generally drove to Bear Valley early Sunday morning when the weather was good, and back again Sunday afternoon.

Mr. DE NEFFE. Have you ever talked with any of the contractors with regard to the cause of delay of the prosecution of this work?

Mr. BIGGS. Yes; at times I have stopped and talked with the contractors. I knew the greater portion of them there, and as to what —

Mr. DE NEFFE (interposing). You knew them personally

Mr. BIGGS. Yes.

Mr. DE NEFFE. Did any of them make any statement as to the cause of the work lagging?

Mr. BIGGS. Oh, they have made a number of statements, a number of them have.
Mr. DE NEFFE. What were those statements?

Mr. BIGGS. Well, at times they said that the company would not allow them to put on a force sufficient to go ahead and handle their contracts in a manner in which they could make a reasonable profit out of the work; that the minute they would put on a large force of any kind they would be notified that the company did not have the money to pay them on that, and that they must cut down their work. In fact, two of the contractors were informed that at different times —

Mr. HALLOCK (interposing). Pardon me just a moment, if you will, Mr. De Neffe?

Mr. DE NEFFE. All right.

Mr. HALLOCK. I do not know whether the subcommittee is disposed to entertain so much hearsay. I do not want to object to it if it is the subcommittee's wish to hear it. I merely direct attention to the

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fact that this is by no means the best evidence and that it is largely hearsay.

Mr. DE NEFFE. We should have liked to bring witnesses here according to the list furnished to the chairman,

but, as heretofore stated, the chairman said that the money allowed for these hearings would not permit of bringing anything like the number of witnesses asked by any of the parties to this controversy.

The CHAIRMAN. You may go ahead.

Mr. DE NEFFE. Go right ahead with your statement, Mr. Biggs.

Mr. BIGGS. In fact —

Senator WALSH of Montana (interposing). Excuse me just a moment. I was trying to think of our situation: As to declarations made by people conducting the work, and while they were conducing it, that might be legitimate evidence, but as to the value of it there may be different views.

Mr. HALLOCK. May I ask one question in that connection?

The CHAIRMAN. Yes.

Mr. HALLOCK. These gentlemen whom you are about to quote, Mi. Biggs, are not employees of the Fred Herrick Lumber Co., but contractors or others working on specific units of the work, is that right?

Mr. BIGGS. Yes; they were contractors.

Mr. HALLOCK. I just wanted to know that situation.

Mr. DE NEFFE. All right, Mr. Biggs, you may proceed with you testimony.

Mr. BIGGS. One of the contractors told me that whenever the weather was such that he could put on a good force and make a little time, he was notified not to do it; but for the purpose of carrying it through and to keep from losing on his contract that he put on a large force at one time and carried his own pay roll for a period of three months.

Mr. DE NEFFE. Who told him not to speed the work up?

Mr. BIGGS. He said that Mr. Klobucher was the one that instructed him not to speed up the work, but to hold it back.

Mr. DE NEFFE. And who is Mr. Klobucher?

Mr. BIGGS. He was the engineer in charge.

Mr. DE NEFFE. For the Fred Herrick interests?

Mr. BIGGS. Yes, sir.

Mr. DE NEFFE. Now, there was a meeting held on February 15, 1925, at Burns, Oreg., was there not?

Mr. BIGGS. Yes.

Mr. DE NEFFE. Who was present representing the Forest Service?

Mr. BIGGS. I could not say all, but as far as I remember Mr. Carter was there and Mr. Ames —

Mr. DE NEFFE (interposing). Who is Mr. Carter?

Mr. BIGGS. Mr. Carter was from the General Land Office in Washington, D. C.

Mr. DE NEFFE. That is, he was from the Forest Service right here in Washington?

Mr. BIGGS. Yes; and —

Mr. DE NEFFE (interposing). Just a minute. What is the official position that Mr. Carter held, Mr. McGowan?

Mr. MCGOWAN. It is the Assistant Forester.

Mr. DE NEFFE. He is under Colonel Greeley?

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Mr. MCGOWAN. Yes; under Colonel Greeley. What ,was that date, Mr. Biggs?

Mr. DE NEFFE. It was February 15, 1925.

Mr. BIGGS. I don't remember the date, any more than it was the meeting in February, 1925. I remember the month but, do not remember the date.

Mr. DE NEFFE. What other Forest Service officials were there?

Mr. BIGGS. Mr. Carter, Mr. Ames, Mr. Dutton, and Mr. Granger, I think. I think all those, and I don't recall now any others besides them.

Mr. DE NEFFE. Who represented the Herrick interests at that meeting?

Mr. BIGGS. I couldn't tell you.

Mr. DE NEFFE. Was Mr. Girard there, or do you know?

Mr. BIGGS. I think so, although I don't remember positively whether he was there at that, time or not.

Mr. DE NEFFE. Was Mr. Klobucher there?

Mr. BIGGS. I could not say.

Mr. DE NEFFE. Who else was there?

Mr. BIGGS. There were other people, to the number of, as well as I can remember now, something like trolls 20 to 30 or 35 people.

Mr. DE NEFFE. Was the meeting generally advertised?

Mr. BIGGS. I hadn't heard of it until about 15 minutes before the meeting.

Mr. DE NEFFE. Where was it held'?

Mr. BIGGS. At the courthouse at Burns?

Mr. DE NEFFE. Did Mr. Girard or Mr. Klobucher inform you, or did the Forest Service inform you?

Mr. BIGGS. No; one of my friends called me up and asked me to come up, at that time. I went up to the meeting then. That was just before it convened.

Mr. DE NEFFE. And at that meeting the status of the work was generally discussed, was it?

Mr. BIGGS. It was.

Mr. DE NEFFE. And the purpose of the meeting, what did you understand it. to be?

Mr. BIGGS. The purpose of the meeting, as stated by Mr. Carter, I think, was this: That Fred Herrick had fallen behind in his contract, and would not be able to complete it on time; that he had applied for an extension, and that he wished the expression of the people there as to the extension of that contract.

Mr. DE NEFFE. The first extension, as the record shows, was March 3, 1925, so this was just prior to that

time?

Mr. BIGGS. This was just prior to that. A short time prior to that.

Mr. DE NEFFE. Was any statement made by the Herrick people as to whether they were behind or on schedule with their requirements?

Mr. BIGGS. I can not recall them having said a word there at that meeting, and for this reason: This statement was made by Mr. Carter that he had, prior to coming up there, been down and had a meeting with the officers of the Fred Herrick Lumber Co. and the Malheur Railroad Co. He said that he had a meeting, and had talked over the work, and had discussed it with them.

Mr. DE NEFFE. Did he say anything about whether the work was up to schedule or not?

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Mr. BIGGS. Oh well, it was absolutely not up to schedule. That was apparent everywhere, because the first contract at that time was admitted to be behind, admitted by all.

Mr. DE NEFFE. Have you seen Exhibit No. 9 which contain the contract and the numerous modifications of it?

Mr. BIGGS. I have.

Mr. DE NEFFE. Have you a copy of it in your pocket?

Mr. BIGGS. No.

Mr. DE NEFFE, Where is that copy. You had one. Maybe I have it.

Mr. BIGGS. Well, might I refer to this one which is marked "Exhibit No. 9"?

Mr. DE NEFFE. Yes; if you wish. The only thing is that I have my office copy paged.

Mr. MCGOWAN. What is that?

Mr. DE NEFFE. I stated that I had an office copy of the contract with modifications, which I paged for easy reference. I thought I handed it to you this morning, Mr. Biggs?

Mr. BIGGS. Oh, here it is. I had laid it down on the chair behind me.

Mr. DE NEFFE. If you will refer to that.

Mr. BIGGS. All right.

Mr. DE NEFFE. Have you studied that over?

Mr. BIGGS. I have since Saturday. I never saw the contract or any copy of it until last Saturday.

Mr. DE NEFFE. Now, will you refer to the page, which I have numbered 39—well, this is my own paging, and maybe I better identify it, so that in any copy it may be easily found. It is on page 3 of the first modification dated March 3, 1925, paragraph 4 (Exhibit No. 9). Are you familiar with that paragraph?

Mr. BIGGS. Yes.

Mr. MCGOWAN. May I make a suggestion right there just for the sake of keeping the record clear, Mr. De Neffe?

Mr. DE NEFFE. Certainly.

Mr. MCGOWAN. The paragraph to which you have referred is paragraph 4 of the stipulations with

accompanying modifications, that is a correct statement, is it not?

Mr. DE NEFFE. Yes; that is right. As I understand these portions became a part of the contract, did they not?

Mr. MCGOWAN. They became a part of the modifications of the agreement.

Mr. DE NEFFE. Now Mr. Biggs, what effect would you say that paragraph 4 would have on the matter as to whether this railroad when finished north of Burns to Seneca, would be in actual practice a common-carrier railroad?

Senator WALSH of Montana. Well, really I do not believe that we better get expert legal advice on that. That would give rise to considerable controversy I think.

Mr. DE NEFFE. Then I will withdraw that question, although I think Mr. Farre went into it.

Senator WALSH of Montana. I should like to inquire of the witness what was understood in that locality by the term "logging railroad"?

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Mr. BIGGS. We do not know. We have never had any logging railroads in there, in that part of the country; but there was a road built primarily for that purpose in the next county, in which it was held up as for logging purposes for a number of years.

Senator WALSH of Montana. You live in a lumbering country, and no doubt the term "logging railroad" has been used there. And I think Colonel Greeley used it in a newspaper interview.

Mr. BIGGS. In our country a logging railroad is referred to as one that just carries logs. It is just made primarily for the purpose of logging operations. That is the general term that is used there.

Senator WALSH of Montana. How does it differ from any ordinary railroad?

Mr. BIGGS. Probably it might not be built to carry anything else except logs.

Senator WALSH of Montana. You say "probably it might not." You people are more familiar with the term than some of the rest of us, so I should like to know of you what it means.

Mr. BIGGS. Senator, for one thing I should like to say this, that up to this time our county has never been a timber county. This is the first time operation directly in our county.

Senator WALSH of Montana. So as a term of art you are not familiar with it?

Mr. BIGGS. I am not familiar with it.

Senator WALSH of Montana. All right.

Mr. DE NEFFE. You said that there was a logging railroad in the next county; what county was that?

Mr. BIGGS. That was in Grant County.

Mr. DE NEFFE. Where did that run between, what, points?

Mr. BIGGS. From Austin to Prairie City was what I had in mind.

Mr. DE NEFFE. Up to Austin it was what kind of a railroad?

Mr. BIGGS. It was a common carrier railroad.

Mr. DE NEFFE. And then from Austin down to Prairie City it was a logging railroad, do you say?

Mr. BIGGS. Yes: for a number of years.

Mr. DE NEFFE. Did it carry passengers?

Mr. BIGGS. Only by special arrangement.

Mr. DE NEFFE. They could if they wanted to, or they could refuse to do so if they wanted to?

Mr. BIGGS. Yes. That is the way I have understood it. I am not stating this positively from my own knowledge.

Mr. DE NEFFE. Now refer to paragraph 3 of the original contract. You have studied that, have you?
Mr. BIGGS. Yes, sir.

Mr. DE NEFFE. Have you studied that same paragraph in the prospectus?

Mr. BIGGS. Yes.

Mr. DE NEFFE. And do you find any difference between the two paragraphs?

Mr. BIGGS. Yes; it absolutely changes the situation. That paragraph has been changed so that it absolutely changes the full meaning of the contract, entirely. I will call attention to the situation if you will just hand it to me.

Mr. DE NEFFE. You mean paragraph 3 practically entirely changes the contract as following the prospectus?

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Mr. BIGGS. It changes the whole contract, not only paragraph 3 but the whole contract.

Mr. DE NEFFE. Now, is there anything in that contract, and I mean in that paragraph 3 of the contract, Exhibit No. 9 which to your mind indicates that there was fraud and collusion in the making of that contract?

Mr. BIGGS. A good deal. The party who represented the Forest Department in drawing this contract must have been in collusion with the Fred Herrick people.

Mr. DE NEFFE. What makes you think so?

Mr. BIGGS. In the first place, the contract has set out as one provision that subsequent —

Mr. DE NEFFE (interposing). The contract has set out where?

Mr. BIGGS. I mean in the prospectus. It has this provision in it, that subsequent to 1931 during each three-year period they shall cut not less than 100,000,000 feet nor more than 175,000,000 feet.

Mr. DE NEFFE. It makes it compulsory to cut at least 100,000,000 feet.

Mr. BIGGS. At least 100,000,000 feet each three years and not more than 175,000,000 feet.

Mr. DE NEFFE. All right, go ahead.

Mr. BIGGS. That paragraph is cut out entirely in this contract, and nothing has been put in in its place. Secondly, when it describes the minimum amount and the maximum amount this contract is so worded —

Mr. DE NEFFE (interposing). Which contract do you refer to?

Mr. BIGGS. The contract that is signed by Mr. Herrick is so worded that if he sees fit during periods of from 6 years to 10 years he does not have to turn a wheel.

Mr. DE NEFFE. Do you mean that his mill could lie idle?

Mr. BIGGS. His mill could lie idle for a period of from 6 years to 10 years under that contract. Secondly —

Senator WALSH of Montana (interposing). I think you better explain that a little more fully.

Mr. BIGGS. It says "unless such amounts are changed in writing by the district forester" —

Senator WALSH of Montana (interposing). Now, what paragraph is that?

Mr. BIGGS. It is paragraph 3, the second section of that paragraph 3, of the original contract signed by Mr. Herrick.

Mr. HALLOCK. And that is not as it appears in the prospectus.

Mr. BIGGS. This is the contract as signed by Mr. Herrick.

Mr. HALLOCK. I see. That is what I want to get clear.

Mr. BIGGS. Yes. And under that it gives a period of from 6 years to 10 years that they do not have to operate at all.

Senator WALSH of Montana. Will you just explain that to us?

Mr. BIGGS. In the first place, it does not require any specified amount to be cut during any given period, but provides lump sums which may be cut prior to certain periods, both as to the minimum and the maximum.

Now, if Mr. Herrick cuts the maximum in 1931, which is 150,000,000 feet, he does not have to cut a stick of timber until 1937, because the minimum does not reach the maximum until 1937. Now,

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if he has cut the maximum in 1934, which is 450,000,000 feet, he then does not have to turn a wheel until 1943, because the minimum does not catch the maximum again from 1934 until 1943. So, instead of making specific amounts that ought to be cut each three years, it gives a minimum which he may cut to certain periods and a maximum which must be cut prior to certain periods.

The CHAIRMAN. Are those provisions of the original contract that was signed by Mr. Herrick?

Mr. BIGGS. Before I made this statement I asked for the original contract this morning, and I checked it with the copy which they have here.

The CHAIRMAN. Well, I mean those provisions are not modifications of the original contract?

Mr. BIGGS. They are not in the modification. They are the original contract as drawn at the time. Consequently the original contract provides—or I mean the contract as set out in the prospectus, it makes a maximum of 175,000,000 feet which may be cut, in any three-year period. But under this contract they could cut, if they saw fit, on a basis of 890,000,000. That being so they could cut in the three-year period 430,000,000, and if there is more than 890,000,000, they can cut the proportionate amount more than that. And that I will refer to as in this respect: Suppose that he has cut the minimum only up until 1937, which is 320,000,000 feet. Then between that time and 1943 he may cut to the maximum, which is 750,000,000, which makes 430,000,000 that he can cut in that period if he has been cutting the minimum up to that time, wad then wants to reach the maximum.

Mr. DE NEFFE. Let me ask you this: In the contract as set out in the prospectus was there anything which made it compulsory on Mr. Herrick, or whoever might get this contract, to cut after June 1, 1931, any particular amount, of timber?

Mr. BIGGS. It did. It required in the original contract that for a three-year period at least 100,000,000 feet should be cut and not more than 175,000,000 feet.

Mr. DE NEFFE. You mean in the prospectus?

Mr. BIGGS. Yes; I mean in the prospectus.

Senator WALSH of Montana. You speak of the different papers in a way that the record will not be clear. When you speak of the prospectus, or the form of contract set forth in the prospectus, I think you better mention that fact, and when you speak of the contract actually signed by Mr. Herrick you better speak of the contract that he signed. Then we will get it straight.

Mr. BIGGS. In the prospectus, then.

Mr. DE NEFFE. Yes. There was not any provision in the prospectus of a three-year period that he could get out of cutting at least as much as 100,000,000 feet?

Mr. BIGGS. No.

Mr. DE NEFFE. He was compelled to cut that much according to the prospectus.

Mr. BIGGS. Yes.

Mr. DE NEFFE. And that would enable the community during every three-year period to have a certain income, is that right?

Mr. BIGGS. It would.

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Mr. DE NEFFE. And you say under this plan that during three to five and ten years he does not have to cut anything?

Mr. BIGGS. He does not have to turn a wheel under this contrast.

Mr. DE NEFFE. By cutting the maximum amount —

Mr. BIGGS (continuing). After any one three-year period he can lay off as long as nine or ten years without cutting anything more.

Mr. DE NEFFE. When this timber was put on the market was it considered that it should be a continuous operation.?

Senator WALSH of Montana. You will have to refer to the prospectus for that.

Mr. DE NEFFE. I will ask if there is anything in the prospectus which provides for continuous operation?

Mr. BIGGS. It says that it is the intention of placing this on the market at this time to make a continuous operation on the timber.

Mr. DE NEFFE. Were the people of those two counties interested in having a continuous operation?

Mr. BIGGS. Certainly.

Mr. DE NEFFE. Why?

Mr. BIGGS. Well, it gives a steady income instead of a large amount one year and nothing doing then for maybe several years. It means stability for the other industries of the community.

Mr. DE NEFFE. What proportion of the money from this timber would Harney County get?

Mr. BIGGS. Thirty-five per cent of that proportion of the sales that belong to that county.

Mr. DE NEFFE. That would be about how much a year?

Mr. BIGGS. Well, on an average basis it would mean probably, I think, or at least it has been figured out about $27,000 to $30,000 a year for Harney County and at probably $50,000 for Grant County.

Mr. DE NEFFE. Those two counties, were they wanting that money for a particular purpose?

Mr. BIGGS. Well, Grant County particularly —

Senator WALSH of Montana (interposing). I think that is a little too remote.
Mr. DE NEFFE. Well, I will withdraw it. Burns was interested in having a steady operation of the sawmill?

Mr. BIGGS. Of course.

Mr. DE NEFFE. Under this contract the right that is given to Mr. Herrick in regard to this cutting and laying off, would Burns have a steady pay roll?

Mr. BIGGS. No.

Mr. DE NEFFE. And a steady industry?

Mr. BIGGS. No.

Mr. DR NEFFE. There would be periods as you have stated, when he could shut the mill down and stop logging operations up in Beaver Valley {*sic*}?

Mr. BIGGS. Yes.

Mr. DE NEFFE. Explain how under this method of cutting that you explained here, Mr. Herrick would take advantage of a high or a low market, how would that operate?

Mr. BIGGS. He could cut the minimum at any time on a low market, or lay off for a period of front 6 to 8 or 9 or 10 years if the market was not right.

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Mr., DE NEFFE. That is, he could start out, and say the market was good, he could take his maximum cut during his first three-year period?

Mr. BIGGS. Yes.

Mr. DE NEFFE. Then he could lay off for five or six years if the market was low, and not cut any more at all, and wait for a high market; is that right?

Mr. BIGGS. Yes.

Mr. DE NEFFE. Then when the market came up he could take the maximum cut immediately, is that right?

Mr. BIGGS. Yes.

Mr. DE NEFFE. And then if the market continued to be good he would quit of course when he got to his maximum cut, but if the market commenced to drop off he could quit as long as he wanted to and then start up again when the market was good.

Mr. BIGGS. Yes.

Mr. DE NEFFE. You may take the witness.

Senator CAMERON. Did you ever hear at any time discussed by Mr. Herrick or Mr. Girard anything about a common-carrier railroad?

Mr. BIGGS. I have never discussed anything of that kind with Mr. Herrick at all, and never with Mr. Girard, except at the time that the relation of attorney and client existed between us.

Mr. DE NEFFE. Well, do I understand that you were in a privileged position and do not want to tell what that conversation was?

Mr. BIGGS. I think those communications were privileged, and I would not want to tell them.

Mr. DE NEFFE. Would you gentlemen waive the privilege?

Senator WALSH Of Montana. Oh, no; do not ask that.

Mr. HALLOCK. Frankly, Senator Walsh, I did not hear what that was. I was reading a memorandum here.

Senator WALSH of Montana,. Well, never mind. Go ahead.

Mr. DE NEFFE. I do not know what it is at all, and you may take the witness.

(Cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. You spoke of having been in the employ of Mr. Herrick as his attorney at one time, is that correct?

Mr. BIGGS. I was.

Mr. HALLOCK. But that relationship does not exist now?

Mr. BIGGS. It does not.

Mr. HALLOCK. Due to the fact that some difficulty arose over the matter of your compensation, is that true?

Mr. BIGGS. That is the reason that we stopped.

Mr. HALLOCK. And that matter is unadjusted at this time?

Mr. BIGGS. It never has been adjusted.

Mr. HALLOCK. You are the personal attorney of Mr. Barnes at this time?

Mr. BIGGS. I have been, but I am not retained by him in any way at this time, well, I will take that back, for there is one matter yet that I am still retained by Mr. Barnes for.

Mr. HALLOCK. We were discussing the other day some, satisfactory settlements of lawsuits that Mr. Barnes was a party to, either as plaintiff or defendant, involving the Herrick interests in Harney

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and Grant Counties. I think, with one exception, you appeared as counsel for Mr. Barnes in all those cases, is not that correct?

Mr. BIGGS. I think so.

Mr. HALLOCK. The exception being a case down in Multnomah County, in the western part of the State.

Mr. BIGGS. Yes.

Mr. HALLOCK. The other day one of the witnesses had something to say with respect to a statement regarding Mr. Herrick that was credited to Mrs. Blott. Mrs. Blott is a stenographer in your employ, is she not?

Mr. BIGGS. She was at one time, but is not now.

Mr. HALLOCK. And she was formerly in Mr. Herrick's employ?

Mr. BIGGS. Yes. Sir.

Mr. HALLOCK. And was subsequently employed by you?

Mr. BIGGS. Yes. Well, she had been employed by me for 15 years before Mr. Herrick came and then she went there for probably six or eight months or so, and then came back to my office.

Mr. HALLOCK. Mr. Biggs, I was interested in your analysis of what might occur under the terms of the contract as it had been changed. Now, if Mr. Herrick or anyone else, under the provisions of that contract, had an investment in there of something like $3,000,000, coupled with the obligation to operate a common-carrier railroad, and with perhaps 99 per cent of the tonnage over that railroad forest products, you do not want to leave the impression, do you, that in your opinion a man would discontinue his operations for a period of years under that kind of an investment?

Mr. BIGGS. I can only say what he could do, Mr. Hallock and not what he might do.

Mr. HALLOCK. You would say, would you not, John, that a situation of that kind would be the remotest sort of possibility?

Mr. BIGGS. Well, things have happened in the last few years that seemed very remote at one time.

Mr. HALLOCK. I do not want to pursue that at great length, but would not you say, as a business man, and I know you are one, and I know of your interests up there, that in all likelihood, with a $3,000,000 investment, coupled with a common-carrier obligation, in the situation that I have suggested here, with the tonnage substantially forest products, it could not be permitted to remain idle for any appreciable period of time without virtually bankrupting the owners.

Mr. BIGGS. It might be a pretty good excuse to have that stopped and take bankruptcy in order to get rid of the common-carrier clause.

Mr. HALLOCK. Well, perhaps, but let us forget the common-carrier clause then, and just take the sawmill with the obligation to maintain it. Do you honestly feel that there would be any possibility of a man shutting down that investment, an investment of that kind on his hands, for any appreciable period of time?

Mr. BIGGS. Yes.

Mr. HALLOCK. You feel that that would be apt to happen and that it might extend over a period of seven or eight years?

Mr. BIGGS. It might do it.

Mr. HALLOCK. Do you care to give us the name of the contractor who was not permitted to put on an adequate-sized force or number of crews?

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Mr. BIGGS. It was Harry Howell

Mr. HALLOCK. And Mr. Klobucher, as you understand it, told him got to carry such a force?

Mr. BIGGS. Yes; and that he carried his own pay roll for three months rather than shut down.

Mr. HALLOCK. Something was said here the other day, and I do not know whether you were present or not, relative to the men who were named as the incorporators of these two Herrick corporations. I am referring to the Fred Herrick Lumber Co. and the Malheur
Railroad Co.

Mr. BIGGS. Yes.

Mr. HALLOCK. And comment was made upon the point that these two companies were incorporated by Mr. Herrick, Mr. Girard, and Mr. Klobucher. You had a good deal to do with the incorporation of these two companies, did you not?

Mr. BIGGS. I did.

Mr. HALLOCK. In fact —

Mr. BIGGS (continuing). That is, as far as the legal work was concerned, yes.

Mr. HALLOCK. You were consulted at that time very fully regarding the necessity for these corporations. Do you recall that Mr. Herrick had just signed the contract with the Union Pacific Railroad, in October, 1923, which required him to incorporate a common carrier railroad, just as the Government contract had done; You recall that?

Mr. BIGGS. Yes.

Mr. HALLOCK. And that that document required him to immediately incorporate this common carrier railroad under the laws of Oregon; that is true, is it not.?

Mr. BIGGS. My memory is that it is, yes, as well as I remember.

Mr. HALLOCK. So that as Mr. Herrick's legal representative at that time you started the preparation of those papers which ultimately culminated in the incorporation of these two railroads—is that right?

Senator WALSH of Montana (interposing). You mean these two corporations?

Mr. HALLOCK. Yes; the Malheur Railroad Co. and the Fred Herrick Lumber Co.

Mr. BIGGS. Yes; I prepared the articles for those two corporations, which were filed.

Mr. HALLOCK. This letter is a document addressed by you to Mr. Herrick in that connection, is it not?

Mr. BIGGS. It is.

Mr. HALLOCK. We offer it in evidence only to connect the witness with these transactions, and will be glad to read it into the record if that is desired.

Senator WALSH of Montana. Unless there is something you want to particularly call our attention to, other than the fact to show the relationship, I take it it will be unnecessary to read it.

Mr. HALLOCK. That is all.

(The letter referred to is as follows:)

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BURNS, OREG., *October 25, 1923.*

MR. FRED HERRICK,
St. Maries, Idaho.

DEAR MR. HERRICK: At the request of Mr. Girard and Mr. Foley I am sending you herewith articles of incorporation of the Fred Herrick Lumber Co., in triplicate. Please sign each of these and acknowledge them before a notary public or some one qualified to take an oath.

I am also inclosing for the Fred Herrick Lumber Co. subscription to the capital stock, which you will please sign and opposite your name, under the proper headings, give the number of shares and the total value thereof.

Also inclosed, waiver of notice as to holding the first meeting of the stockholders and directors in the organization.

Now, under the Malheur Railroad Co., I am sending you the same; that is, articles of incorporation, in

triplicate, subscription to capital stock, and waiver of notice as to the first meeting of the stockholders and directors.

Please sign these and forward them either to me or to Mr. Girard at once, as there are some things necessary at this time to be done which can not be attended to until these are properly acknowledged, filed, and the organization completed. It will be necessary before the completion of the organization for you not only to sign the articles in triplicate but also the subscription and the waiver, as our statute provides clearly that the first meeting of a corporation, either of the stockholders or the directors, can not be held and the corporation can not be organized without first giving four weeks' notice by publication in some newspaper, unless written waiver and consent of each and all of the subscribers to the capital stock has been signed and filed with the secretary of the corporation.

I am very sorry, indeed, that I was away while you were here, but was unavoidably detained in the trial of a case at Bend. I hope to be here when you return. You might also write Mr. Girard, Mr. Foley, or myself any requests or instructions that you might have with reference to the organization.

With kindest regards, I remain, yours very truly,

J. W. BIGGS.

Mr. HALLOCK. How did it happen, Mr. Biggs, that when you were doing that work that Mr. Herrick, Mr. Girard, and Mr. Klobucher were selected as incorporators of these companies?

Mr. BIGGS. I know nothing further than that Mr. Girard came in at the time and stated who the incorporators should be. Mr. Girard at that time was in charge of the work there, and so was Mr. Klobucher with him.

Mr. HALLOCK. And those two men constituted the only official organization that Mr. Herrick had there, did they not?

Mr. BIGGS. They did.

Mr. HALLOCK. And that is true down to this day, is it not?

Mr. BIGGS. As far as I know; yes.

Mr. HALLOCK. So that you do not criticize nor do you claim that there are any suspicious circumstances surrounding the fact that these three men were the incorporators of those companies, do you?

Mr. BIGGS. No further than this, that I did not and never believed it until I read this contract.

Mr. HALLOCK. I See.

Mr. BIGGS. And it looks to me as if there might have been some one in the forest office who helped fix this as it should be; I mean as they wanted it fixed.

Mr. HALLOCK. You never believed that there was any conspiracy or collusion that involved these men until you had read these provisions of the contract?

Mr. BIGGS. Yes.

Mr. HALLOCK. When did you first read this provision of the contract?
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Mr. BIGGS. I read this provision of the contract Saturday night.

Mr. HALLOCK. Saturday night of this week?

Mr. BIGGS. Saturday night of last week.

Mr. HALLOCK. All right. So as far as you are concerned you never suspected anything resembling any conspiracy or collusion between these men so far as the incorporation of these companies was concerned, until Saturday night of last week?

Mr. BIGGS. Well, I will change that: I would not say suspected, but I never believed it.

Mr. HALLOCK. Well, did you ever hear anybody besides Mr. Barnes indicating that any such idea was entertained by anyone?

Mr. BIGGS. And you.

Mr. HALLOCK. Me?

Mr. BIGGS. Yes; under certain terms which I had heard you state that were in the contract. I did not believe it, but I thought you were only saying it for the purpose of effect.

Mr. HALLOCK. I do not know what you mean. I am asking you whether anybody, except Mr. Barnes, had ever stated to you, or given you any impression, that there was any collusion between any of these men in the matter of the incorporating of these companies?

Mr. BIGGS. No.

Mr. HALLOCK. Well, that is what I am getting at.

Mr. BIGGS. No.

Mr. HALLOCK. So that when the Oregon resolution was adopted, and the Senate resolution was adopted, with reference to some collusion between Mr. Klobucher and Mr. Girard and others in the matter of the incorporation of these companies, you took no stock in it, did you?

Mr. BIGGS. No further than this, that I had heard certain things, and then had received certain letters which had come from different parts of the department, in which certain statements were made, and then immediately or within a short time afterwards certain conditions were waived, I did begin to suspect that there must be some reason why these things were done, and I wrote a letter to Mr. Barnes after Grant County had adopted the resolution, in which I stated that it seemed like the suspicions were at least enough to be looked into.

Mr. HALLOCK. I see. Now, John, you are referring to matters involving the extensions of the contract and things of that sort?

Mr. BIGGS. I am.

Mr. HALLOCK. I am trying to dispose of one of these points at a time. I first want to get rid of any suspicion surrounding the incorporation of these companies.

Mr. BIGGS. Oh, no.

Mr. HALLOCK. I think that first occurred to you as of last Saturday of this week?

Mr. BIGGS. Yes.

Mr. HALLOCK. Now, I direct your attention, Mr. Biggs, to a part of the record of this hearing in which I interrogated Mr. Barnes with respect to a telegram which he told us he had sent out to Burns, under the date line of February 4, in which he dictated the document that he wished prepared and signed by representative citizens and it culminates with these words:

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> Send this to me at once as it is very important and confidential. You and Biggs do this. Let me know when Girard left and who went with him.

Are you the Biggs referred to in that telegram?

Mr. BIGGS. I suppose I am, although I never saw the telegram.

Mr. DE NEFFE. To whom was that telegram sent. He has not identified it.

Mr. HALLOCK. No; and I am asking him if he will produce it. On yesterday —

Mr. DE NEFFE (interposing). But you know what it is?

Mr. HALLOCK. Yes; and it is confidential, and I do not want to abuse any confidences here unless compelled to.

Mr. DE NEFFE. Was the telegram sent to you, Mr. Biggs?

Mr. BIGGS. I never saw the telegram and know nothing about it.

Mr. HALLOCK. I should prefer that Mr. Barnes should tell us who it was sent to.

Mr. BARNES. I will not tell who it was sent to.

Mr. DE NEFFE. You must know who it was sent to, Mr. Hallock.

Mr. HALLOCK. I do. But I prefer not to make that statement, because I am not the author of It and am not responsible for it anyway.

Senator WALSH, of Montana. Well, go ahead with the examination.

Mr. HALLOCK. In any event, Mr. Biggs, do you know about the document that I am referring to?

Mr. BIGGS. I do not.

Mr. HALLOCK. I wonder whether any responses were prepared—but, you say you do not know.

Mr. BIGGS. No.

Mr. HALLOCK. You said something about a logging railroad in response to Senator Walsh's interrogation. A logging railroad, as it is understood in the West, is a very flimsy structure generally, is it not?

Mr. BIGGS. The most of them that I have seen have been.

Mr. HALLOCK. They are just laid out, largely on the surface of the ground with as little grading and as light cuts and as little effort to build a standard railroad as possible to get by with, are they not?

Mr. BIGGS. Yes.

Mr. HALLOCK. The grades are excessive and the curvature is excessive with the ordinary logging railroad, is it not?

Mr. BIGGS. Yes.

Mr. HALLOCK. And you do not find any resemblance between that kind of a structure and the railroad that Mr. Herrick has practically completed from Burns up to Seneca, do you?

Mr. BIGGS. Nothing except in the statements always in the modifications of both of these contracts—or I mean, in both of the modifications of this contract.

Mr. HALLOCK. That road to Seneca, as you know, is about as substantially constructed, and about as fine a piece of railroad construction as you will find on any branch-line railroad in that whole northwest country, is it not?

Mr. BIGGS. The construction is good.

Mr. HALLOCK. It has 80-pound steel over much of it?

Mr. BIGGS. Yes; and 90-pound on some of it.

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Mr. HALLOCK. With wide substantial grades, and is a first class piece of railroad construction generally, is it not?

Mr. BIGGS. The greater part of it is.

Mr. HALLOCK. Now, generally, do you want this contract canceled, is that your idea as to how this should terminate?

Mr. BIGGS. I want that contract as it stands today canceled, and we are entitled to have it done.

Mr. HALLOCK. I see.

Mr. BIGGS. Yes, sir.

Mr. HALLOCK. I wanted to get your view of the matter.

Mr. BIGGS. That is my view of it exactly.

Mr. HALLOCK. You want the contract canceled?

Mr. BIGGS. Yes, sir.

Mr. HALLOCK. Have you in mind someone else whom you believe to be prepared to step in and take over Mr. Herrick's interests in there if this contract were canceled?

Mr. BIGGS. I have not.

Mr. HALLOCK. You say you have not?

Mr. BIGGS. No.

Mr. HALLOCK. I think that is all.

Mr. DE NEFFE. Why do you want that contract canceled?

Mr. BIGGS. I would rather the contract would be canceled to-day, and the operation checked, than to be bottled up there until 1945 and never know a single thing that we could depend on for being operated during that time.

Mr. MCGOWAN. Might I ask a few questions?

Mr. DE NEFFE. Oh, I beg pardon.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Mr. Biggs, do you of your own personal knowledge know anything about the proposed elimination of the common carrier clause of this contract? That is, with reference to the proposed, or the possible proposed action by the Forest Service.

Senator WALSH of Montana. He said something about some communications upon that subject that he had received in confidence as the attorney for Mr. Herrick.

Mr. BIGGS. I was just going to ask Mr. McGowan if that is what he referred to.

Mr. MCGOWAN. Not so far as that may relate to the relationship between you and your client. I am asking the question specifically with reference to any member of the Forest Seance.

Senator WALSH of Montana. But your question compels him to answer in regard to his confidential relation, unless you reframe it.

Mr. MCGOWAN. Well, I will withdraw that question. In the Senate resolution. Mr. Biggs, the charge is made that Mr. Herrick was not financed at the time this contract was entered into, and that he is not properly financed now. Do you know of your own knowledge anything on that point?

Mr. BIGGS. My main knowledge on that is the report of the work and the applications for the modifications or extensions.

Mr. MCGOWAN. That is the extent of your knowledge on that subject?

Mr. BIGGS. That is the extent of my knowledge entirely.

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Mr. MCGOWAN. Now, to come down specifically to what you suspect, and you may go just as far on this, so far as I am concerned, as you like, subject to the orders of the subcommittee: What you suspect as to the fraudulent nature of this contract in so far as the forest offices are concerned, and let us get that absolutely out in the open and absolutely clear as to what is in your mind and as to the fraud that is in it, is based on what?

Mr. BIGGS. The fraud is in changing the contract as advertised, which provides for specific amounts of timber to be cut through each three-year period, the cutting of that out, and the entering into a contract in which Herrick could operate the property just as he pleases.

Mr. MCGOWAN. All right. Now, is that the sole extent of your suspicion that there might be fraud?

Mr. BIGGS. Well, it seems to me that it is sufficient in that.

Mr. MCGOWAN. Well, that does not quite answer my question. Is that the sole extent to which you suspect that there might be fraud? That is the question I asked you.

Mr. BIGGS. No; it is not the sole extent of it, although I considered that the strongest.

Mr. MCGOWAN. That is the most important?

Mr. BIGGS. Yes.

Mr. MCGOWAN. Could you indicate to the subcommittee what other things there may be m your mind as to tile existence of fraud in this matter?

Mr. BIGGS. Well, I have found out the most of that since I came here, although I had looked or suspected some things prior to, that. In the first place, I have requested through the different Senators and Congressmen of our State information with regard to that. They have sent me —

Senator WALSH of Montana (interposing). With regard to what?'
Mr. BIGGS. To the extensions of these contracts.

Senator WALSH of Montana. All right.

Mr. BIGGS In that there were letters received by them and forwarded to me from Colonel Greeley which were absolutely in conflict with the reports which he had from his officers that he had sent.

Mr. MCGOWAN. Where are these letters to which you refer?

Mr. BIGGS. One of them I received, or a copy of it, from Senator McNary along in 1925. There are one or two that I received from Congressman Sinnott, one particularly in June, 1926.

Mr. MCGOWAN. Well, did you take any exception to what was in those letters prior to the time that you ceased to be the attorney for Mr. Herrick?

Mr. BIGGS. Oh, those letters I received long after I had been attorney for Mr. Herrick. I have not been attorney for Mr. Herrick in any manner since April, 1924.

Mr. MCGOWAN. Would you please produce the letters that you refer, to?

Mr. BIGGS. No. I have not either one of those letters here, or copies of them.

Mr. MCGOWAN. Would you be kind enough, and I know that this is a rather unusual request, to go to Senator McNary or to Represent-

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ative Sinnott and see if you can get copies of those setters from their files, and if so, bring them to this subcommittee?

Mr. BIGGS. I will.

Mr. MCGOWAN. Now, coming back to the question of the prospectus and the contract: I understand that that is the point you make, the difference between the written contract and the prospectus, which you regard to be the most important indication of fraud.

Mr. BIGGS. Yes.

Mr. MCGOWAN. I think I am correct in quoting you in that way?

Mr. BIGGS. Yes.

Mr. MCGOWAN. I assume that you know that the prospectus was issued prior to the first advertisement.

Mr. BIGGS. Yes.

Mr. MCGOWAN. Which advertisement was productive of no bids?

Mr. BIGGS. No.

Mr. MCGOWAN. Do you know whether a clause that is in the Herrick contract and of which you now complain as differing from the prospectus was drafted subsequent to the conference had between Colonel Greeley and the representatives of the Forest Service, with the Brooks-Scanlon people; I am asking if you know that that is a fact?

Mr. BIGGS. I know nothing about it. I have never seen anything of that kind.

Mr. MCGOWAN. Do you know whether as a fact the clause in the Herrick contract, or the substance of it at least, was given to the trade in connection with the readvertising of the timber?

Mr. BIGGS. I do not.

Mr. MCGOWAN. You say you do not know it?

Mr. BIGGS. No.

Mr. MCGOWAN. Then if it is a fact that the clause, of which you complain in the Herrick contract was in substance given to the trade, there would be no foundation for your suspicion that the thing was fraudulent? That is, if it was given to the trade prior to the time when the Herrick contract was entered into —

Mr. BIGGS (interposing). Here is one thing I want to say now —

Mr. MCGOWAN (continuing). In connection with the second advertisement.

Mr. BIGGS. I think that the people there were as much interested as the trade was, and what was submitted to the trade, if there was anything different, was entirely different from what was submitted to us.

Mr. MCGOWAN. Well, now, let us put it this way: Here is a contract where you say there is a suspicious circumstance. If the readvertisement of this timber, and in substance this is the basic proposition of which you now

complain, that is, the terms of the contract to be entered into, was given to the various operators who might bid on that contract, would not that allay your suspicion that there vas anything wrong in connection with it?

Mr. BIGGS. No; it would not. I think that if the department had submitted to us who were at least interested to the extent of 35 per cent of this contract—if it had submitted to us certain terms upon which you were to base the contract, that it made no difference to us what contractor got it, we were entitled to be protected in it, and it was us that were entitled to protection and not the contractor.

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Mr. MCGOWAN. That is all I wish to ask.

Mr. HALLOCK. May I ask one more question, please.

The CHAIRMAN. Yes.
(Further cross-examination by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. John, you and I stood shoulder to shoulder over there in Harney County and fought through several condemnation cases in the interest of Mr. Herrick in the earlier stages of this construction work, did we not?

Mr. BIGGS. We did.

Mr. HALLOCK. And then later I lead to fight those condemnation cases against you as the champion of the land owner"?

Mr. BIGGS. Well, on a few, yes, although I represented only a very few of them.

Mr. HALLOCK. Yes, I realize that, and I did not want to leave the impression that you represented all of them. But your attitude toward Mr. Herrick's effort to secure rights of way and that sort of thing, was radically different after this little difficulty you had that I have mentioned.

Mr. BIGGS. I will say this, that in the cases in which we represented Mr. Herrick, we tendered them at the time that we were there the full amount, and the jury sustained it. For the cases that I represented against Mr. Herrick, I only did it for the simple reason that there was not a sufficient amount, and the jury did award sufficient amounts.

Mr. HALLOCK. That is true. I got licked, John, and I will admit it. That is all.

Mr. DE NEFFE. Do you claim that there is a difference between the first prospectus and another prospectus, or were there two prospectuses?

Mr. BIGGS. There was this one prospectus when it was advertised for six months, and another one when advertised for 30 days.

Mr. MCGOWAN. The original prospectus which is now in the record, which is the blue-bound book —

Senator WALSH of Montana (interposing). Would not the whole matter be cleared up by putting in at this time the second advertisement?

Mr. MCGOWAN. I will be very glad to do it, Senator. We were reserving that for Colonel Greeley when he goes on the stand, to explain this whole situation.

Senator WALSH of Montana. Well, very well. I think we better defer it until we hear what the facts are.

Mr. DE NEFFE. My recollection is that the question was asked in the beginning whether or not the same prospectus was used in the 30-day advertisement as in the six-months advertisement, and I understood that the prospectus which was in the record was that one. That is why I asked.

Senator WALSH of Montana. That impression was made on the committee, or I am sure it was made on my

mind. But we will get the facts in due course.

The CHAIRMAN. It has just been developed that the contract which was signed was let under a different prospectus than the one used in the first advertisement.

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Mr. MCGOWAN. Not under a different prospectus, Mr. Chairman, but the major provisions of the prospectus remained the same. There was a slight change in one of the clauses, and that change was carried to the trade in connection with the readvertising of the timber, on which Herrick and the Brooks-Scanlon Lumber Co. put in their bids.

Senator WALSH of Montana. Let us suspend our judgment on that until we find out what the facts are.

Mr. MCGOWAN. All right. I was just trying to get before you what the situation is in that respect.

(Redirect examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Mr. Biggs, you said you had some difficulty over compensation with Mr. Herrick.

Mr. BIGGS. I did not say any difficulty. I merely stated it had not been settled as between us.

Mr. DE NEFFE. What was the trouble?

Senator WALSH of Montana. Let us not go into that.

Mr. HALLOCK. No; I did not ask it, because I did not want to embarrass Mr. Biggs.

Senator WALSH of Montana. Well, I am not suggesting that Mr. Biggs would be embarrassed, nor even supposing it. But it is entirely immaterial. We understand now that there is some difference between these people, the same as there is some litigation between Mr. Herrick and others. We will consider that, of course, in judging of the weight of the evidence given by the witnesses, but as to the details of any controversy, they do not interest us at all.

Mr. DE NEFFE. You are not retained by Mr. Barnes in this controversy?

Mr. BIGGS. Not at all, nor by anyone.

Mr. DE NEFFE. You are here as a witness only; is that right?

Mr. BIGGS. Yes.

Mr. DE NEFFE. Mr. Hallock asked you something about whether it would be likely for Mr. Herrick to discontinue operations if the market for lumber was very low. Would it pay him, m your opinion, to discontinue operations rather than to cut timber and take a big chance of selling his lumber at a big loss?

Mr. BIGGS. It certainly would.

Mr. DE NEFFE. You said that it might be a good excuse for him to eliminate the common carrier clause in the case of a logging railroad by letting it lie idle. How would that be brought about?

Mr. BIGGS. Well, if there was no work being done on this for a period of 10 or 11 years, or even 5 or 6 years, the railroad would have no income, and it might go into bankruptcy at any time.

Mr. DE NEFFE. And in that way the common-carrier clause might be eliminated?

Mr. BIGGS. It might be eliminated by carrying it through bankruptcy proceedings.

Mr. DE NEFFE. You said that Harry Howell, a contractor, told you that he was ordered to slow down on the work?

Mr. BIGGS. Yes.

Mr. DE NEFFE. Mr. Chairman, I have the affidavit of Harry Howell on this question. I realize that it is merely an affidavit, but

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if the subcommittee wishes I will put it in, as it corroborates what Mr. Biggs has said. The committee might receive it for what it is worth. I realize that it is not like a deposition.

Senator WALSH of Montana. Well, had not you better inquire of the representatives of the company about the facts first?

Mr. DE NEFFE. In regard to the Harry Howell matter?

Senator WALSH of Montana. Yes.

Mr. DE NEFFE. Very well, I will leave that for cross-examination. Mr. Biggs, you stated that you never saw the contract before last Saturday. Why have not you ever seen the contract?

Mr. BIGGS. I had never been able to get it.

Senator WALSH of Montana. What was that answer?

Mr. BIGGS. I said I had never been able to see it until I came here to this city.

Senator WALSH of Montana. What do you mean by never being able to see it?

Mr. BIGGS. I never knew where it was. And while I never asked directly for it, I did ask two other parties to ask for a copy of it in the Portland office, but they refused to let them have a copy.

The CHAIRMAN. Do you mean the forest office in Portland, Oreg.?

Mr. BIGGS. Yes.

Mr. DE NEFFE. You stated that the two modifications that had been allowed of this contract by Colonel Greeley indicated that it was only a logging railroad. Is there anything in those modifications requiring it to haul passengers?

Mr. BIGGS. No.

Mr. DE NEFFE. I did not hear your answer.

Mr. BIGGS. No.

Senator KENDRICK. Do you mean as to the contract between the forest department and Mr. Herrick?

Mr. BIGGS. Yes.

Senator KENDRICK. Would you think it consistent to take a contract of that kind and pass copies of it around to the public?

Mr. BIGGS. I think where we are as directly interested in the contract as we are in that, that we certainly should know what the terms of the contract are.

Senator KENDRICK. You should have every right, from my viewpoint, to see the contract.

Mr. BIGGS. Yes.

Mr. HALLOCK. May I have a question right there?

The CHAIRMAN. Yes.

Mr. HALLOCK. John, that right has always been extended, has it not?

Mr. BIGGS. Which right?

Mr. HALLOCK. To see the contract.

Mr. BIGGS. I have never personally asked for it, but I have sent two parties to the office, or at least two persons who were going there, I requested them to ask for it, and they refused to let them see the contract, or to let them take a copy of it.

Mr. MCGOWAN. Who were the parties, Mr. Biggs?

Mr. BIGGS. Judge Patterson, of Canyon City, was one of them. I asked him to get for me a copy of the contract, as they were more directly interested than anyone else.

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Mr. MCGOWAN. Do I understand you to say that the Forest Service should not permit Judge Patterson or anybody else that you sent there to examine the contract and ascertain what was in it?

Mr. BIGGS. I am only telling you what he reported when he came back, that they refused to let him take a copy of the contract.

Mr. MCGOWAN. They refused to let him take a copy of the contract; that is what they said, is it?

Mr. BIGGS. Yes.

Mr. MCGOWAN. Did they ever tell you that the forest office denied them the right to look at the contract and to see all the various provisions that were in it?

Mr. BIGGS. I do not know.

Mr. MCGOWAN. All right.

Mr. DE NEFFE. Did this refusal on the part of the forest office to allow you people to have a copy create any suspicion in your mind as to what might be in the contract, in the minds of the people of the community I mean?

Mr. BIGGS. No further than that Mr. Herrick was reporting at least that he had certain conditions in the contract that I did not believe he had, and I wanted to see whether those conditions were in fact in there.

Mr. DE NEFFE. Do you remember what he reported as being in the contract?

Mr. BIGGS. One thing was that he could operate this as he pleased. The other was that he did not have to do anything until 1928, that the essence of his contract was July 1, 1928, and that he did not have to do anything until that time if he did not want to. That was reported around.

Mr. DE NEFFE. What did he say was the essence of his contract?

Mr. BIGGS. July 1, 1928, and that he did not have to do anything until that time if he did not want to.

Mr. DE NEFFE. Now, then, taking into consideration the right that he has, as you explained here, to shut down his milling operations for periods of from 3 to 8 or 10 years, and not keep that mill and logging camp in operation, would that have anything to do with the future development of the city of Burns?

Mr. BIGGS. Why, it would, and of the whole country there.
Senator KENDRICK. Just a moment. May I ask a question without interrupting your line of thought?

Mr. DE NEFFE. Certainly, Senator Kendrick.

Senator KENDRICK. You referred to a right that Mr. Herrick had to shut down, as you said; was that it?

Mr. DE NEFFE. Yes, sir. Senator Kendrick, I am sorry that you were not here when that was fully explained by Mr. Biggs. That is something that is very unusual in a contract of that kind, and I think that Mr. Biggs would be glad to explain that to you, now, or at any other time.

Senator KENDRICK. Well, I can examine the record.

Mr. DE NEFFE. Now, then, Mr. Hallock asked you if the change m the contract as you have described it here, was the sole and only thing that excited the suspicion of yourself and the people around there. Was there anything that happened subsequently to the signing of the contract that caused you to continue to be suspicious, and

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that confirmed what suspicions you might have, that was wrong in the making of that contract?

Mr. BIGGS. Well, the modification of that contract had been made twice. At the time that the conditions as to the extension and modification was made, the Forest Office stated, or Colonel Greeley stated, so I have been informed, that unless Mr. Herrick lived up to the terms of the extension he would consider that the contract should be closed and that it was not in good faith. And yet each time Mr. Herrick has gone ahead, and not broken the contract eventually but has broken every term and every condition, on all occasions, and that not only from my statement, as to the situation, but from the reports made to Colonel Greeley with regard to it. Still he goes ahead and keeps extending and granting new conditions, and each time saying if Mr. Herrick does not complete it according to this agreement at this time then we will cancel it.

Mr. DE NEFFE. And he never has canceled the contract, has he?

Mr. BIGGS. No.

Mr. HALLOCK. Would you permit an interruption just for a moment for a question in connection with Senator Kendrick's question a moment ago?

Mr. DE NEFFE. Yes.

Mr. HALLOCK. Or rather I would like to make a statement.

Mr. DE NEFFE. All right.

(Further cross-examination by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Regarding any provision in the contract as to permitting Mr. Herrick to discontinue operations, I was a little afraid that Senator Kendrick might have gotten the impression, from Mr. De Neffe's statement, that there was a specific recital in the contract to that effect. But Mr. De Neffe was referring to Mr. Biggs's construction of a certain provision under which, as I understood him, he claims that result could be accomplished.

Senator KENDRICK. Very well. I certainly did draw the conclusion that it was written into the contract from what Mr. De Neffe said.

Mr. DE NEFFE. Of course, as Mr. Biggs said, there is the question that two and two make four, and that is the way that he construes the contract.

Senator KENDRICK. But that means his interpretation of it?

Mr. DE NEFFE. Yes.

Mr. BIGGS. I would like to explain a little further, that you can not read the contract as it stands today without finding absolutely that Mr. Herrick has got the right, if you choose, to use the figures with regard to the minimum and maximum amounts to be cut.

Mr. HALLOCK. One more question: Mr. Biggs, while you were attorney for Mr. Herrick's interests in Burns, did you not have access to Mr. Herrick's contract?

Mr. BIGGS. I did not. I never saw it.

Mr. HALLOCK. Did you not ask for it?

Mr. BIGGS. I do not remember that I did at that time; no. I saw no reason to ask for it. I did not care for it in any of the relations that I had at that time.

Mr. HALLOCK. But as far as you know it was available for your inspection?

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Mr. BIGGS. I do not know that.

Mr. HALLOCK. Now, you say that at this time you are not in the employ of Mr. Barnes in connection with this particular inquiry here; is that correct?

Mr. BIGGS. Not at all.

Mr. HALLOCK. And are you here under subpoena, Mr. Biggs?

Mr. BIGGS. I am.

Mr. HALLOCK. You leave been subpoenaed in whose behalf?

Mr. BIGGS. I do not know. I was informed that I was subpoenaed ,directly by the committee. I asked Mr. Barnes, and he said that —

Mr. HALLOCK. He said what?

Mr. BIGGS. He said he had not had me subpoenaed. I asked him who had me here, for as much as I had not been subpoenaed by the other side.

Mr. HALLOCK. When were you subpoenaed?

Mr. BIGGS. I was subpoenaed Saturday afternoon, a week ago Saturday afternoon.

Mr. HALLOCK. Was that by telegraph?

Mr. BIGGS. By telegram, and they asked in the telegram if I would accept that telegram as service of subpoena?

Mr. HALLOCK. Who sent it, Mr. Biggs?

Mr. BIGGS. David S. Barry, Sergeant at Arms of the Senate.

The CHAIRMAN. I will say that Mr. Biggs's name was taken from the list of witnesses that Mr. Barnes furnished. And he appears here as one of Mr. Barnes's witnesses.

Mr. HALLOCK. I was interested in view of our application for subpoenas to cover our people, and I wondered by what process Mr. Biggs came in, and in what point of time in regard to the request for subpoena.

The CHAIRMAN. We had only limited funds, and we divided them between your list of witnesses and Mr. Barnes's list of witnesses.

(Further cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Mr. Biggs, your suspicions were aroused by reason of this extension that the Forest Service

was in cahoots with Herrick. What passed through your mind, if this is a proper question, after you ascertained, if you did ascertain it, that the Forest Service had exacted $50,000 from Herrick by reason of one of his failures to comply with the terms of the contract? Did you then continue to believe that the Forest Service was in collusion with Mr. Herrick, after it had taken the $50,000?

Mr. BIGGS. Personally I do not know yet that they have taken it. I heard that they had, but I do not know that personally.

Mr. MCGOWAN. You have never seen a receipt for that money?

Mr. BIGGS. I have not.

Mr. MCGOWAN. Well, if you were satisfied that the money had been received by the Government, would that allay your suspicions in connection with the matter?

Mr. BIGGS. Well, I do not know, unless I knew there were no strings to it.

Mr. MCGOWAN. However, if there were no strings to it, then your suspicions in that connection would be allayed; is that your answer?

Mr. BIGGS. It is pretty hard, Mr. McGowan, when you have taken a series of events extending over a period of four years, to sit back and say which particular event along that line caused any suspicion.

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Mr. MCGOWAN. Very well. Now, when the gentlemen went to the Portland office of the Forest Service to get copes of the contract, it was Mr. Patterson and who else?

Mr. BIGGS. I have forgotten who it was from Burns, but I requested, if I am not mistaken, them to get it. I don't remember whether it was Mr. Charles Foley or whether it was Arch McGowan . There were three or four parties there that we had talked it over with at times, and when they went down there; or some one of them I requested it. And I don't remember which one it was.

Mr. MCGOWAN. Let us have the record clear on that point. When these men reported back to you, did they tell you, in substance, this: The Forest Service will permit you to examine a copy of the contract for the purpose of giving you full information on it, but they will not let you take a copy of it.

Mr. BIGGS. They told me that they would not—that they could not get a copy of it for me—is all that they reported to me in regard to it.

Mr. MCGOWAN. Did you {they?} tell you that the Forest Service would let them examine the contract?

Mr. BIGGS. I don't, remember that.

Mr. MCGOWAN. You don't remember?

Mr. BIGGS. I don't remember that point. I don't know that I ever asked them about that.

Mr. MCGOWAN. Did these gentlemen talk with you before they went to the Forest Service office in connection with that request for a copy of the contract?

Mr. BIGGS. Yes; we had talked in a general way prior to that time, and I had stated I would like to have a copy of the contract.

Mr. MCGOWAN. Did this, in substance, appear in that conversation: That we will make a trip down to Portland and make request of the Forest Service for a copy of the contract, hoping that we will be turned down?

Mr. BIGGS. Why, no.

Mr. MCGOWAN. Very well, that is all.

Mr. DE NEFFE. That is all I wish to ask.

(Further cross-examination by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. One more question. I want to see if I can not refresh your memory a little bit on the matter of the receipt for the $50,000. Do not you recall that when I was over in your office along in August of last summer, and we were endeavoring to settle these different Barnes suits, working out a plan of arbitration, and after Mr. Barnes again made the claim that this $50,000 was just a gesture, and that he did not believe it had ever been paid, that I then and there produced the receipt from the office of the Fred Herrick Lumber Co., being the document I have in my hand here at this time, and that we commented upon it; do you recall that?

Mr. BIGGS. I recall the fact that it was questioned, but this receipt was never shown to me. You might have shown it to Mr. Barnes, but this was never shown in my office. On one day you did say something about it, and then started to get down to it, and said, "John, I have not that with me, but I will show it to you later on."

Mr. HALLOCK. Do not you remember it this way: That Mr. Barnes introduced this as a part of the stumpage subject and concluded with some comment, that he was not convinced it had been, collected?

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Mr. BIGGS. I do not. And I think you are mistaken as to who was present with you and Mr. Barnes at the time.

Mr. HALLOCK. It is my recollection that it was in your office.

Mr. BIGGS. Well, I do not recall at any time of ever having seen receipt. I know that we discussed it one day.

Mr. HALLOCK. That question was up on that occasion.

Mr. BIGGS. Yes, it was; but my remembrance at the time was that you did not have it; but that you and Mr. Barnes probably talked of it; or you showed it to him afterwards. But at the time you spoke to me you said you did not have it but would produce it.

Mr. HALLOCK. John, I know I went right to the office and produced it. Perhaps you were out of your office when I got back with it.

Mr. BIGGS. There must be something of the kind as to when you got back with it, because I never saw the receipt.

Mr. MCGOWAN. That would be necessary in order to satisfy you that the $50,000 was in fact collected and put into the Treasury of the United States?

Mr. BIGGS. Oh, I don't care anything for that.

Mr. MCGOWAN. But I am asking you the question.

Mr. BIGGS. Why, if Mr. Hallock would tell me directly, without producing the receipt, it would settle it in my mind. I would not question it. If Mr. Hallock would tell me here today that they had actually paid the money I would not ask for any further proof of it.

Mr. MCGOWAN. That is all I wish to ask.

Mr. HALLOCK. Well, I would like to make that statement to you, then, John, if it satisfies you.

Mr. BIGGS. All right.

Senator WALSH of Montana. When do you understand, under the existing extension, that the cutting of timber must commence?

Mr. BIGGS. Under the existing extension I understood that the cutting of timber was to begin on January 1, 1927, which was the first day of this last January. That under the second extension the cutting of timber must be begun by January 1.

Senator WALSH of Montana. Was it begun?

Mr. BIGGS. No.

Mr. HALLOCK. I think the witness is somewhat mistaken on that point, Senator Walsh, although I do not want to intrude.

The CHAIRMAN. Can you clear up that point?

Mr. HALLOCK. I believe this extension required the cutting of timber on the privately owned premises on April 1, 1927, and on the Government stumpage on October 1, 1927.

Mr. BIGGS. The extension that was set out in June, 1926, says that, among the terms as to work at least, that the grade must be completed by September 15.

Senator WALSH of Montana. The 15th of what?

Mr. BIGGS. September 15, 1926. That the road must be completed and in operation by December 15, 1926, and that the actual cutting of timber must begin on January 1, 1927, and that the mill must be in operation by March 1, 1927. Now, they were exactly the terms that were submitted in a letter from Colonel Greeley, which I think I have here with me.

Senator WALSH of Montana. Now, let me inquire about that: The grade was to be completed when?

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Mr. BIGGS. September 15, 1926.

Senator WALSH of Montana. Was that done?

Mr. BIGGS. No; it was not.
Senator WALSH of Montana. When was it completed?

Mr. BIGGS. I was up there about two weeks ago and there was about half or three-quarters of a mile of grading which is not completed yet, or was not completed then.

Senator WALSH of Montana. From Burns to Seneca?

Mr. BIGGS. Yes, sir.

Senator KENDRICK. Was it at the terminus of the road?

Mr. BIGGS. No; it was at a little canyon that you go through about 2 miles from the terminus.

Senator KENDRICK. Difficult construction?

Mr. BIGGS. Yes.

Senator WALSH of Montana. Then the road was to be in operation at what time,
did you say?

Mr. BIGGS. December 15, 1926.

Senator WALSH of Montana. And of course the grading not being completed it could not be in operation.

Mr. BIGGS. No; it is not in operation.

Senator WALSH of Montana. And you say that the cutting of timber was to be begun on private lands —

Mr. BIGGS. It does not say private lands. The letter from Colonel Greeley that was sent to me said that it

should begin cutting timber January 1, 1927.

Senator WALSH of Montana. It did not say whether private or not?

Mr. BIGGS. It did not say whether private or public.

Senator WALSH of Montana. And the mill was to be in operation when?

Mr. BIGGS. March 1, 1927.

Senator WALSH of Montana. What is the condition of the mill now?

Mr. BIGGS. Well, no work has been started on the mill proper. They have started work on the power plant, in which the foundation and a part of the walls have been built on it. On the dynamo room there has been quite a little work on it, but on the mill proper they have not even started on the foundation, or had not a few days ago.

Senator WALSH of Montana. Is this the last extension July 1, 1926 headed "Stipulations governing construction work"?

Mr. BIGGS. Yes.

Senator WALSH of Montana. I will read that:

JULY 1, 1926.

Stipulation governing construction work to be performed prior to March 1, 1927, under the timber-sale agreement signed by Fred Herrick on June 15, 1923 and approved by GEO. H. Cecil, district forester, on June 15, 1923, as modified by an application executed on March 3. 1925, and approved by C. M. Granger, district forester, on March 12 1925, and further modified by an application executed on September 5, 1925, and approved by the acting district forester on September 8, 1925, and further modified by an application executed on July 6, 1926, and approved by C. M. Granger, district forester, on July 14, 1926, which stipulations shall be considered a part of said agreement as modified:

1. The purchaser will advance and make available to his representative in charge of construction work in connection with the timber sale of June 15, 1923, Malheur National Forest, Ore., for expenditure by such representative in completing the railroad construction work hereinafter described, the following amounts on the dates indicated:

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Aug. 1, 1926	$70,000
Sept 1,1926	70,000
Oct. l, 1926	70,000
Nov. 1, 1926	70,000
Total	280,000

Evidence satisfactory to the forest supervisor, Malheur National Forest, that these required advances have been made, shall be furnished him by the purchaser's representative.

2. On September 15, 1926, the railroad ;rude from Burns to the point Dear the south line of sec. 34, T. 16 S., R. 31 E.. Willamette meridian, being station 2520 of the railroad survey, including all cuts, fills, tunnels, bridges, trestles, other structures, laying of ties and steel for a permanent standard-gouge railroad track suitable for use in hauling logs in trains, shall have been completed: *Provided*, That this requirement shall not be construed to require completion of the widening of cuts or fills or other minor work which, in the judgment of the forest supervisor, may be done most economically after permanent steel has been laid and can be used for transportation purposes.

3. On December 15, 1926, the railroad from the mill to the timber shall be ready for operation.

4. On March 1, 1927, the complete sawmill plant shall be ready for operation.

5. The Secretary of Agriculture shall be the final judge as to the compliance with all of the above stipulations.

Signed in duplicate this 6th day of July, 1926.

Witnesses:
JAMES W. GIRARD.
FRED AMES.

Mr. DE NEFFE. There is nothing in there as to when the cutting shall begin. But you stated that Colonel Greeley said the cutting should begin —

Senator WALSH of Montana (interposing). Let us get that. Have you Colonel Greeley's letter?
Mr. BIGGS. I have a copy of it here that was sent to Congressman Sinnott, I believe.

Senator WALSH of Montana. Can you call our attention to any provision in relation to the cutting of timber?

Colonel GREELEY. Might I make an explanation about that at this time?

Senator WALSH of Montana. Yes.

Colonel GREELEY. On June 17, 1926, I gave Mr. Herrick my decision in full involving the forfeiture of the $50,000 as liquidated damages in the terms of the new extension. One of those provisions was that the extension of time for the beginning of cutting and removal of timber should be made January 1, 1927.

Senator WALSH of Montana. Is that in a letter?

Colonel GREELEY. That is in my letter to Mr. Herrick under date of June 17, 1926.

Senator WALSH of Montana. You are reading from your letter, as a result of which this stipulation was made?

Colonel GREELEY. I am reading from my letter to Mr. Herrick as the result of which the new modifications were drafted. Now, in drafting the new modifications, that clause as to the extension of the date for cutting timber was omitted through pure oversight.

Senator WALSH of Montana. Will you read about that from your letter?

Colonel GREELEY. Do you wish the entire letter read?

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Senator WALSH of Montana. No; unless you care to, but the particular matter that we have in mind, the time when the cutting of timber is to commence.

Colonel GREELEY. My letter enumerates six provisions —

Mr. DE NEFFE (interposing). What is the date of that letter?

Colonel GREELEY. June 17, 1926.

Mr. DE NEFFE. And that letter was addressed to whom?

Colonel GREELEY. To Fred Herrick, Fort Dearborn Hotel, Chicago, Ill.

Senator WALSH of Montana. All right; go ahead.

Colonel GREELEY. The letter enumerated five provisions on the basis of which the contract will be modified. No. 4 of those five provisions says:

> Extension of time for the beginning of cutting and removal of timber to January 1, 1927.

That letter was sent to the district forester at Portland, as the basis for drafting modifications. In the drafting of the modifications the provision for extending the period for the beginning of cutting of timber to January 1, 1927, was omitted. It was a pure oversight, so that it does not appear in the present modification. As a matter of fact, the old date still stands, although it has become inoperative.

Senator KENDRICK. That condition, if I may interrupt you, was contained in your letter of instructions to the district forester?

Colonel GREELEY. It was contained in my letter to Mr. Herrick, and went to the district forester. The controlling factor which remains in the contract is the 60,000,000 feet of Government stumpage that must be cut by June 1, 1928. That is now the controlling factor as to cutting.

Senator WALSH of Montana. Are we to understand that your construction now is that there is no provision at all as to the time when the cutting of timber is to begin?

Colonel GREELEY. No, sir. but that is true as to the existing modification. There is no express requirement as to the date when cutting must begin.

Senator WALSH of Montana. Well, so far as the contract and modifications are concerned, then the old provision would remain, would it not?

Colonel GREELEY. I presume that is true.

Senator WALSH of Montana. And that time has long gone by, of course, the present contract would be subject to modification by appropriate proceedings to correspond with your letter?

Colonel GREELEY. Yes, sir.

Senator WALSH of Montana. So that we might consider your letter exhibited by you as controlling, so that really the contract between you now is that the cutting should commence on the 1st of January, 1927.

Colonel GREELEY. That is the intent of it, sir.

Mr. DE NEFFE. And that time has gone by?

Senator WALSH of Montana. Have you a copy of Colonel Greeley's letter?

Mr. BIGGS. Here is the letter from Colonel Greeley, but it is only a copy to Congressman Sinnott. I will submit it to Mr. McGowan.

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Colonel GREELEY. Yes, sir; that is practically a repetition of my letter to Mr. Herrick. It enumerates the various terms of my decision as to the modification of the contract.

Senator WALSH of Montana. What I mean is that in fairness and justice we ought to consider that Mr. Herrick had until the 1st of January, 1927, to begin cutting.

Colonel GREELEY. Yes, sir; that would be my interpretation of it.

Mr. DE N NEFFE. Might I ask Colonel Greeley a question right there?

Senator WALSH of Montana. Yes.

Mr. DE NEFFE. You state that your interpretation of the essence of the contract is that as long as he has 60,000,000 feet cut before June 1, 1928, that is correct?

Colonel GREELEY. Not before June 1, 1928, I didn't say that it was the essence of the contract. I simply pointed out that that clause remains in the contract unchanged.

The CHAIRMAN. You stated that it was the controlling factor.

Colonel GREELEY. It is the controlling factor as to the progress of actually cutting the stumpage.

Mr. DE NEFFE. Mr. Herrick has always been claiming that as for the essence and everything else, that it is immaterial as to when the railroad is to be completed.

Senator WALSH of Montana. Let us go along in the regular form.

Mr. DE NEFFE. All right. I will take it up on cross-examination.

(Further cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick. James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Biggs, this contract, as you know, involves the construction of a railroad from Crane reaching on up through to the terminus in Bear Valley, a distance in excess of 80 miles. Now, having in mind that part of the work, which Mr. Herrick was to build, unless the Union Pacific Railroad joined him in it, from Crane to Burns, what would you say is the approximate investment in that country by Mr. Herrick and the Union Pacific Railroad pursuant to the construction program required by this contract?

Mr. BIGGS. Where do you mean?

Mr. HALLOCK. I mean the entire construction program from Crane right on into the terminus of the line, at Seneca.

Mr. BIGGS. No; I have no idea at all.

Mr. HALLOCK. Well, it, will exceed $2,000,000, will it not?

Mr. BIGGS. It will probably exceed that. I do not know for I have no idea, at all. The only thing I can tell was by your estimates and the estimates that were set up in the prospectus. That is the only thing I have in any manner to base tile cost of that on.

Mr. HALLOCK. I thought you might care to give the subcommittee an approximation of the magnitude of that investment to date.

Mr. BIGGS. If I did I would tell them that they could look at the prospectus and see what the Government estimated it would cost. And that is the only estimate I have for saying anything upon it at all.

Mr. HALLOCK. Very well, that is all I wish to ask.

(Redirect examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. The section from Crane to Burns, the 30-mile section, which is in operation, has been bought by the Union Pacific people, has it not?

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Mr. BIGGS. It is in operation by the Union Pacific, and I have understood has been bought by them, but that is not of my own knowledge.

Mr. DE NEFFE. That is not of your own knowledge.

Mr. BIGGS. No; I do not know of my own knowledge that they, bought it. I know that they are operating it.

Mr. DE NEFFE. That is all.

The CHAIRMAN. Any further questions?

Senator KENDRICK. Mr. Biggs, you are living in the neighborhood of this development?

Mr. BIGGS. I have been right there. Yes, that has been my home for the last 34 or 35 years.

Senator KENDRICK. Have conditions there for the last four years, the last few years, I will say, been favorable to the prosecution of any kind of new work, and particularly as to the development of lumbering operations?

Mr. BIGGS. Well, I do not know what you refer to, to which part of it?

Senator KENDRICK. Well, as an illustration let me ask: Has the price of lumber been at a point to encourage production of lumber, and have the general financial conditions in that country been favorable?

Mr. BIGGS. Our general financial conditions have been very bad. As to what the lumber industry is, I have no knowledge of it at all. I have not been interested in it.

Senator KENDRICK. I will tell you what prompts my question. We are trying to reach a conclusion as to the good faith indicated, or that is my idea of it. All throughout that part of the West with which I am familiar, any sort of new development has been almost impossible because of financial conditions. And I thought perhaps you would have, judging from your statements made here, as good an idea as to those conditions as probably any man who could be found in your country.

Mr. BIGGS. As to the lumber industry, Senator Kendrick, I have no knowledge in a direct way at all. Everything I would give would be hearsay. I have never been interested in it.

Senator KENDRICK. You do not know whether the price of lumber has been low or high.

Mr. BIGGS. I know that with us the price has been high, but then of course that is only the local market, with us, and until this mill should start into operation why, that is the only use we have of lumber, is just the local use.

Senator KENDRICK. It is reasonably safe to say that the price to the consumer is always high, I might suggest.

Mr. BIGGS. Yes.

Mr. DE NEFFE. In this connection, Mr. Biggs, is there anything in the prospectus which requires the person to whom an award of this kind is made should have a certain amount of liquid assets before the contract can be awarded to him?

Mr. BIGGS. It provided that he must show assets of $850,000.

Mr. DE: NEFFE. Will you read that provision? What page is it to be found on?

Mr. BIGGS. It is found on page 10. [Reading:]

> The purchaser will be required to show assets in hand of $850,000, estimated to be about 30 per cent of the initial investment in fixed and working capital

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> shown by the appraisal. Such assets must be clear of liabilities, which include bonds, mortgages, or notes but not stock subscribed or paid in. Assets may be in the form of cash, improvements, equipment or, in the case of corporations, subscribed stock, the last not to exceed one-half of the amount required for a satisfactory financial showing. Stock subscriptions must be by solvent subscribers satisfactory to the approving officer and in the amount specified, whether the stock be subscribed at par or not. Assets equivalent to subscribed stock may be accepted in the case of firms, partnerships, limited corporations, or personal or family arrangements.

Mr. DE NEFFE. I do not care to have any more of it read, just the first part was what I wanted, unless you want the rest of it read.

Mr. HALLOCK. No; but I should like to ask one more question.

Mr. DE NEFFE. One minute. If Mr. Herrick had had the $850,000 of liquid assets as required in that provision, would there have been any need for the work lagging on account of lack of funds?

Senator WALSH of Montana. That is argumentative.

Mr. DE NEFFE. I think it is proper to be asked in cross-examination.

Senator WALSH of Montana. It is argumentative.

Mr. HALLOCK. Mr. Biggs, would you say that a man who could come down into the money marts of Chicago at this time and get $1,200,000 on his note, and who possessed a net worth of about $8,000,000, would qualify under that clause of the prospectus?

Mr. BIGGS. I am not passing on that at all.

Senator WALSH of Montana. You are asked for your opinion.

Mr. BIGGS. My opinion world be that it would be perfectly satisfactory if he could do that.

Mr. HALLOCK. All right.

Mr. MCGOWAN. No questions.

Mr. DE NEFFE. That is all I wish to ask.

The CHAIRMAN. The witness will be excused.

(Whereupon the witness left the stand.)

Mr. DE NEFFE. Now call Mr. Haight. But right at this point I should like to say that on yesterday Mr. Farre said he would bring some newspaper clippings which were to go into the record. I now supply them.

The CHAIRMAN. They will be placed in the record of yesterday at the point at, which they were offered. Now, Mr. Haight, please raise your right hand. You do solemnly swear that the evidence you are about to give in the hearing now being held by the subcommittee of the Committee on Public Lands and Surveys of the United States Senate, will be the truth, the whole truth and nothing but the truth; so help you God?

Mr. HAIGHT. I do.

TESTIMONY OF C. P. HAIGHT, OF CANYON CITY, GRANT COUNTY, OREG.

(Direct examination by Mr. Frederick M. De Neffe, representing Grant County, Oreg.)

Mr. DE NEFFE. Mr. Haight, what are your initials?

Mr. HAIGHT. C. P. Haight.

Mr. DE N NEFFE. Where do you live?

Mr. HAIGHT. In Canyon City, Grant County, Oreg.

Mr. DE NEFFE. How long have you lived there?

Mr. HAIGHT. About 24 or 25 years.

Mr. DE NEFFE. What is your business?

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Mr. HAIGHT. I have been publishing a newspaper there for that period.

Mr. DE NEFFE. You have been in touch with this Fred Herrick timber project since its beginning?

Mr. HAIGHT. I have.

Mr. DE NEFFE. And since the contract was signed have you kept in touch with it?

Mr. HAIGHT. Yes; I have run down everything in every direction that I could hear of, just as a matter of news.

I have gone out in every direction and run down every rumor, and picked up everything I could, just as a mere matter of news, to keep up with it.

Mr. DE NEFFE. That is, in connection with your work as a newspaper man you kept in touch with what was going on?

Mr. HAIGHT. Yes, sir; from every source.

Mr. DE NEFFE. Have there been any delays in the prosecution of this work under the contract?

Mr. HAIGHT. Why, there has never been anything but delays.

Mr. DE NEFFE. Have you ever had any discussion with any of the forest officials regarding any delay there might have been in the enforcement of the forfeiture provided by the contract originally?

Mr. HAIGHT. Well, yes, I have.

Mr. MCGOWAN (interposing). Might I interrupt for just an inquiry. Mr. De Neffe, what forfeiture do you refer to?

Mr. DE NEFFE. There was to be a $50,000 forfeiture.

Mr. MCGOWAN. In the contract originally?

Mr. DE NEFFE. Yes.

Mr. MCGOWAN. Was not that a surety bond?

Mr. DE NEFFE. Yes.

Mr. MCGOWAN. Do I then get your idea to be that a forfeiture and a surety bond are synonymous?

Mr. DE NEFFE. In a case like the forfeiture of the Liberty bonds, they would be put up and sold.

Mr. HALLOCK. No; but available to cover any damage that the Government might sustain. That is what it recites.

Mr. DE NEFFE. Was there any discussion as to a forfeiture or liquidated damages or anything of that kind for failure of Herrick to complete his contract?

Mr. HAIGHT. Yes.

Mr. DE NEFFE. Who did you talk with?

Mr. HAIGHT. Well, I talked with our local supervisor.

Mr. DE NEFFE. And who is he?

Mr. HAIGHT. Walter Dutton.

Mr. DE NEFFE. What did he say, if anything?

Mr. HAIGHT. Well, perhaps I had better explain it. When the last extension was made, when this 1926 extension was made, as usual I went off to get the terms and conditions and one thing and another connected with it. He said that everything was fine now, that they had everything right down now so that they could do something. I said, "I am glad to hear it." Then he recited the extensions and said, "Now, there is connected with it one of those provisions for the completion of road September 15, 1926, to Seneca and the completion of the road from the mill to the timber by December 15, and the saw mill plant to be in operation March 1st." He said that these conditions referred to, that touched each one of these things, was automatic, and that a fine was to follow for non-

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performance. In case of nonperformance, why the thing just automatically worked, that $50,000 forfeiture was liquidated damages. Well, late in December we were discussing the matter again --

Mr. DE NEFFE (interposing). What year was this?

Mr. HAIGHT. 1926, just passed. I asked him how about this forfeiture. "Well," he said, "there was another clause there." I said, "What is that other clause? I never heard of that at the time." "Well," he says, "that of course is subject to review by the Secretary of Agriculture." "Well," I said, "there is no use talking about it." that is about as far as I have ever got on this thing from beginning to end. There was always another clause to it.

Mr. DE NEFFE. Have you recently made a trip over it from Burns to Seneca?

Mr. HAIGHT. Yes, sir; I was there on the 19th day of December last.

Mr. DE NEFFE. Who was with you?

Mr. HAIGHT. Mr. Wollenberg, and the county agent of Grant County, Mr. Rogers.

Mr. DE NEFFE. How far south did you go?

Mr. HAIGHT. To the proposed mill site.

Mr. DE NEFFE. Below Burns?

Mr. HAIGHT. Two miles out of Burns or such a matter.

Mr. DE NEFFE. What condition did you find there as to construction work?

Mr. HAIGHT. Well. I found the mill pond, and I would call it partially complete. That is just out there on the sagebrush, flat, loose ground, and Fresnos have gone in there and run up a bank around one end of it, pretty well around there. There was a structure there, I wouldn't attempt to say just the size, but maybe 30 by 50 or 60 it looked like, looked like it might be half done or maybe a little more. But so far as the mill proper is concerned I could not find any evidence or trace of it. Sagebrush is still growing between that and the mill pond and I could not find it.

Mr. DE NEFFE. Is Mr. Barnes the only one up in that neighborhood who is objecting to these delays and the situation that this matter is in at the present time?

Mr. HAIGHT. {Oh}, no; Barnes is a very insignificant part of this thing. It is the people of our country, of Grant County, and they were so greatly concerned that they were willing to pay his expenses back here to present this case; because they had had so many experiences with the Forest Service. The county judge a year ago, when they protested as strongly as they could as to the removal of the terminus, they never even got a reply.

Mr. DE NEFFE. That was as to stopping there below Seneca?

Mr. HAIGHT. It was first and then near Shirt Tail Creek. They said there was no use of sending any resolutions back to Colonel Greeley, that there is only one thing to do, to send some one back there, and so they sent Barnes back and paid his expenses to see if they could not get some action.

Mr. DE NEFFE. Is Mr. Barnes now dominating the sentiment of Grant County?

Mr. HAIGHT. Well, I do not think so. I think this resolution is the culmination of expressions, of the highest expression that can

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be obtained, first through the Grant County Stock Growers' Association, as expressed in their resolutions and represented by the most substantial people of the county; and the highest expression within the county is expressed through their county court by resolutions and backed by their representative. The next highest expression we could get was the Oregon Legislature, and we got that, expressing our whole disapproval of this thing. And we can not get any higher expression by the people of that country than these different protests.

Mr. DE NEFFE. Why are the people insisting on the money coming in there from this project as soon as possible?

Mr. HAIGHT. The county, as far back as the beginning of this thing, had contemplated road plans and outlined their work so far as the building of other permanent roads in the county were concerned, and —

Senator WALSH of Montana (interposing). I think this subcommittee will take judicial notice of the fact that the county needs money.

Mr. HAIGHT. You will see that they are not getting their part. Let me clear up this situation: This proposition does not belong to the Forest Office. That timber did not belong to them. That whole proposition belongs to the people, initiated and instituted by and through them in the shape of a petition, to participate in all the results of that contract. They are a party to that contract, to receive their share of the proceeds of the sale, and we feel as though we have some right to speak and to be heard when we do speak and not be entirely ignored from 1923 down to this very hour.

Mr. DE NEFFE. Why are you people insisting on the common-carrier clause in the contract as to the railroad from Burns to Seneca?

Mr. HAIGHT. That was the basis of the whole thing. Eliminate that and we have nothing. Now, remember that I have lived in a dead county for 25 years, a county 100 miles square with 5,400 people in it, 55 per cent of the area within the forest reserve and ruled by this administration. Why, when this thing came along there was a great deal of interest, lots of enthusiasm. We believed that a great development was coming to our county, something that had never happened before, and we were all enthusiastic, and we had a right to be enthusiastic. And then—that is about as far as we have got.

Mr. DE NEFFE. Did anything happen recently in regard to anything Colonel Greeley has said which made you people suspicious that the common-carrier feature might be impaired or changed in any way?

Mr. HAIGHT. This is it, if you will just let me explain. As we see it this whole contract now is modified from the original, is nothing but an emasculated memory. There is nothing there. First there was the essence of time and if time is of the essence of a contract, then this contract has disappeared entirely and is of no force and effect at all. As to the matter of the cutting of the timber and the amount. to be cut, that was a very dominant and important thing so far as contemplating bidders might have figured on it. And, of course, this made lots of difference to them. That has all been changed.

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Now, as to the common-carrier clause, that has degenerated from a common carrier for freight and passengers to the modified form of a broad gauge road suitable for logs.

Then the terminus of the road has receded from Seneca into the vicinity of Seneca, and then to Shirt Tail Creek.

And then at this time comes the last statement of Colonel Greeley, when he says it will be necessary for me to make other and further modifications in the contract to suit certain bankers, so that this thing can be financed. So we fear, and have the right to fear that even now we are going to lose even Shirt Tail Creek.

Mr. DE NEFFE. You may take the witness.

(Cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Haight, there is nothing in your name that implies your frame of mind toward Colonel Greeley, is there?

Mr. HAIGHT. No; these things generally go by contraries, you know.

Mr. HALLOCK. You are after the brass buttons as you have put it in your paper over and over again.

Mr. HAIGHT. I am after the man responsible, and the man who is responsible is the head of the department.

Mr. HALLOCK. And as you characterized it in your journalistic language, you are after the brass buttons.

Mr. HAIGHT. I am after the head of the department, and he is the man responsible for the whole thing, because you can not blame any one else.

Mr. HALLOCK. And that is Colonel Greeley that you refer to?

Mr. HAIGHT. He is either responsible willfully or ignorantly. If he is responsible willfully he is amenable to the courts; and if he is responsible ignorantly then he is certainly not the man to administer all the resources of the West, where there are hundreds of millions of dollars worth of property, and particularly the resources of Grant County, that has six or seven other units worth millions of dollars to come into this matter and which should add millions of dollars to our county.

Mr. HALLOCK. You are bringing Mr. Herrick into this thing, so to speak, for good measure. Your fight is against Colonel Greeley's administration generally, is it not?

Mr. HAIGHT. Well, no—yes, in this particular instance, yes. We do not want to have the other units handled like this has been handed—when we wake up to the situation, after a contract has been made, we find that ex-forest officials are connected with them, and the county getting nothing for three or four years.

Mr. HALLOCK. You are the publisher of the Blue Mountain Eagle?

Mr. HAIGHT. Yes, sir.

Mr. HALLOCK. That paper is printed over in Canyon City, in Grant County?

Mr. HAIGHT. Yes, sir.

Mr. HALLOCK. Your nearest competitor is Mr. Julian Byrd, the publisher of the Times-Herald in Burns, is it not?

Mr. HAIGHT. He is not a competitor at all.

Mr. HALLOCK. Well, in any event he is in the same journalistic field that you are?

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Mr. HAIGHT. Yes; but he is 70 miles away.

Mr. HALLOCK. Your views on this matter are and always have been radically opposed to those of the Times-Herald, have they not?

Mr. HAIGHT. No.

Mr. HALLOCK. Well, you have found yourself in the situation where you were having a newspaper debate over this matter several times?

Mr. HAIGHT. Oh, yes, after three or four years transpired and we were never able to get any information. There was no one in the country more willing to support and better supporters of Mr. Herrick and the Forest Service when this thing was taken hold of.

Mr. HALLOCK. The Times-Herald is published right there where this thing has been going forward?

Mr. HAIGHT. Yes.

Mr. HALLOCK. You do not want to leave the impression, do you, Mr. Haight, that the first time you made an inspection of that property was in December, 1926?

Mr. HAIGHT. Oh, no. I have been over it back and forth a number of times.

Mr. HALLOCK. You recall, do you not, that you were attacking Mr. Herrick and his administration of affairs, and that Mr. James Girard, the general manager, came over to Canyon City and expressly invited you to come in and

look over the line with him—do you recall that?

Mr. HAIGHT. Yes.

Mr. HALLOCK. And you did not accompany him, did you?

Mr. HAIGHT. Why, no, I did not, because it was not convenient at that time.

Mr. HALLOCK. Have you ever gone to the office of the Fred Herrick Lumber Co., or any one else in authority there, and asked them to show you over the line, and to let you know what was really going on?

Mr. HAIGHT. At the last extension that was made in June, when Mr. Dutton came in and gave me the terms of this thing. I published it. I said, "I will get in touch with Girard now and see if he is going to hit the ball, and shove this thing along." I tried to get in touch with him, but he disappeared for a month or six weeks, and I could not get in touch with him.

Mr. HALLOCK. He was down in California engaged in appraising some timber down there running into the millions of dollars in value, was he not?

Mr. HAIGHT. Well, I do not know where he was. I never could find him, and I wanted to find out when they were going to build this road.

Mr. HALLOCK. You didn't know that he had been requested to go there and make an appraisal of timber running into the millions of dollars?

Mr. HAIGHT. Well, he was the general manager of this road and ought to have been there building this road, and not cruising timber for somebody else.

Mr. HALLOCK. I show you what purports to be a sheet from your paper under date of April 9, 1926. Are you the author of that article that is circled there?

Mr. HAIGHT. Yes, sir.

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Mr. HALLOCK. Might I have it back now, if you please?

Mr. HAIGHT. Certainly. Here it is.

Mr. HALLOCK. Now, you say here, Mr. Haight:
James Girard is the superintendent of the Fred Herrick Lumber Co., supposed to be building a railroad into Bear Valley.

Mr. HAIGHT. Yes.

Mr. HALLOCK. Why do you use the word "supposed"?

Mr. HAIGHT. Well, it is a mere supposition up to this time.

Mr. HALLOCK. Do you mean to say that it was a mere supposition up to early in 1926?

Mr. HAIGHT. There is no realization like there should have been way back on April 1, 1925. I do not know whether it will ever be completed. At least I have no assurance of it.

Mr. HALLOCK. In referring further to Mr. Herrick you say:

> In other words, he has not the money to build this road. and as the Eagle said more than a year ago, it was a shoestring outfit.

Mr. HAIGHT. Colonel Greeley says in his statement of December 31 that it is now trying to finance itself, and if he can make further modifications—and I do not know what they could be, because everything has gotten out of

that contracts—but anyway, if he can make further and other modifications, then he will be able to get the money. And —

Mr. HALLOCK (interposing). But you have always characterized —

Mr. HAIGHT (continuing). Pardon me a moment.

Mr. HALLOCK. Pardon me, but I thought you were through.

Mr. HAIGHT. If you will go back to the letter that Mr. Sherman wrote —

Mr. DE NEFFE. (Interposing.) The first assistant?

Mr. HAIGHT. He is the one who was acting.

The CHAIRMAN. He is of the Forest Service?

Mr. HAIGHT. Yes, sir. In 1924, when there was nothing done on this road, we protested, and wanted to know why this man did not become active to fulfill his contract. As a result of that I presume Mr. Sherman of the Forest office wrote to Mr. Herrick. And he told him that he must get busy and make some showing or he would be in no position to ask for an extension in 1925. Following that letter is Mr. Herrick's reply, and it is stated in there that he was doing the best he could, that he was asking his right hand to go into his left-hand pocket for money.

Mr. HALLOCK. And that is why you characterized it as a shoestring outfit.?

Mr. HAIGHT. He did not have the money, and has not got it yet.

Mr. HALLOCK. Do not you think that is rather a bold statement?

Mr. HAIGHT. No; I take Colonel Greeley's own statement for it.

Mr. HALLOCK. Have you, yourself, made any investigation to be able to make a statement like that?

Mr. HAIGHT. I take Colonel Greeley's statement, and he says that he is trying to raise $500,000, and says the mill will cost $525,000, and the railroad will cost $1,125,000, and the equipment will cost $410,000, so that will not get him anywhere.

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Mr. HALLOCK. I am not asking you what Colonel Greeley says I am asking you what investigation you have made that enables you to characterize the Herrick proposition as a shoestring outfit?

Senator WALSH of Montana. Well, I think he has told us enough along that line. He has told us the basis for his statement.

Mr. HALLOCK. You do know that Mr. Herrick and the Union Pacific Railroad on that joint venture have spent something like $2,000,000 up to date, do you not?

Mr. HAIGHT. Mr. Arthur Spencer, the general attorney of the Oregon-Washington Railroad & Navigation Co., told me that Mr. Herrick had only put $35,000 on the road, and that he had given him 36 miles of steel on that, and that he had 10 years in which to pay for it, and he stated further than that —

Mr. HALLOCK. What you have learned of Mr. Herrick's financial status you have gleaned in conversations of that character?

Mr. HAIGHT. And further, as far as I could get them, there is no commercial agency that I have ever been able to find that gives him any rating. Every time that I have heard of him out in our country, so far as this activity is concerned, and as to the railroad, why there is not any money.

Mr. HALLOCK. All right, Mr. Haight, that is all I wish to ask.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. How much money have you in that proposition?

Mr. HAIGHT. Not a penny or a promise.

Mr. MCGOWAN. What would be your desire with reference to the action the Forest Service should take? Do you think the contract should be canceled?

Mr. HAIGHT. Well, now, if you will permit me to explain, as I can not answer that yes or no.

Mr. MCGOWAN. Go ahead in your own way.

Mr. HAIGHT. I will have to divide it probably into a phase or two.

Mr. MCGOWAN. All right.

Mr. HAIGHT. So far as we personally, locally and selfishly may be concerned we might be satisfied with a guaranty, but it would have to be something besides the Forest Office, because their guaranties up to date are no good. But if we could get an absolute guaranty that a common-carrier railroad within a specified time suitable for carrying passengers and freight, was to be built, that might satisfy us locally, selfishly as a community, you understand. Upon that phase of it possibly we would not cancel it.

But there is another phase: If through the instrumentality of the Government and its employees this transaction is worked up within the department, and a man then steps out of the department and becomes associated with it, and over a period of four years gets every consideration, every modification, which tears out every one of the four essentials of the contract, with the consent and approval of the Chief Forester, then upon that point I would cancel it right to-day, and dismiss the Chief Forester. That is what I would do.

Mr. MCGOWAN. Well, then, on the basis of your selfish interests you are perfectly willing to let it go ahead, but on the moral end of it —

Mr. HAIGHT. I did not say that.

Mr. MCGOWAN. Well, I do not want to misquote you. I was trying to summarize it.

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Mr. HAIGHT. As a matter of good government I would cancel it, and I would dismiss the chief man responsible.

Mr. MCGOWAN. You would not dismiss him, though, in the absence of something to justify some collusion or fraud in the matter. Would you?

Mr. HAIGHT. Well, I don't know what more you would want for collusion.

Mr. MCGOWAN. I am not asking you to argue the matter. I am asking what you would do, whether you would want to cancel it on the ground of fraud unless there was some evidence of fraud.

Mr. HAIGHT. Well, the evidence —

Mr. MCGOWAN (interposing). Is that what you would do? I am asking you personally what you would do; if there was no fraud in it, would you want to cancel it?

Mr. HAIGHT. Oh, no.

Mr. MCGOWAN. Now, specifically; what information have you, Mr. Haight, as to fraud in this transaction, of your own personal knowledge?

Mr. HAIGHT. I can not point to any one specific act. It unfolds, commencing at the beginning, and at intervals makes its own revelation, down to the last statement by the Chief Forester.

Mr. MCGOWAN. Yet over a period of four years—and is it four years from 1923 to 1927?

Mr. HAIGHT. It started in 1922, but it has not even started being financed down to this date.

Mr. MCGOWAN. In a period of five years, and with all this controversy that is going on now, and notwithstanding your, I take it, considerable depth of feeling in connection with it?[1]

Mr. HAIGHT. Yes, sir; I have.

Mr. MCGOWAN. I ask you if there is one specific instance of fraud of your own personal knowledge, and what is your answer?

Mr. HAIGHT. There has not been one condition, there has not been one promise, there has not been one guaranty kept or fulfilled from the beginning of this contract down to this hour.

Mr. MCGOWAN. Very well. Now as to the common-carrier clause: Have you ever at any time taken up with any member of the Forest Service the proposition of the common-carrier clause, to ascertain what the Forest Service would or would not do with reference to that clause of the contract?

Mr. HAIGHT. The first time I came —

Mr. MCGOWAN (interposing). Can not you answer that question: yes or no and then make your explanation?

Mr. HAIGHT. Yes.

Mr. MCGOWAN. Who was it and when did you take it up?

Mr. HAIGHT. The first time we came in contact with the Forest Service after we had planned this development of our country and with a common-carrier road, the first contact that we had was the suggestion by the forest office to eliminate the common-carrier clause.

Mr. MCGOWAN. That was before the contract was entered into?

Mr. HAIGHT. Yes; between that time and the second advertising or just prior to the opening of the second advertising for bids. That was our first contact.

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Mr. MCGOWAN. That was before the contract was entered into. But, subsequent to the time when the contract was entered into, have you ever taken up with any member of the Forest Service the proposition of elimination of the common-carrier clause?

Mr. HAIGHT. I have taken this up with those that I could.

Mr. MCGOWAN. Can you answer that yes or no?

Mr. HAIGHT. Yes.

Mr. MCGOWAN. Who was it with?

Mr. HAIGHT. I have talked it with everyone I could contact with.

Mr. MCGOWAN. Who?

Mr. HAIGHT. Mr. Dutton, for one, and I made an effort to talk with everyone I could for four years.

[1]This is how it appeared in the transcript.

Mr. MCGOWAN. I am not talking about the countryside down there. The only man of the Forest Service that you have ever taken up the proposition of elimination of the common-carrier clause with was Mr. Dutton; am I correct in that?

Mr. HAIGHT. No; I do not think so.

Mr. MCGOWAN. Well, who else than him; tell us?

Mr. HAIGHT. Well, now—well, I don't know as I could recall at this time, but I am satisfied I have.

Mr. MCGOWAN. You do not know of any other than Dutton; is that your answer?

Mr. HAIGHT. Oh, I guess I have; yes. I have written to them.

Mr. MCGOWAN. Who did you ever write to with reference to the common-carrier clause, as to the elimination of it?

Mr. HAIGHT. I think I wrote to the department one time.

Mr. MCGOWAN. Well, to whom and when?

Mr. HAIGHT. Probably to the department in Portland.

Mr. MCGOWAN. You are sure of that?

Mr. HAIGHT. Oh, I think I am, yes.

Mr. MCGOWAN. Have you a copy of your letter?

Mr. HAIGHT. A copy that I wrote to them?

Mr. MCGOWAN. Yes.

Mr. HAIGHT. No.

Mr. MCGOWAN. What did you say in substance? We do not care so much about the copy, just tell us about the substance.

Mr. HAIGHT. Well, I asked them if that fine had ever been made.

Mr. MCGOWAN. I am now talking about the common-carrier clause.

Mr. HAIGHT. I told you I wrote to them.

Mr. MCGOWAN. Go ahead and tell us about it.

Mr. HAIGHT. I think I wrote them and asked if that fine or liquidated damages, that started out to be a forfeiture, and ended up by being liquidated damages, had been paid; and possibly if the common-carrier clause was still in the contract.

Mr. MCGOWAN. That is the only recollection you have of it?

Mr. HAIGHT. Why —

Mr. MCGOWAN (interposing). Yet this common-carrier clause, as I understand it, and as you have carried it repeatedly in your newspaper, The Blue Mountain Eagle, and spread it over the countryside there; you have stated, if I quote you correctly, that the Forest Service was in cahoots with these conspirators to eliminate the common-carrier clause, is not that what you have said?

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Mr. HAIGHT. Well, I think so.

Mr. MCGOWAN. What is there in reference to that of your own information?

Mr. HAIGHT. Why, your own records.

Mr. MCGOWAN. Show me any place where the common-carrier clause is to be eliminated.

Mr. HAIGHT. Take section 38.

Mr. MCGOWAN. All right, take section 38 and look at it and show me where it says the common-carrier clause is to be eliminated.

Mr. HAIGHT. It says that a common-carrier railroad shall be built, constructed, suitable for hauling passengers and freight, and then it modified the language to a broad-gauge railroad suitable for hauling logs.

Mr. MCGOWAN. When did you first see this contract?

Mr. HAIGHT. Well, since I have been here.

Mr. MCGOWAN. You did not know anything about that clause before you got here in Washington, did you?

Mr. HAIGHT. Well, I think I did.

Mr. MCGOWAN. Well then, your articles that appeared in your newspaper were based upon misinformation?

Mr. HAIGHT. No; I don't think so. I had a talk on the 19th day of December over in Burns with Mr. Arch McGowan, our State representative, and he stated that Mr. Girard had told him repeatedly, and only a few days previous to that, that they would never haul a passenger, and would never haul a log over that railroad for anybody else. That is what Mr. Girard said.

Mr. MCGOWAN. Coming back to Mr. Herrick's financial ability to carry on this proposition: Have you of your own personal knowledge any information on that subject at all, as to what Mr. Herrick can do and what he can not do in a financial way?

Mr. HAIGHT. Yes; I have.

Mr. MCGOWAN. Tell us what it is.

Mr. HAIGHT. Why, he can not do anything, he has not done anything.

Mr. MCGOWAN. Do you know anything about his financial ability, is my question.

Mr. HAIGHT. Well, we have four years of it here and he has not got it done yet.

Mr. MCGOWAN. That is as I would see it a conclusion.

Mr. HAIGHT. Well, he says he has a contract—or I mean that he is trying with his right hand to get money out of his left-hand pocket.

Mr. MCGOWAN. Is that the extent of your knowledge of the man's situation?

Mr. HAIGHT. Well, I don't know anything about that.

Mr. MCGOWAN. Very well. That is all I wanted to find out.

Mr. HAIGHT. Colonel Greeley says he has not got it yet.

Mr. MCGOWAN. Now, coming down specifically to the clause in Senate resolution 332 with reference to the so-called fraud or collusion that existed between Herrick and the officials of the Forest Service: Have you any personal knowledge as to the existence of any fraud there, and if so tell us what it is, because we want to know.

Senator WALSH of Montana. You have been over that.

Mr. MCGOWAN. I did not think so.

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Mr. HAIGHT. Pardon me, and let me supplement that a little.

Senator WALSH of Montana. Oh no. You must answer the questions asked, but counsel has been over that.

Mr. MCGOWAN. I withdraw the question then. That is all.

Mr. HALLOCK. I should like to offer in evidence the newspaper article I directed the attention of Mr. Haight to a while ago, and ask that it be made a part of the record.

The CHAIRMAN. If there is no objection it will be received and made a part of the record.

(The article from the Blue Mountain Eagle, published at Canyon City, Grant County, Oreg., Friday, April 9, 1926, is here made a part of the record, as follows:)

> James Girard is the superintendent of the Fred Herrick Lumber Co., supposed to be building a railroad into Bear Valley. According to Government guarantees to the people of Grant and Harney this road was to be in operation on April 1, 1925. In the last issue of the Burns paper Mr. Girard makes the following statement:
>
> "There are only two types of individuals who can be of any material assistance in the development of this or any other large project. These two types are as follows: (1) A person with sufficient cold cash to be in a position to assist in financing the work,"

In other words, he has not the money to build this road and as the Eagle said more than a year ago, it was a "shoe-string outfit." He needs some man with the cold cash. Since 1924 he has trifled with the people of two counties and made the Forest Service in Portland ridiculous. Mr. Girard says they need a man with the "cold cash." Why did they not say this two years ago? Why did not the Portland office know that this man was not financially able to build this road and develop two great counties. Was this office so inefficient and indifferent that they did not know that he could not build this road because as Mr. Girard now says they need a man with cold cash. This is a nice state of affairs from which the people should arouse. There is no use to protest this situation with the Portland office, but should be taken direct to the Oregon delegation. The Oregon delegation should know and the chief forester should know that the Portland office has approved a man who says he has no money with which to fulfill his contract but is looking for a man with the cold cash. How long is he going to look for this man, and how long is the Portland office going to give him to find a man with the cold cash? Time and again they have extended the time so he could find some one with the "cold cash" and the Portland office said that on April 1st he must have the grade to Seneca ready for ties and steel and the foundation of the mill laid. He has done neither and will he be given other and indefinite time to hunt for this much-desired individual. If Mr. Herrick is broke, as Mr. Girard intimates, he has our sympathy for we know what the feeling is, and if he never did have the money to build this railroad and mill, then we want to congratulate him on hanging it onto the Portland office and getting a billion feet of timber with which to go out and find a man with "cold cash."

(Redirect examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Have you the letter in the Government record which Mr. Herrick wrote about this left-hand pocket business? If so, read that paragraph.

Mr. HAIGHT. Under date of September 30, 1924.

Mr. DE NEFFE. To whom is this addressed.

Mr. HAIGHT. To Colonel Greeley.

Mr. DE NEFFE. And signed by Fred Herrick.

Mr. HAIGHT. Yes; signed by Fred Herrick.

Mr. DE NEFFE. You may read it.

Mr. HAIGHT. The concluding paragraph is as follows:

> I am going to ask you for one year's extension of time on this contract, and I know you will consider that this is a big proposition to work out, getting the cash by your right hand out of your left-hand pocket.

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And then the extension was granted. I do not know on what other grounds. That was an open winter and they could have worked all winter, pretty nearly in their shirt sleeves.

Mr. DE NEFFE. You say that Girard disappeared during the summer of the year 1926.

Mr. HAIGHT. That was after the extension was made. And then I said I would see if they were going to hit the ball this time.

Mr. DE NEFFE. During the summer of 1926.

Mr. HAIGHT. Yes, after this last extension was made in 1926. But I could not find him as he was not there.

Mr. DE NEFFE. Was it generally known throughout the country that he was absent?

Mr. HAIGHT. Sure, it was. He was gone a month or six weeks, and ought to have been there building the railroad, and yet it seems he was down cruising timber, I suppose, somewhere else.

Mr. DE NEFFE. You stated in reference to Mr. Herrick's raising $500,000, that was the statement Colonel Greeley made, was it?

Mr. HAIGHT. That was the last statement, and a copy of that was given to the press and also to the other office.

Mr. DE NEFFE. How late was that statement?

Mr. HAIGHT. The 30th day of last December.

Mr. DE NEFFE. Is $500,000 enough to finish the project according to the Government's own appraisement?

Mr. HAIGHT. The prospectus provided that the mill, exclusive of the box factory and other things, will cost $525,000, and then this equipment will cost $410,000, and I would like to know what he will do with $500,000, for he owes a lot of money for what has been done?

Mr. DE NEFFE. In addition to the $525,000 for the mill, he would have the equipment amounting to $410,000 and other things; is that right?

Mr. HAIGHT. Whatever those figures are.

Mr. DE NEFFE. And the total cost of the road is $1,025,000. So that what would $500,000 amount to to finish the whole project? {This is how the sentence appears in the transcript.}

Mr. HAIGHT. That will not start it according to his own figures.

Mr. DE NEFFE. You stated in response to a question as to whether the contract should be canceled on the ground of fraud, as to what you thought about it. Is there anything in this contract as it was signed which indicates to you that there was any fraud?

Senator WALSH of Montana. I think this witness had told all he knows about the fraud.
Mr. DE NEFFE. It was just this reference to paragraph 3.

Senator WALSH of Montana. If you want to call his attention to any specific matter, all right. But as to any general question on that line, you have already asked him.

Mr. DE NEFFE. Have you examined the original contract, particularly paragraph 3, which specified the minimum and maximum cut as explained by Mr. Biggs?

Mr. HAIGHT. Yes.

Mr. DE NEFFE. Comparing that with the requirements in the prospectus, has that anything to do with the conclusion you have come to that there was fraud in the inception of the contract?

Mr. HAIGHT. Oh, I imagine that would make all the difference in the world in a man's bidding in the beginning. The chances are

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that if other operators had had the same contract that Herrick has got they would have bid a whole lot more than $2.80. They did not have it, and they bid on that prospectus.
Mr. DE NEFFE. You gentlemen may go ahead.

(Further cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. You say they did not have it. What is the basis of that information?

Mr. HAIGHT. This thing in his contract. No one else had a chance to bid on his contract. Here is what they bid on, the prospectus.

Mr. MCGOWAN. What is the basis of your information that other bidders on this timber did not have the same data that Herrick had when he signed the contract? That is a clear question; now answer it.

Mr. HAIGHT. Sure he did.

Mr. MCGOWAN. What is that?

Mr. HAIGHT. Yes.

Mr. MCGOWAN. "Yes " does not answer the question. What is the basis for your information?

Mr. HAIGHT. Why, the basis is that here is what they bid on, and here is what he has got now.

Mr. MCGOWAN. Let us go back for a minute. I understand you to suggest that Herrick, by reason of the contract that was entered into, had something different from what the other prospective bidders had; is that your position?

Mr. HAIGHT. Why —

Mr. MCGOWAN (continuing). Can't you answer that yes or no?

Mr. HAIGHT. Why, yes.

Mr. MCGOWAN. What is the source of your suggestion that that situation did exist?

Mr. HAIGHT. Well, after 1924 passed and we saw that there was no activity on the road to speak of, and we used every effort to see if we could not stimulate this work, and these extensions went on, and these other things commenced creeping in, I said, "Who is this man Mr. Girard, and what is his official capacity and, his relation here?" and I wrote to the Missoula office —

Mr. MCGOWAN (interposing). Well, now —

Mr. HAIGHT (continuing). I will answer your question. I wrote to the Missoula office, the Missoula forest office, and I was amazed when I got the reply and I got the record of his service, starting back to 1906, I think it was, as a forest ranger, or a forest Girard, or a forest this and that and the other. And I think along about the time this contract was signed he was logging engineer or something of that kind. And I was amazed that from 1906 to 1923,

so far as the record disclosed, he had never had any experience in handling of such a corporation or outfit as a $4,000,000 proposition, and then he comes in here, leaving the service, and takes full charge of a proposition that means three or four million dollars. I just could not understand it.

Senator WALSH of Montana. That is not answering the question addressed to you at all.

Mr. HAIGHT. I beg your pardon.

Senator WALSH of Montana. The question addressed to you was, what information did you have that the bidders who bid on the second advertisement bid on the basis of that prospectus?

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Mr. HAIGHT. Why, the advertisement was not changed any except as the amount was changed from $2.75 to $2. Otherwise it was the same.

Senator WALSH of Montana. Did the advertisement run in the papers at the time?

Mr. HAIGHT. Yes, I think so. I knew once one did.

Senator WALSH of Montana. Then you are speaking on the basis of the advertisement as it appeared in the paper?

Mr. HAIGHT. Yes.

Mr. MCGOWAN. Have you any information of any nature whatsoever that the lumber trade, specific lumber dealers did not have all of the data with reference to the contract that was signed by Herrick?

Mr. HAIGHT. The modified contract?

Mr. MCGOWAN. The contract that he actually signed?

Mr. HAIGHT. Did they? I am talking about the modified contract.

Mr. MCGOWAN. The contract on which he bid?

Mr. HAIGHT. Yes.

Mr. MCGOWAN. Wasn't that contract, and the data that was in it of general interest and general knowledge to the lumber trade? That is the point.

Mr. HAIGHT. Well, they had this contract in here, yes.

Mr. MCGOWAN. Now you have in your hand the prospectus.

Mr. HAIGHT. Well, the form of the contract is in here, isn't it?

Mr. MCGOWAN. Well, go back and let me put the question to you once more. You say that Herrick when he signed the contract in 1923 had some advantage over some other person. What is that advantage that he had?

Mr. HAIGHT. No, I think maybe we misunderstand each other.

Mr. MCGOWAN. Well, let put it the other way. Do you mean to say that Herrick did not have an advantage over the other bidders?

Mr. HAIGHT. I mean to say that in the modified form of the contract —

Mr. MCGOWAN. I am not talking about the modifications. Let us confine it to the question of the original contract. Was that all fair and in your opinion open and aboveboard and Herrick did not have a shade on anybody else?

Mr. HAIGHT. Why, in the submission of this contract, yes. That is what they all supposed they were bidding on; yes.

Mr. MCGOWAN. Well, as far as the original contract was concerned then, there was no collusion between the Forest Service, as I understand you, and the Herrick people, is that the straight of it?

Mr. HAIGHT. Well, I don't know as to that.

Mr. MCGOWAN. Well, that is what we want to find out.

Mr. HAIGHT. I kind of suspect there was.

Mr. MCGOWAN. Well, that is your suspicion? Tell us.

Mr. HAIGHT. Well, I suspect—-this is a mere suspicion based upon subsequent events—that Mr. Girard was instrumental in getting Mr. Herrick to make the bid, and it is possible that he might have been given to understand that he could have the modifications as here
shown.

Mr. MCGOWAN. That is only a suspicion?

Mr. HAIGHT. That is what I state it as.

Mr. MCGOWAN. All right.

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Mr. HAIGHT. Based upon subsequent events from that hour down to Mr. Greeley's last statement.

Mr. MCGOWAN. Yes, but as far as the contract itself is concerned, there is nothing of any fact that you know of any nature whatsoever' that Herrick had any advantage over the other persons who were interested in the purchase of that timber, is that correct?

Mr. HAIGHT. Well, outside of that suspicion, yes.

Mr. MCGOWAN. Outside of the suspicion?

Mr. HAIGHT. Yes.

Mr. MCGOWAN. That is all there is to it?

Mr. HAIGHT. That there is is {*sic*} apparent on its face. Of course that is what they bid on.

Mr. MCGOWAN. That is all.

Mr. DE NEFFE. That is all.

Mr. HALLOCK. Air. Haight, just a moment, please.

Senator WALSH of Montana. I hope you will try to get through with this witness.

The Chairman. Yes.

(Further cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. I understood you to say that the Herrick companies over in that country owe a lot of money for work that has been done, is that correct? Did I quote you correctly, sir?

Mr. HAIGHT. I think so.

Mr. HALLOCK. Can you cite a single instance of an unpaid account of the Fred Herrick company or the Malheur Railroad Co.?

Mr. HAIGHT. I say of their activities.

Mr. HALLOCK. What do you mean by that?

Mr. HAIGHT. Well, I mean those things that originated with them and those that are connected with them, and those that are working with them, I mean their whole activities.

Mr. HALLOCK. What money does the Herrick Lumber Co. and the Malheur Railroad Co. owe in that country at all?

Mr. HAIGHT. Weinstein told me that they got into him for $10,000.

Mr. HALLOCK. Who?

Mr. HAIGHT. Weinstein told me that they got into him for $10,000.

Mr. HALLOCK. Who did?

Mr. HAIGHT. The different operators working in through there; that Mr. Girard or Mr. Klobucher came in there and guaranteed the bill of a contractor, and then later repudiated it.

Mr. HALLOCK. Weinstein told you that some contractors had been extended credit?

Mr. HAIGHT. Upon the guaranty of Mr. Klobucher, yes, and then later they repudiated it, and later paid them half and saying, "Oh, you paid them too much."

Mr. HALLOCK. What was the name of the contractor?

Mr. HAIGHT. He didn't tell me that.

Mr. HALLOCK. Can't you remember that?

Mr. HAIGHT. No.

Mr. HALLOCK. You do not know now whose contract it was?

Mr. HAIGHT. I know further that on the 18th of last December I was at the home of Mr. Jack Craddock in Silvies Valley, and Mr. Jack Craddock at that time told me that this outfit had not even secured right of way yet, there were three miles through him that

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they had never secured that right of way, and he said he wouldn't let them through until they paid him, and I asked him why, and he told me this.

Mr. HALLOCK. Do you not know that a condemnation proceeding is pending on the Craddock property now, Mr. Height?

Mr. HAIGHT. Well, that is what he told me.

Mr. HALLOCK. Yes.

Mr. HAIGHT. Now let me tell you now. You asked me the question.

Mr. HALLOCK. All right.

Mr. HAIGHT. He said that their credit was no good. He did not want to deal with them. And I said, "Why?" "Well," he said, "I had a lot of hay here, and these fellows building the road and working for this Herrick outfit wanted to get my hay and I told them I didn't want to give them the hay, but I said if they will pay me as much as the

hay I am using in the valley, all right, and it amounted to $300, and I sent the bill for it, and they gave me a check, and I took it to the bank, and it was no good."

Mr. HALLOCK. Well, that was a building contractor?

Mr. HAIGHT. Well, I said it was their activities.

Mr. HALLOCK. I think that is all.

Mr. DE NEFFE. Had you finished that explanation, Mr. Haight?

Mr. HAIGHT. And then he took it to the bank and said to the bank, "I want some money on this," and they said, "No funds here." "Well," he said, "give me a note," and he made his own personal note for $300, and he pinned their check to it and he said, "If they ever get any money in this bank put it on this note and charge me the interest," which they did.

Senator KENDRICK. To whom did you refer as "ever getting money in the bank"—the Herrick Co.?

Mr. HAIGHT. Well, they handled the funds there, yes.

Senator KENDRICK. Did the Herrick Co. give the check for the payment of the hay or was it one of their contractors?

Mr. HAIGHT. Well, I will not be positive as to that. I am pretty sure, but I won't say. We had better let it go as one of their contractors.

Mr. HALLOCK. Yes; I think we had better let it go as one of their contractors.

Mr. HAIGHT. Well, I am not dead sure about that. I won't risk it.

Mr. HALLOCK. That is all.

The CHAIRMAN. You are excused.

(Witness excused.)

The CHAIRMAN. Have you other witnesses?

Mr. DE NEFFE. I have one more witness, Mr. Chairman, that is not quite ready yet. He is an engineer. The profiles did not come here until yesterday, and they had no opportunity to go over the profiles to check up, so I will not be able to put him on until tomorrow. So for the present. Mr. Chairman, we have no more witnesses.

Mr. HALLOCK. I wonder if I may make a suggestion, gentlemen of the committee, and Mr. De Neffe, at this juncture. We have here Mr. Culver from Chicago. He hopes to get away to-day. His testimony

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will be very brief, and if it is permissible to put on that testimony out of order I could do so.

Senator WALSH of Montana. Let us have him. Let us get through.

The CHAIRMAN. Mr. Culver.

(The witness was duly sworn by the CHAIRMAN.)

TESTIMONY OF W. T. CULVER, LUMBERMAN, LUDINGTON, MICH.

(Direct examination by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. State your name.

Mr. CULVER. W. T. Culver.

Mr. HALLOCK. Your residence?

Mr. CULVER. Ludington, Mich.

Mr. HALLOCK. What is your occupation?

Mr. CULVER. I am a lumberman.

Mr. HALLOCK. On an extensive scale or otherwise?

Mr. CULVER. Well, on rather a large scale, perhaps.

Mr. HALLOCK. Would you mind stating just generally where your interests lie in that field, Mr. Culver?

Mr. CULVER. Well, I have some lumber interests in Michigan, Washington, Oregon, Kentucky.

Mr. HALLOCK. Are you assisted with the corporation known as the James D. Lacey Co.?

Mr. CULVER. I am.
Mr. HALLOCK. And, just generally, what business is that company engaged in?

Mr. CULVER. Well, we are timber factors. We buy and sell timber. We have interests in timber scattered all over the United States. We are in the general engineering business.

MR. HALLOCK. Does your work include making physical appraisals of lumbering properties?

Mr. CULVER. Yes, sir.

Mr. HALLOCK. And timber stands and things of that sort?

Mr. CULVER. Yes.

Mr. HALLOCK. Are you affiliated with the Lacey Securities Co. in any way, or the Lacey Securities Corporation, is it?

Mr. CULVER. James D. Lacey & Co. own all the common stock and some of the preferred of the Lacey Securities Co.

Mr. HALLOCK. And the Securities Co. function is what?

Mr. CULVER. To loan money on timber securities.

Mr. HALLOCK. Yes. Are you acquainted with Mr. Fred Herrick?

Mr. CULVER. I am.

Mr. HALLOCK. Abort how long have you known him, Mr. Culver?

Mr. CULVER. Why, almost 40 years.

Mr. HALLOCK. Do you know something of his activities in the lumber business?

Mr. CULVER. Why, I have known of them for many years; Yes, sir.

Mr. HALLOCK. I wish you would tell the committee just in a general way where Mr. Herrick is enraged in the lumbering business around over the country as you know it.

Mr. CULVER. Well, Mr. Herrick has large interests in Alabama. He has large interests around St. Maries, Idaho, Inland Empire territory.

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Mr. HALLOCK. What are the facts as to whether or not last fall you were consulted by Mr. Herrick or some of his representatives relative to securing a bond issue on some part of his properties?

Mr. CULVER. Well, I went to Spokane and met Mr. Herrick and we drove down to Burns and over this proposed new property of his.

Mr. HALLOCK. Now about when was that, Mr. Culver?

Mr. CULVER. Some time in November. I do not remember the date.

Mr. HALLOCK. Of 1926?

Mr. CULVER. Of 1926.

Mr. HALLOCK. That was prior to any suggestion of an investigation of this character as far as you know, was it?

Mr. CULVER. As far as I know.

Mr. HALLOCK. Yes. And in company with Mr. Herrick or some of his representatives, did you go over the physical properties that are involved in this proceeding?

Mr. CULVER. I went over his mill site and I rode over his railroad—rode and walled over it.

Mr. HALLOCK. Have you had a good deal of experience in appraising properties of that character?

Mr. CULVER. Well, I have been building properties of that type in a number of States over a period of a few years.

Mr. HALLOCK. I wish you would just tell the committee briefly the character of that work, and if you care to give them your idea of his approximate value. Or we had better take it one angle at a time. Will you just describe briefly the character of that work that you saw there, what it consisted of, and its general character?

Mr. CULVER. The work at the mill site consisted of a pond that apparently was complete in every way except filling it with water. No great amount of work had been done at the mill. The general plans, however, were along right lines, and there is no question about him eventually having a mill that is adapted for the purposes for which it is being built. The railroad was very well constructed, in fact, one of the best railroads of its kind that I have ever been over.

Senator KENDRICK. What was the length of it, Mr. Culver?

Mr. CULVER. Well, I do not remember the length. Something between 50 and 60 miles.

Senator KENDRICK. It was completed at the time?

Mr. CULVER. It was not all completed. It was, I should say in a rough way, probably 80 per cent completed, if not more. I made no effort to get any exact figures. But the work was very well done. The plans were to have a railroad there that would be a credit to any lumber company, and better than is built usually for that purpose.

Mr. HALLOCK. Was that a standard-gauge railroad or not?

Mr. CULVER. Standard-gauge railroad.

Mr. HALLOCK. Following your inspection, did your Pacific coast representative, Mr. Lyford, spend a week or ten days on the property?

Mr. CULVER. Yes. They went over it very carefully.

Mr. HALLOCK. Yes. As the result of the investigation you made and that Mr. Lyford made, are you able to tell us, Mr. Culver, or do you care to do so, about what is the approximate value of that structure with the various units, in your opinion, at this time?

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Mr. CULVER. Well, I could not give you the figures.

Mr. HALLOCK. Do you care to approximate it?

Mr. CULVER. No. I do not want to give out approximate figures,

Mr. HALLOCK. Yes. You are in the appraisal business?

Mr. CULVER. Yes, sir; but for that reason I do not like to give approximate figures.

Mr. HALLOCK. Yes; I appreciate it. That is why I made the suggestion, Mr. Culver. Now, have you had occasion to determine something of the net worth of Mr. Herrick as an individual

Mr. CULVER. Well, we are investigating some of his properties now. I have known Mr. Herrick for a good many years. I know something about the money he has made in different enterprises.

Mr. HALLOCK. If he would consent to your giving the committee the benefit of your investigation on that feature, would you have any objection to doing so?

Mr. CULVER. Giving it in a general way?

Mr. HALLOCK. Yes. Is that agreeable to you, Mr. Herrick?

Mr. HERRICK. Yes, sir.

Mr. HALLOCK. I wish you would state, if you will, Mr. Culver what, in your opinion, Mr. Herrick's present net worth is, as you know it from your own acquaintance with him and familiarity with his properties and his revenues.

Mr. CULVER. Well, it is anywheres from five to eight, millions of dollars.

Mr. HALLOCK. Can you tell us how many sawmills Mr. Herrick now owns and is operating?

Mr. CULVER. Five, as I have in mind. He may own more.

Mr. HALLOCK. You are referring to four on Coeur d'Alene Lake and one in Alabama?

Mr. CULVER. Yes.

Mr. HALLOCK. Are you acquainted with his Mississippi holdings?

Mr. CULVER. Only in a general way.

Mr. HALLOCK. Are you able to give us an idea of his approximate annual cut from these various properties, Mr. Culver?

Mr. CULVER. No; I have never footed them up.

Mr. HALLOCK. What can you say as to whether or not in your opinion Mr. Herrick is a man who is disposed to speculate with a venture of this character, or, to the contrary, to develop and operate a property?

Mr. CULVER. M. Herrick has always been a builder and never a speculator.

Mr. HALLOCK. You may cross-examine. I think I had in mind another question, Mr. De Neffe, that I may ask later.

(Cross-examination by Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. You do not know anything about the progress he has made on this work down here in Harney and Grant Counties, do you?

Mr. CULVER. I was over all of it in November, sir.

Mr. DE NEFFE. Do you know when he started construction on that job?
Mr. CULVER. No; sir.

Mr. DE NEFFE. And you don't know when he was supposed to have certain work finished?

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Mr. CULVER. No; I do not know anything about that.

Mr. DE NEFFE. And if it should be a fact that he was supposed to have the line finished on April 1, 1925, and he has not got if finished get and has delayed and delayed and had to have extensions, would you say that he was a builder?

Mr. CULVER. Yes; I would.

Mr. DE NEFFE. He is still a builder, is he?

Mr. CULVER. Yes.

Mr. DE NEFFE. I see.

Mr. CULVER. We have a good many contracts out for the sale of timber, some of them with very responsible concerns, and we have had to grant concessions to every one of them, and some of them several times.

Mr. DE NEFFE. Well, that was because they were not sufficiently financed, was it not?

Mr. CULVER. No; simply because the condition of the time has been such that they were practically marking time and not making any money.

Mr. DE NEFFE. Do you mean they wanted to wait to get the money to build the railroad out of the sale of lumber for their operations, was that it?

Mr. CULVER. Well, that is what nearly every one does that goes into the lumber business.

Mr. DE NEFFE. Yes; but if when Mr. Herrick bid here the requirement of the prospectus was that he have $850,000 in net worth to enable him to go ahead with the work, and he did not have it, then would you still say that he was a builder?

Mr. CULVER. Yes; he had $850,000 then. It was not always liquid.

Senator WALSH of Montana. It was not what?

Mr. CULVER. He had $850,000, but it was not liquid. I do not think it is any disgrace for a man to ask for an extension of a contract.

Mr. DE NEFFE. No; I am not saying that it is a disgrace.

Mr. CULVER. I do not think it is any disgrace for a man to ask for an extension of a contract for that reason, because nearly every one in the business had to do it.

Mr. DE NEFFE. And because it was not liquid, as required by the prospectus, naturally he would not be able to go ahead with the work, isn't that right? That would hinder and delay the work?

Mr. CULVER. Yes.

Mr. DE NEFFE. Have you checked up this contract that Mr. Herrick has with the Forest Service?

Mr. CULVER. No reason to.

Mr. DE NEFFE. You never have; and you never saw any of its provisions, then?

Mr. CULVER. No.

Mr. DE NEFFE. You say last fall Mr. Herrick approached you on a bond issue. What month was it that he took it up with you?

Mr. CULVER. The bond issue was talked of some time during the month of November.

Mr. DE NEFFE. And did he submit a statement of his assets and liabilities?

Mr. CULVER. Yes.

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Mr. DE NEFFE. What did it show? Have you that statement with you?

Mr. CULVER. No; I haven't it. I haven't any figures with me.

Mr. HALLOCK. We will have that financial statement, Mr. De Neffe. I do not know whether Mr. Culver has it or not, but we will have one.

Mr. DE NEFFE. Well, he said that he submitted one.

Mr. CULVER. Yes; but. I have no figures with me.

Mr. DE NEFFE. And you were going to use that statement as a basis to determine whether you would give him a bond issue; wasn't that right?

Mr. CULVER. Well; there was never any question about his being able to get a bond issue.

Mr. DE NEFFE. But you wanted some kind of a financial showing, did you?

Mr. CULVER. Yes; naturally.

Mr. DE NEFFE. But you did not bring that with you?

Mr. CULVER. No.

Mr. DE NEFFE. And you do not remember what it shows?

Mr. CULVER. No.

Mr. DE NEFFE. You said the general plans of the mill were right. D112r. HALLOCK. Yes. Is that agreeable to you, Mr. Herrick?

Mr. HERRICK. Yes, sir.

Mr. HALLOCK. I wish you would state, if you will, Mr. Culver what, in your opinion, Mr. Herrick's present net worth is, as you know it from your own acquaintance with him and familiarity with his properties and his revenues.

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(Cross-examination by Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. You do not know anything about the progress he has made on this work down here in Harney and Grant Counties, do you?

Mr. CULVER. I was over all of it in November, sir.

Mr. DE NEFFE. Do you know when he started construction on that job?

Mr. CULVER. No; sir.

Mr. DE NEFFE. And you don't know when he was supposed to have certain work finished? Did he show you the blue prints?

Mr. CULVER. Yes.

Mr. DE NEFFE. And did he show the cost estimates?

Mr. CULVER. I did not look over his cost estimates, but I talked with his man who was building his mill there in a general way.

Mr. DE NEFFE. You say no work had been done on the mill?

Mr. CULVER. Well, the foundation was walled in.

Mr. DE NEFFE. That was the power house, wasn't it?

Mr. CULVER. Yes; that was the power house.
Mr. DE NEFFE. And the dynamo. But nothing actually on the mill itself was there?

Mr. CULVER. No.

Mr. DE NEFFE. You said there were from 50 to 60 miles of complete railroad. That was from Crane to Burns, and then north of Burns?

Mr. CULVER. Well, this was the railroad north of Burns.

Mr. DE NEFFE. From 50 to 60 miles?

Mr. CULVER. Well, it would be. It was not all complete. I thought it was possibly 80 per cent I did not go over it carefully enough to —

Mr. DE NEFFE. You know the distance north of Burns is only about 50 miles of this projected railroad?

Mr. CULVER. Yes.

Mr. HALLOCK. Pardon me, Mr. De Neffe. I think he was taking in the Shirttail Creek branch. He was over there, as I recall it.

Mr. DE NEFFE. And he says the railroad was complete.

Mr. CULVER. I say it would be at least 80 per cent, and possibly more. It was nearly complete.

Mr. DE NEFFE. You said you were investigating some of Mr. Herrick's properties. Whom did you inquire of in making those investigations?

Mr. CULVER. In making those investigations?

Mr. DE NEFFE. Yes.

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Mr. CULVER. We have sent our own men on the job to look them over.

Mr. DE NEFFE. What was the purpose of that investigation?

Mr. CULVER. For appraisal purposes. General knowledge, facts to be used.

Mr. DE NEFFE. But you haven't that with you at all, as I understand?

Mr. CULVER. No, sir.

Mr. DE NEFFE. And he is operating five mills, you say?

Mr. CULVER. Yes, sir.

Mr. DE NEFFE. And does he own all those five mills?

Mr. CULVER. Well, he owns a good share of all of them.

Mr. DE NEFFE. Do you know what proportion he owns?

Mr. CULVER. No, I don't.

Mr. DE NEFFE. You don't know whether it is half or one-hundredth part of it?

Mr. CULVER. Well, he owns half of one operation that I know of.

Mr. DE NEFFE. Well, had you determined to make this bond issue, to give it to him?

Mr. CULVER. Had we determined to?

Mr. DE NEFFE. Yes.

Mr. CULVER. We wanted to get it. We were sure that we could.

Mr. DE NEFFE. Well, did you get it?

Mr. CULVER. Well, we haven't yet, no.

Mr. DE NEFFE. Why not?

Mr. CULVER. No, sir.

Mr. DE NEFFE. Why not

Mr. CULVER. Well, he will place his bond issue wherever he can place it to best advantage to himself.

Mr. DE NEFFE. Has he placed it?

Mr. CULVER. I think he has.

Mr. DE NEFFE. Are you sure of it?

Mr. CULVER. Well, I know he has placed it to the extent that he can get it if he wants to.

Mr. DE NEFFE. `Well, had you people made up your mind to give him the bond issue?

Mr. CULVER. We will give him the bond issue.

Mr. DE NEFFE. How much?

Mr. CULVER. About two and a half million dollars.

Mr. DE NEFFE. You were going to give him two and a half million dollars, and you do not know what proportion of these five mills he owns?

Mr. CULVER. Well, I do not know what proportion; but we will know very soon.

Mr. DE NEFFE. Well then, you had not made up your mind that you would give him an issue?

Mr. CULVER. Yes, we have. We know he has collateral enough, but we have not had any offer. We are not worrying about that.

Mr. DE NEFFE. What other collateral has he.

Mr. CULVER. What other collateral has he?

Mr. DE NEFFE. Yes.

Mr. CULVER. He has enough with the interests he has already mentioned to us.

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Mr. DE NEFFE. Well, how much?

Mr. CULVER. Well, I will tell you when we get the official figures in, but we know he has enough to satisfy us, so I don't know whether it is necessary to tell you any more about it.

Mr. DE NEFFE. Do you remember in making this check about the St. Maries Lumber Co. that he is interested in?

Mr. CULVER. Yes; I remember about that.

Mr. DE NEFFE. When did he buy that?

Mr. CULVER. I can not tell you that. I can not tell you the year. He has owned it some years.

Mr. DE NEFFE. How much did he pay for that?

Mr. CULVER. I don't know that.

Mr. DE NEFFE. Do you how much he paid down?

Mr. CULVER. No.

Mr. DE NEFFE. Don't you know it is a fact that, he paid a million and a half for it as the purchase price; and he only paid $100,000 down?

Mr. CULVER. Well, I know that he has bought a number of enterprises of that kind and he made money out of them.

Mr. DE NEFFE. And buy them for as little down as he could and string them along?
Mr. CULVER. That is the only way to buy those properties. Any wise man knows that.

Mr. DE NEFFE. And as far as you know he is shoe stringing this railroad and this timber project along?

Mr. CULVER. Well, he can not shoestring that along, because he has got to pay cash for practically all the materials that he puts into it. He has got to put money into it.

Mr. DE NEFFE. And you don't know whether he has been shoe stringing this at all?

Mr. CULVER. Shoe stringing what?

Mr. DE NEFFE. You don't know whether he has been shoe stringing this, delaying it?

Mr. CULVER. Whether he has been delaying it?

Mr. DE NEFFE. Yes; on this project.

Mr. CULVER. No.

Mr. DE NEFFE. Did he tell you that he had kept his requirements on this timber contract right along?

Mr. CULVER. I have never asked him. I have never asked him. I had no reason to.

Mr. DE NEFFE. I think that is all.

Senator KENDRICK. Mr. Culver, in connection with the extensions of which you have heard here, there is of course involved the question of good faith on the part of Mr. Herrick in keeping his contract. Every business man that has had any experience, limited or otherwise, must understand the advantages that increase his chances of promoting and developing an enterprise, and when the financial conditions of the country are good, and when the market for his product is practically unlimited at fair prices, and they also understand the difficulties surrounding a condition the reverse of that. I am curious to know, and I think the committee would like to know, whether the conditions surrounding the lumber industry the last four or five years have been favorable, and whether there has been

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plenty of money at all times to finance these different enterprises, especially the new enterprises?

Mr. CULVER. Well, in 1923, the year in which I understand this contract was made, the lumber business was in very good shape. A man who had made plans for the future would have naturally figured he could make some money. His properties were already in motion. Mr. Herrick's properties ought to have made money enough to pay these out without borrowing anything. But the market has been slumping every year since then. I do not think you can find, if you look over the statements of very many lumbermen in the United States, but what they have lost rather than made money since 1923. It has been a very trying time. It is a very good thing for the general lumber territory as a whole that Mr. Herrick has not had his mill in operation.

Senator WALSH of Montana. Mr. Culver, let me interrupt you to say that we get the impression down here from what we hear that we have been enjoying a period of unexampled prosperity and building activity—Coolidge

prosperity.

Mr. CULVER. Well, I think possibly that may be true in some lines, but that is not true in the lumber business. I have inside information on that.

Senator WALSH of Montana. Well, does not the lumber business reflect the general prosperity?

Mr. CULVER. It does not. It does not. The market has been going down and down all the time.

Senator WALSH of Montana. How do you account for that in a period of unexampled prosperity?

Mr. CULVER. I do not try to account for it. It is just the fact.

Senator KENDRICK. Well that may account, Senator Walsh, if I may interrupt, for some of the lack of judgment of Mr. Herrick himself. You will recall that he wanted to know whether Mr. Coolidge was to be elected before he entered into it.

Mr. CULVER. I say, Senator, it is an unfortunate situation, but very few of us are spending any of the profits that we made in the lumber business.

Senator WALSH of Montana. Just another question. Did you hear that in order to get one of these extensions Mr. Herrick was obliged to pay $50,000?

Mr. CULVER. Well, I heard something about it, but I have never heard the facts about it. I do not know, Senator. I do not think he ought to have had to pay it himself.

Senator WALSH of Montana. Well, it evidently was exacted of him.

Mr. CULVER. Well, I think it was wrong, because he has been going ahead in good faith.

Senator WALSH of Montana. Well, if Mr. Herrick was able to go out into the market and get money upon a bond issue, would you think he would be paying $50,000 for an extension?

Mr. CULVER. Well that, of course, I could not answer; but I do know that at the beginning of each year for the last three years we have all had faith enough in the lumber business to go ahead and put in more logs, thinking that we would get more money, but we have not done it.

Senators KENDRICK. Has there been an unlimited demand for lumber?

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Mr. CULVER. There has been a very large demand for lumber, but just a little bit more than enough manufactured to keep anyone from getting good prices.

Senator KENDRICK. In other words, more production than the market would absorb?
Mr. CULVER. Yes, sir.

Mr. DE NEFFE. You say you think he was acting in good faith all along in this construction work?

Mr. CULVER. Yes.

Senator WALSH of Montana. I understand this witness to say that he does not know anything at all about the properties.

Mr. DE NEFFE. That is what he said at first; yes.

Mr. CULVER. Well, I think he has acted in good faith, or else he would not have done anything.

Senator KENDRICK. Now, if I may interrupt?

Mr. DE NEFFE. Certainly, Senator.

Senator KENDRICK. It was my suggestion about the good faith. I do not believe the witness referred to that fact at all. I suggested that in connection with these extensions, in forming a conclusion as to the matter of good faith, we might be in better position if we knew what the conditions were like that surrounded this entire development.

Mr. DE NEFFE. Yes; that is very important, Senator. Now, in that connection—you say he has acted in good faith—if the Forest Service records—their own records—after making an extensive investigation of the status of the work and the amount of expenditure, should show and admit that he had not shown good faith in this work, would you still say that he was acting in good faith?

Senator WALSH of Montana. Well, I do not believe that that helps us at all.

Mr. CULVER. I could say this, that if the Forest Service or the Government officials would be censured in any way—-and I do not know that it is their fault—-they ought to be censured for putting more timber on the market as the conditions are at the present time.

Mr. DE NEFFE. You are speaking from the standpoint of a man who is operating and has lumber to sell?

Mr. CULVER. I am speaking from the point of conservation of the natural resources of this country. I think it is a crime, when we are howling about planting more trees and conserving the resources of this country, to have the Government go ahead and put timber on the market to be cut when there is already more produced than the country needs.

Mr. DE NEFFE. You said that this $50,000 should not have been forfeited?

Mr. CULVER. No.

Mr. DE NEFFE. How do you know? Do you know anything about it?

Mr. CULVER. I say—I am just speaking in a general way—I do not think they ought to have exacted any forfeiture from him.

Mr. DE NEFFE. Do you know anything about the terms of the contract?

Mr. CULVER. No; I do not.

Mr. DE NEFFE. And the conditions and stipulations?

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Mr. CULVER. No; I am just merely saying that we are modifying on timberlands; we have sold to very responsible firms, and we are modifying every contract, and we are not asking anybody to forfeit anything. We are helping them to carry the load. That is not only one but many instances. We know of no intention on our part to penalize anybody under the conditions under which we have all been working.

Mr. DE NEFFE. How was the lumber market in 1924?

Mr. CULVER. Very bad. 1923 was good.

Mr. DE NEFFE. I think that is all.

(Redirect examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Culver, will you state, if you can, the approximate shrink expressed in dollars per thousand feet between 1923 and 1926?

Mr. CULVER. It depends something on the timber, but it will run from $5 to $10 anyway.

Mr. HALLOCK. Yes; so on an average of say $7, a man who is producing annually —

Mr. CULVER (interposing). Fully $7.

Mr. HALLOCK. Yes. [Continuing.] A man who is producing annually 150,000,000 feet would take a shrink of about a million dollars of quick assets annually, wouldn't he?

Mr. CULVER. Yes; nearly so.

Senator WALSH of Montana. I do not quite understand that. You have various qualities, of course, of lumber at various prices?

Mr. CULVER. Yes.

Senator WALSH of Montana. And take ordinary common lumber, what is the spread between the price in 1923 and the present price?

Mr. CULVER. Well, we take it on the average. For instance, your pine, I think on the pine the shrinkage has been more than $10.

Mr. HALLOCK. I should have included pine in my question, Senator. That is the product we are handling out in the West, the yellow pine I am talking about.

Mr. CULVER. It would be the average run of the log season that we are figuring on, and say 10,000,000 feet a year, the shrink on 10,000,000 feet, on the pine, will be more than $10, as I have it in mind.

Senator KENDRICK. Just one question. Is there any deterioration in lumber that is carried over from year to year?

Mr. CULVER. Yes.

Mr. DE NEFFE. Have you operated a sawmill, Mr. Culver?

Mr. HALLOCK. Pardon me, Mr. De Neffe, I had intended to ask one or two more questions and surrender him again for recross, if I may.

Mr. DE NEFFE. Yes.

Mr. HALLOCK. Mr. Culver, are you acquainted with the trade journal known as The Timberman?

Mr. CULVER. I see it occasionally; Yes, sir.

Mr. HALLOCK. Does that possess a pretty high standing among journals of that character dealing with timber?

Mr. CULVER. Yes.

Mr. HALLOCK. I direct your attention to the paragraph appearing in an article of that journal under date of January 10, 1927, from Washington, D.C., reading in part:

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> The Forest Service has acted very properly in extending the time limit for the commencement of lumbering at Burns by the Herrick Lumber Co. The overcapacity of mill facilities and the condition of the lumber market are sound reasons why opening of the Herrick Lumber Co.'s operations should be delayed in order to allow the pine industry to catch its breath. Curtailment rather than increased production should be the slogan.

Do you concur in that view, Mr. Culver?

Mr. CULVER. Yes.

Senator WALSH of Montana. Is that an editorial?

Mr. HALLOCK. Yes, it appears to be, Senator. It is in connection with a statement respecting Mr. Herrick's

activities. It appears to be an editorial.

Senator WALSH of Montana. Well, no, this is a Washington dispatch. Not an editorial.

Mr. HALLOCK. I had supposed that that was the comment of this paper on the matter that appears in the form of news.

Senator WALSH of Montana. No.

Mr. HALLOCK. Well, I do not want to mislead anyone on it.

Senator WALSH of Montana. This is a Portland, Oreg., paper, and this is a dispatch to that paper from Washington referring to the extension of the Herrick contract.

Mr. HALLOCK. Yes, but is it credited to some other periodical or paper?

Senator WALSH of Montana. No, it purports to be a dispatch to this paper, The Timberman, printed in Portland, Oreg., a dispatch from Washington, and of course the views expressed are important or otherwise depending upon the source from which the statement comes.

Mr. HALLOCK. Yes, and I do not want to claim anything for it that it is not entitled to.

The CHAIRMAN. That is from a Washington correspondent?

Senator WALSH of Montana. Quite likely.

Mr. HALLOCK. What can you say, Mr. Culver, with respect to the attitude of the industry generally toward this question, as you know it?

Mr. CULVER. Well, they are all opposed to the opening up of any more Government timber.

Senator WALSH of Montana. Well, that, would be the natural attitude for everybody having private timber, would it not?

Mr. CULVER. Yes.

Senator WALSH of Montana. For anyone in that situation.

Mr. CULVER. The reason for that is that we do not need any more sawmills. For instance, we have a lot of timber in Washington today that we would not sell to anyone who would build a sawmill. We think it is safer to hold it.

Senator WALSH of Montana. As a representative of Montana I have been in receipt of frequent protests from owners of private timberland complaining about the Government issuing permits to cut on the national forests.

Mr. CULVER. You see, Senator, we are trying to be consistent on the point of conservation. There is not much conservation when they open up new tracts of timber that can be carried without taxation. The timberman has to pay taxes.

Senator KENDRICK. Yes; but the timber of the forests is owned by the people of the country, and millions of people have a joint

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interest in that timber and the right to market it the same as private individuals. Also it is true, as I understand it, that when timber is ripe it is economical to cut, and market it as promptly as possible. So that it would not be a one-sided question. The Government would have its rights as well as a lumberman who owned privately controlled lands.

(Recross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Well, you believe, do you not, Mr. Culver, that when Mr. Herrick entered into a contract that he should be expected to comply with it, or do you think that he should treat it with impunity? What is your feeling

on that?

Mr. CULVER. You know there are conditions regarding every contract.

Mr. DE NEFFE. Well, suppose that he enters into three or four contracts and does not keep any of them, then what would you say? Would you say that he is still justified in breaking them?

Mr. CULVER. I merely say that we have to do that in private business; we have to change contracts to meet new conditions. And we have always had to do it. Now in that particular case there is no timber being damaged, there was no loss particularly, and it would seem to me that he ought to have had every courtesy shown him in proportion to the conditions of the times under which he was working.

Mr. DE NEFFE. Do you think that Herrick is the only one to be considered, and not the people who live in there, and who have a right to this development, and who have a right to have the money come in? Have they not any right to consideration in this matter?

Mr. CULVER. The timber is there. They are going to get all of the benefit out of it, whether they get it today or to-morrow. He is not robbing anybody of that.

Mr. DE NEFFE. You are going to postpone it for a long time. Is that it? And they haven't any right to have it immediately?

Mr. CULVER. It might be better to do that than to have the forests cut and no profit made out of it.

Mr. DE NEFFE. The people would get profit, though, if he complied with his contract?

Mr. CULVER. It might be, but if he makes no money, and holds back his operations, would they lose by it?

Mr. DE NEFFE. You are considering Herrick alone in this, aren't you?

Mr. CULVER. No, I am considering the whole territory, the people.

Mr. DE NEFFE. Why would the people lose there if they were going to get $2.80 a thousand, no matter whether the market was good or bad? How would they lose?

Mr. CULVER. How would they lose?

Mr. DE NEFFE. Yes, if that timber was cut.

Mr. CULVER. They are losing the profit. Every time you cut one log or one stick of timber that is handled without a profit that community has lost the money.

Mr. DE NEFFE. Although they are sure of getting $2.80 a thousand no matter what Herrick makes?

Mr. CULVER. I know, but it doesn't make any difference, it is lost money just the same. There is only one crop, and every time any

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one cuts a tree and there is no profit made except just what it costs that community has lost that money.

Mr. DE NEFFE. You mean Herrick has lost the money?

Mr. CULVER. Herrick has lost the money. But what becomes of his profit? It goes back into new business.

Mr. DE NEFFE. They are scattered all over the United States he puts it into new business scattered all over the United States on a shoe string it is not helping them.

Mr. CULVER. Wherever he puts them he is of benefit to the community that he is in.

Mr. DE NEFFE. You have operated big sawmills?

Mr. CULVER. Yes.

Mr. DE NEFFE. Familiar with the costs of operations?

Mr. CULVER. I am. But I do not carry any figures in memory at all.

Mr. DE NEFFE. I will ask you this. Where you have an investment of two and a half million or three million dollars you have big overhead there, and it is very desirable to cut a great deal of timber, isn't it? The more you cut the more money you make?

Mr. CULVER. No; not always.

Mr. DE NEFFE. If the market is good, isn't that right?

Mr. CULVER. The more a man has cut the last three years the more he has lost.

Mr. DE NEFFE. I am saying if the market is good.

Mr. CULVER. Yes.

Mr. DE NEFFE. He can make more money if he can cut 200,000,000 feet in a certain period than if he can only cut 120,000,000, isn't that right?

Mr. CULVER. Yes.

Mr. DE NEFFE. Isn't it very desirable to cut a great deal of timber, because he can cut it with the same overhead, he has got logging material and the equipment and the sawmill, and the more he can cut when the market is good the more money he will make, isn't that right?

Mr. CULVER. Yes, when the market is good. But that is not very often.

Mr. DE NEFFE. And you know —

Mr. CULVER. Pardon me a moment. Your question is one of the things that is causing the trouble to-day. The statisticians figure that if a man cuts 50,000,000 a year, he would make more money than if he cuts 150,000,000, but if he overstocks the market, why, he loses the other way; and it has been a detriment to the community all along the line, this same theory that you bring out.

Mr. DE NEFFE. And suppose a man had a contract which permits him when the market is low not to cut, that is desirable?

Mr. CULVER. Yes.

Mr. DE NEFFE. But if he is compelled to cut when the market is low, that is not so good?

Mr. CULVER. No.

Mr. DE NEFFE. Now, if the contract gives him the further right when the market is high that he can cut a great deal, that is very desirable, isn't it?

Mr. CULVER. Yes.

Mr. DE NEFFE. And he can cut over a certain period and then keep on cutting as long as the market is good and then lay off two or three years when the market is bad, that is very desirable, isn't it?

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Mr. CULVER. Yes; it is a good thing for the community, too, because they are not wasting a natural asset.

Mr. DE NEFFE. Well, then, he would have to shut down his mill and there would be no pay roll for four or five years?

Mr. CULVER. Yes; possibly.

Mr. DE NEFFE. Would that be a good thing for the community?

Mr. CULVER. It would be a good thing for the community rather than to have no profit made out of it.
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Mr. DE NEFFE. You mean rather than have the people make no profit?
Senator WALSH of Montana. I think there is no need to argue.

Mr. DE NEFFE. All right.

Mr. HALLOCK. I did not intend at this time to surrender the witness except for just one or two questions.

Mr. DE NEFFE. I did not know that I was limited to the number, Mr. Hallock.

(Further redirect examination by Mr. Blame Hallock, attorney re relenting Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Just a question or two. What can you say as to whether or not Mr. Herrick is known as a practical operator and developer throughout the country where he is operating?

Mr. CULVER. He is known as a practical operator.

Mr. HALLOCK. And on a big scale, Mr. Culver?

Mr. CULVER. Yes.

Mr. HALLOCK. Do you know anything about the size and type of his mills generally, whether they are big first-class mills or otherwise?

Mr. CULVER. Well, I have been in the two mills at Mt. Maries. They are up-to-date mills. They are well managed, well handled.

Mr. HALLOCK. And down at the Alabama property?

Mr. CULVER. I have not been in there since it was rebuilt, but knowing the way it is rebuilt I know that it is a practical mill.

Mr. HALLOCK. Just another question and I am through. You had something to say with respect to Mr. Herrick's ability in the spring of 1923 to produce liquid assets in the amount of $890,000. Has there ever been a time, to your knowledge, since you have known Mr. Herrick when he could not produce $890,000, even though some of his assets might at that time be said to be frozen to some extent?

Mr. CULVER. There has not been a time in 25 years that Mr. Herrick could not raise $890,000.

Mr. HALLOCK. Now, are you an officer of J. D. Lacey & Co.? I do not think I asked you that.

Mr. CULVER. Yes.

Mr. HALLOCK. What officer?

Mr. CULVER. Vice president of J. D. Lacey & Co.

Mr. HALLOCK. And that company's headquarters are in Chicago?

Mr. CULVER. Yes, sir.

Mr. HALLOCK. That is all.

(Further cross-examination by Mr. Frederick M. De Neffe, attorney, representing Grant County, Oreg.)

Mr. DE NEFFE. Under your contemplated loan, how much money was to be advanced at once?

Mr. CULVER. To be advanced at once?

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Mr. DE NEFFE. Yes.

Mr. CULVER. I do not know just what you mean.

Mr. DE NEFFE. Well, how much was to be given to Mr. Herrick at once upon the signing of the bond issue?

Mr. CULVER. I do not remember the details. We expected to pay him a good, reasonable amount at the time the bonds are signed. We always do that. Possibly 50 per cent. I never paid much attention to just what we were going to give him.

Mr. DE NEFFE. And then you would string the rest along?

Mr. CULVER. Yes, sir.

Mr. DE NEFFE. That is all.

Mr. MCGOWAN. Could I ask him one question?

The CHAIRMAN. Yes.

(Cross-examination by Mr. D. F. MCGOWAN, attorney, representing the United States Forest Service.)

Mr. MCGOWAN. Mr. Culver, from your knowledge of Mr. Herrick's assets, what would you have to say with reference to the statement filed by him at the time this contract was entered into that his net assets were around $1,260,000? Have you any information on that?

Mr. CULVER. Do you mean in 1923?

Mr. MCGOWAN. In 1923.

Mr. CULVER. That he claimed his net assets were $1,200,000?

Mr. MCGOWAN. At least that. That was the minimum.

Mr. CULVER. At least that?

Mr. MCGOWAN. Yes.

Mr. CULVER. Well, I would like to have had what he owned above that for my share.

Mr. MCGOWAN. Well, but answer the question as I just put it.

Mr. CULVER. Sure, he had it. That was a safe statement for him to make.

Mr. MCGOWAN. And a true statement?

Mr. CULVER. And a true statement.

Mr. MCGOWAN. That is all.

Mr. DE NEFFE. Well, how do you know that, Mr. Culver? Did you know all about the interests he owned? You said he did not own the different mills.

Mr. CULVER. Well, I know.

Mr. DE NEFFE. And what the condition of those mills are?

Mr. CULVER. Well, I know that he had more than that 20 years ago. Mr. Herrick was a partner of a partner I had all these years and had a half interest in the Flambeau Lumber Co., and I did know at that time how much Mr. Stearn's half interest was worth, and Herrick was worth more than that.

Mr. DE NEFFE. But 17 years have gone by since then.

Mr. CULVER. I know he has not lost any money since then. I know he has made money. I know him well enough.

Mr. DE NEFFE. If he handled everything the way he did this he would not lose anything.

The CHAIRMAN. Are there any further questions?

Mr. NEFFE. None.

The CHAIRMAN. You will be excused, Mr. Culver. The committee will recess until 10 o'clock tomorrow.

(Thereupon, at 1 o'clock p. m., a recess was taken until 10 o'clock a. m. the following day, Wednesday, February 16, 1927.)

HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREG.

WEDNESDAY, FEBRUARY 16, 1927

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON PUBLIC LANDS AND SURVEYS,

Washington, D. C.

The subcommittee met at 10 o'clock a. m., pursuant to the recess on yesterday, in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (CHAIRMAN), Cameron, Kendrick, and Walsh of Montana.

Present also: Colonel Greeley, Chief of the Forest. Service, and D. F. McGowan, attorney representing the United States Forest Service; Blaine Hallock; attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher; Frederick M. De Neffe, attorney representing Grant County, Oreg.

Senator WALSH of Montana (presiding). The subcommittee will be in order. You may proceed, gentlemen.

Mr. HALLOCK. I wonder if Mr. De Neffe would permit our recalling Mr. Biggs for one other question on cross-examination?

Mr. DE NEFFE. Yes; that is all right.

TESTIMONY OF JOHN W. BIGGS, OF BURNS, OREG.-Resumed

(The witness was duly sworn by the CHAIRMAN when first put on the stand.)

(Further cross-examination by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Biggs, I want to clear up a matter with respect to which there seems to me a little uncertainty. On yesterday, at page 383 of the record, when you were on the witness stand we were discussing the matter of the claim of fraud and collusion involving Mr. Klobucher and Mr. Girard. I asked you the question:

> Well, did you ever hear anybody besides Mr. Barnes indicating that any each idea was entertained by anyone?

Then you answered, "And you." And then I asked, "Me?" And, then you said, "Yes; under certain terms which I had heard you state that were in the contract." And that is the way the matter appears in the record. Then I apparently got off on another subject. I wonder if you will be good enough to explain a little more fully what you mean by referring to some statement you had understood I had made in that connection?

Mr. BIGGS. In that, I thought from what had been stated prior to the time, as to any suspicion in my own mind, as to whether there

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was any fraud or collusion. That came about in this way: What I had reference to when I said you, was a statement at the time or about the time we were taking up the extension of the contract last June. I think it was the last extension that was made. That we had been making quite a bit of effort to have this work hurried, and the statement came to me, either directly from you or from some one who has been talking with you, that the essence of this contract was July 1, 1928, and that you were not under any obligations to do anything up to that time. That was the thing that made me think there must be something within that contract that had been put in that we did not know about.

Mr. HALLOCK. John, you do not want to leave the impression, do you, that your recollection is that I said Mr. Herrick was under no obligation to do anything until July 1, 1928?

Mr. BIGGS. I do not say that I got it from you. It probably carne through some one else in the discussion, but you were quoted as having said it.

Mr. HALLOCK. Let me see if I can clear that up a little: Is it not more likely that you heard that I had said, or understood that I had made the contention, that in my opinion the essence of the contract was the obligation imposed upon Mr. Herrick to cut and deliver not less than 60,000,000 feet of timber by June 30, 1928?

Mr. BIGGS. As far as that was concerned I did not know that the details came in, except that the question was directly raised that July 1, 1928, was the essence of this contract.

Mr. HALLOCK. Yes, I thank you very much. I just wanted to clear up a little seeming misunderstanding there, that is all.

Mr. DE NEFFE. Mr. McGowan, have you any question?

Mr. MCGOWAN. No.

(Further direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Mr. Biggs, you say July 1, 1928, was the essence of the contract. What did you mean by that?

Mr. BIGGS. I did not know what they meant. And that was the reason it raised some suspicion in my mind, that there was probably something in this contract that we did not know anything about.

Mr. DE NEFFE. The impression that you got was that Mr. Herrick did not have to do anything until July 1, 1928?

Mr. BIGGS. Or probably according to the terms of the contract that there were imposed at that time, just so he did that then there was nothing else necessary.

Mr. HALLOCK. You understand, do you not, that the contract contains the express recital, which has never been changed or modified, that Mr. Herrick must cut and deliver not less than 60,000,000 by June 30, 1928.

Mr. BIGGS. Yes.

Mr. HALLOCK. Very well. That is all I wish to ask.

Mr. BIGGS. But I did not know until Saturday whether or not that had been changed or whether it had not been changed.

Mr. HALLOCK. You understand now that it never has been changed?

Mr. BIGGS. I understand now that it never has.

Mr. HALLOCK. That is all.

(Further cross-examination by Mr. D. F. McGowan, representing the United States Forest Service.)

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Mr. MCGOWAN. Do you know what the position of the Forest Service is with reference to that matter?

Mr. BIGGS. No; I do not.

Mr. MCGOWAN. Have you ever taken the trouble to find out?

Mr. BIGGS. What was that question?

Mr. MCGOWAN. Have you ever taken the trouble to find out?

Mr. BIGGS. Indirectly, yes; and in explanation I will say this, Mr. McGowan, that I have taken quite an interest in this matter, and have been interested in it. I attended the meeting, talked a good deal at the time, and made suggestions at the time of the meeting in February, 1925. I also was down with the delegation to Portland in May, 1926, at the time when we were asking something to be done with this matter by reason of the breaches. I have taken quite an interest in the matter.

Senator WALSH of Montana. The question addressed to you is whether you have taken the pains to ascertain what the attitude of the Forest Service is with reference to cutting 60,000,000 feet of timber by June 30 of 1928.

Mr. BIGGS. Yes, Senator; and I was offering this just by way of explanation to start with. And in that connection I had taken it indirectly with the Forest Department, with the different members of Congress here, and had letters from the Forestry Department.

Mr. MCGOWAN. Did anyone ever tell you that the Forest Service had modified or intended to modify that 60,000,000 feet requirement?

Mr. BIGGS. What I had from them was, indirectly, to the effect that they had not.

Mr. MCGOWAN. That they had not intended to do it?

Mr. BIGGS. Yes.

Mr. MCGOWAN. Was there anything in any of that correspondence to lead you to believe that the Forest Service would modify it?

Mr. BIGGS. Nothing in that at all, but the statement was from the other side.

Mr. MCGOWAN. That is all.

(Further direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. With the subcommittee's permission, I should like to ask Mr. Biggs a further question while on the stand: Has the city of Burns incurred any debt in anticipation of this sawmill and the development that was to be made there as a result of the Herrick contract?

Mr. BIGGS. Yes.

Mr. DE NEFFE. Just what was the cost of that and the nature of it?

Mr. BIGGS. In order to be able to meet the conditions that were necessary, to put in a complete water and sewerage system for a town several times the size of the town at the present time, and that has been done.

Mr. DE NEFFE. In anticipation of the people who would come there to work in the mills and the logging camps?

Mr. BIGGS. Yes.

Mr. DE NEFFE. How much of a debt has the city incurred?

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Mr. BIGGS. I do not remember, but something over $300,000, think, or about that.

Mr. DE NEFFE. Now, then in case, under paragraph 3 as you analyzed it on yesterday, Mr. Herrick was able to shut down his Mill for long periods of time, would that have any effect on the people of Burns —

Senator WALSH of Montana (interposing). We have gone over all that. I do not think you better proceed on that further here.

Mr. DE NEFFE. Then I will withdraw the question. One further question in connection with the method in which this timber was put on the market in contradistinction to the method that is usually employed in putting timber on the market: Who requested this timber to be put on?

Mr. BIGGS. The instigation of this matter, or I think the very inception of it, was the petition signed by the most of the people of Harney and Grant Counties. I think that petition had probably several hundred, or yes, maybe a thousand or two thousand names to it.

Mr. DE NEFFE. Ordinarily when timber of this kind is sold it is usually at the request of the operator in there or who is going in, is not that it?

Mr. BIGGS. Those I have known of prior to this time have been that way?

Mr. DE NEFFE. This was a community proposition was it?

MI. BIGGS. Yes, sir.

Mr. DE NEFFE. For the purpose of developing the timber resources, and of getting a railroad in there, and for having a sawmill, and having pay rolls at Burns and pay rolls up in the woods.

Mr. BIGGS. And also of having a development of the agricultural part of our country by giving us transportation.

Mr. DE NEFFE. And of getting a certain percentage of the money from the sale of this timber.

Mr. BIGGS. Yes.

Mr. DE NEFFE. So it was a community enterprise, was that it?

Mr. BIGGS. Yes.

Mr. DE NEFFE. And the community was interested in everything that was done, and in everything that went into this contract with Herrick, is that right?

Mr. BIGGS. Yes.

Mr. DE NEFFE. Is that the way you people felt about it.

Mr. BIGGS. Yes.

Mr. DE NEFFE. That is all.

(Further cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. You do not suspect that you are not going to get all of that development now, do you?

Mr. BIGGS. Well, it has not looked like it so far.

Mr. HALLOCK. It has been slow, is that what you mean?

Mr. BIGGS. Yes.

Mr. HALLOCK. You do not even remotely suspect, that you are not going to get that railroad and mill and development, do you, Mr. Biggs?

Mr. BIGGS. Well, I do not know that my personal suspicions in regard to it are what you want, but it has seemed rather doubtful when anything would be done, or when we would get it.

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Mr. HALLOCK. Does it not seem to you that the character of the investment to date over there by Mr. Herrick necessarily insures his going through with this development?

Mr. BIGGS. I will tell you this, that the character of the road has been good. Outside of that I know nothing at all.

Mr. HALLOCK. Well, you know that about, $75,000 has been spent down on the mill site to date, do you not?

Mr. BIGGS. I do not know what you mean.

Mr. HALLOCK. Well, a very substantial sum has apparently been spent there.

Mr. BIGGS. I know that the mill pond has been built, or at least excavated, and also that there has been quite a little work on two buildings there.

Mr. HALLOCK. Just answer the question. Burns has been waiting for a railroad to come in there for better than 40 years, has it not?

Mr. BIGGS. Well, I could not say that long. I have not been there that long.

Mr. HALLOCK. But for many, many years?

Mr. BIGGS. Yes.

Mr. HALLOCK. And at one time, at a comparatively recent date and prior to the coming of Mr. Herrick, is it not a fact that the county and the city committed themselves to a bond issue in a very substantial amount by way of a subsidy for anyone who would come in there and give them a railroad?

Mr. BIGGS. That was prior to the war.

Mr. HALLOCK. Yes; is that so?

Mr. BIGGS. Yes.

Mr. HALLOCK. What was the amount of that proposed subsidy?

Mr. BIGGS. I do not know, but it seems to me like it was something like $100,000. It may have been a little less or a little more.

Mr. HALLOCK. Is it not your recollection that it might have been as much as $200,000?
Mr. BIGGS. I could not say as to that.

Mr. HALLOCK. In any event the community at that time was willing to subsidize somebody in order to give them a railroad?

Mr. BIGGS. Yes.

Mr. HALLOCK. Mr. Herrick has not been subsidized in any respect has he; by the city or the county, or by any of the citizens, so far as you know?

Mr. BIGGS. No; so far as I know, except as to the mill site, and I understand that was given to him.

Mr. HALLOCK. Well, that is your construction of the deed, is it, of the contract between Mr. Herrick and Mr. Barnes?

Mr. BIGGS. Yes.

Mr. HALLOCK. I am not interested in that particularly, but the point I want to make is this, and then I will drop the subject: That Mr. Herrick sought no financial aid from the county or the city, nor from the citizens there, by way of subsidy or otherwise?

Mr. BIGGS. Not to my knowledge.

Mr. HALLOCK. No. I think that is all.

Mr. DE NEFFE. That is all I wish to ask.

(Further cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

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Mr. MCGOWAN. Mr. Biggs, I think in your testimony on yesterday you were critical of the provisions of the Forest Service contract with Mr. Herrick in connection with the cutting requirements. Would you be kind enough to draft a clause that would contain your views on that proposition, as to how that clause should be worded, and submit it to the subcommittee before the subcommittee adjourns, so that we might have the benefit of your views on that matter ?

Senator WALSH of Montana. That might be helpful, but it does not seem to me to be in the slightest degree material. The complaint that Mr. Biggs has is that the contract does not conform to the prospectus. Outside of that he has not made any criticism of it. I believe.

Mr. MCGOWAN. Very well, Senator Walsh. I will withdraw my request.

Senator WALSH of Montana. He claims that the contract as drawn is substantially different from the prospectus upon which the bidders were invited to bid.

Mr. MCGOWAN. Very well. I will withdraw my request.

Mr. BIGGS. I should like just to add one thing to that answer, Senator Walsh.

Senator WALSH of Montana. All right.

Mr. BIGGS. Not only upon which the bidders bid, but upon which the community, who were interested in it, understood the contract to be.

Senator WALSH of Montana. That is, your complaint is that the contract as eventually executed does not conform to the contract embraced in the prospectus.

Mr. BIGGS. That is it.

Mr. DE NEFFE. I will ask this: Had the community known that this kind of contract, as is expressed in paragraph 3 of the Herrick contract, was going to be let to whoever was the highest bidder whenever the readvertisement for the 30-day period was up, would that community have stood for it?

Mr. BIGGS. As to that I could not say, any further than to speak for myself. I know that I would have started a fight myself, but how much they would have backed it I could not say.

Mr. DE NEFFE. That is all.

Mr. HALLOCK. One more question, in connection with the public interest over there and the effect of Mr. Herrick's coming in, and that situation: Is it not a fact that in order to construct his mill pond properly it became necessary to move the existing highway, and did not Mr. Herrick, at his own expense, construct a new highway for the city and county there, for the length of half a mile or more?

Mr. BIGGS. I think so.

Mr. HALLOCK. And in accomplishing that he found it necessary to secure rights of way owned by Mr. Barnes, and was compelled to condemn that right of way across Barnes's lands in order to work out that development program.

Mr. BIGGS. I do not think that he condemned it.

Mr. HALLOCK. In the name of Harney County I should have perhaps said, should have put it that way.

Mr. BIGGS. I know that the action was started there, but that was afterwards settled, strictly on the basis of the value of the land, and Mr. Barnes was paid, and then it went through.

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Mr. HALLOCK. It was another of those pieces of litigation that we were discussing the other day with Mr. Barnes?

Mr. BIGGS. Yes.

Mr. HALLOCK. That is all.
Mr. DE NEFFE. I have no other questions.

(And the witness left the stand.)

Mr. DE NEFFE. Now call Mr. Haley.

TESTIMONY OF H. D. HALEY, OF PORTLAND, GREG.

Senator WALSH of Montana (presiding). You do solemnly swear that the evidence you do now give in the hearing being held by this subcommittee of t e Committee on Public Lands and Surveys of the United States Senate will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HALEY. I do.

(Direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Please state your name.

Mr. HALEY. H. D. Haley.

Mr. DE NEFFE. Where do you live?

Mr. HALEY. Portland, Oreg.

Mr. DE NEFFE. How long have you lived there?

Mr. HALEY. Eighteen years.

Mr. DE NEFFE. And where had you lived before that?

Mr. HALEY. In the State of Maine—Gardner, Me.

Mr. DE NEFFE. And what is your business or profession?

Mr. HALEY. Civil engineer.

Mr. DE NEFFE. How long have you been engaged in that profession?

Mr. HALEY. All my life.

Mr. DE NEFFE. And are you a registered engineer in the State of Oregon?

Mr. HALEY. I am.

Mr. DE NEFFE. And what character of engineering work have you done?

Mr. HALEY. I have had a general practice in Portland since 1910. A great deal of my work has been location and construction of railroads.

Mr. DE NEFFE. And will you state, just briefly, what experience you have had in that work?

Mr. HALEY. I have acted as chief engineer for quite a number of important main lines and extensions of main lines in the Northwest, some of which were the Portland & Southwestern Railroad —

Mr. DE NEFFE (interposing). Where was that located?

Mr. HALEY. That runs from Scappoose west into the valley a distance of about 25 miles. It is a heavy, mountainous railroad, with a tunnel 2,000 feet long. And also the Gales Creek & Wilson River Railroad. I was chef engineer of that railroad. That was an extension of one of the Hill lines.

Mr. DE NEFFE. How long did that Scappoose work take?

Mr. HALEY. Well, I was the engineer for that company for over 10 years.

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Mr. DE NEFFE. What company was that?

Mr. HALEY. It was the Portland & Southwestern Railroad.

Mr. DE NEFFE. All right, go ahead.

Mr. HALEY. Then I had the Gales Creek & Wilson River Railroad. It was a heavy piece of extension, and, as I said before, it was an extension of one of the Hill lines in Oregon. That was an extension that I took care of there. I made about 40 miles of location, and constructed 11 miles. Eleven miles was all constructed in the year 1916.

Mr. DE NEFFE. Did you have full charge of the construction?

Mr. HALEY. I did; Yes, sir.

Mr. DE NEFFE. All right. Did you have any other work'?

Mr. HALEY. Yes; I acted as chief engineer for several other lines. One, the Sutherlin, Goose Bay, Eastern, in southern Oregon.

Mr. DE NEFFE. What kind of a country did that go through?

Mr. HALEY. Well, that country was similar to the line built from Crane to Burns, light work.

Mr. DE NEFFE. Was any of this work you have done mountainous work, rough work?

Mr. HALEY. Oh, yes.

Mr. DE NEFFE. And any other kind of work?

Mr. HALEY. Yes; I have made locations in between, beginning from Condon southeast toward Fossil, a distance of about 33 miles. I am working on that at the present.

Mr. DE NEFFE. Did you say from Condon to Fossil?

Mr. HALEY. Yes, sir.

Mr. DE NEFFE. Condon is near Burns, is it?

Mr. HALEY. Yes, sir; it is a similar country.

Mr. HALLOCK. I did not get the connection there, as to Condon and Fossil.

Mr. HALEY. I Say I have men at present working on the location of the line from Condon to a point near Fossil.

Mr. DE NEFFE. Have you done any other railroad construction work?

Mr. HALEY. Yes: I have built hundreds of miles of logging roads, spurs, etc., in the Northwest.

Mr. DE NEFFE. Have you been over the route of the line of this Crane-to-Seneca railroad of the Herrick people?

Mr. HALEY. I have; Yes, sir.

Mr. DE NEFFE. And this work that you did was any of it similar in character to the work that is done on the Herrick line.

Mr. HALEY. Oh, yes.

Mr. DE NEFFE. And in this work that you did, did you have anything to do with figuring cost of construction?

Mr. HALEY. Yes, sir.

Mr. DE NEFFE. That was a part of your duties?

Mr. HALEY. Yes.

Mr. DE NEFFE. When were you over this proposed railroad from Crane to Seneca?

Mr. HALEY. I was over it first in the spring of 1922.

Mr. DE NEFFE. What did you do on that trip?

Mr. HALEY. I went in there for the purpose of making a reconnaissance from Burns into Bear Valley to see the possibilities of constructing a line into that country.
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Mr. DE NEFFE. Did you go over the Crane-to-Burns section of it then?

Mr. HALEY. Yes, Sir; I did; not the entire section, but I went over about 20 miles of it.

Mr. DE NEFFE. Have you been over that line since?

Mr. HALEY. Yes, sir.

Mr. DE NEFFE. This route?

Mr. HALEY. Yes, sir.

Mr. DE NEFFE. When was it?

Mr. HALEY. Just recently, the 1st of February.

Mr. DE NEFFE. Of this year?

Mr. HALEY. Yes.

Mr. DE NEFFE. And are you familiar with the condition of the soil and the material from Crane to Burns?

Mr. HALEY. Yes, sir.

Mr. DE NEFFE. And from Burns northward to Seneca?

Mr. HALEY. Yes, sir.

Mr. DE NEFFE. Since you have come here to Washington, have you examined the profiles of the Malheur Railroad Co., this Herrick project?

Mr. HALEY. Yes.

Mr. HALLOCK. I should like at this juncture, Mr. De Neffe, to have you say that these are the profiles produced by us at your request?

Mr. DE NEFFE. Yes; that is right. Now, Mr. Haley, with whom did you go over those profiles?

Mr. HALEY. Mr. Klobucher.

Mr. DE NEFFE. Did Mr. Klobucher give you the yardage and classifications in all this work?

Mr. HALEY. Yes.

Mr. DE NEFFE. From your experience as a work-locator and builder of railroads, how long would you say it would take a competent railroad contractor who was properly financed to build the line from Crane to Burns?

Mr. HALEY. Four months would be ample time.

Mr. DE NEFFE. And in order to build it in four months what would you say would have to be done in the way of prosecuting the work diligently and with vigor and consecutively?

Mr. HALEY. Four months would be ample time to build that road. I think it was a very accessible country, light work, and if there had been a call to rush it there is no reason why the entire thing could not have been done in 2 months—60 days.

Mr. DE NEFFE. How do you figure it could be built that fast?

Mr. HALEY. Why, as I said before, all parts of the line were accessible. There is a highway in there —

Mr. DE NEFFE (interposing). That is an important feature in railroad construction?

Mr. HALEY. Yes; and the grading work was light. It only meant putting on more teams, men, etc., to throw that grade up quickly. And even before the grading was finished if the materials had been assembled at the rail head, they could have started the laying of steel immediately.

Mr. DE NEFFE. That is, as soon as the railroad from Crane going forward was finished you could start laying steel on the grade?

Mr. HALEY. Yes, sir.

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Mr. DE NEFFE. So that actually the steel could have been laid before the grading had been finished?

Mr. HALEY. Not necessarily. It was a short job to grade, and a short job to lay the steel.

Mr. DE NEFFE. From your checking of the profiles and the quantities, and so forth, what would you say the cost of the Crane-to-Burns section of the road would be, reasonable cost?

Mr. HALEY. I have a tabulation of the figures that I took from the profile. If you will allow me to read from them?

Mr. DE NEFFE. Yes.

Mr. HALEY. I have the estimated cost of the main line, Crane to Burns, at $160,955.70.

Mr. HALLOCK. Pardon me a minute, if I may have an interruption right there: Is this the estimated cost of the whole structure from Crane to Burns?

Mr. HALEY. No.

Mr. DE NEFFE. Probably I better explain what portion was to be intended in there.

The CHAIRMAN (taking the chair). I am sorry, gentlemen, that I was delayed this morning. Go ahead.

Mr. DE NEFFE. The cost of the Crane-to-Burns line that I want first is what everything would cost except the steel and the ties.

Mr. HALEY. That is the way I have it. I have not included the steel or the ties.

Mr. DE NEFFE. All right. What is the total cost?

Mr. HALEY. It is $160,955.70.

Mr. DE NEFFE. And what does that total include?

Senator WALSH of Montana. He has told you everything except the steel and the ties.

Mr. DE NEFFE. Yes. Does that include any spurs?

Mr. HALEY. Yes, that includes all material moved on the spurs, etc., turn-out tracks, in that distance.

Mr. DE NEFFE. How many miles are there of that?

Mr. HALEY. I could not tell you exactly. I have the yardage bunched here as we have taken it from the profile.

Mr. DE NEFFE. You lumped it all together?

Mr. HALEY. Yes, and summed it up.

Mr. DE NEFFE. Those figures are based on the yardage that they gave you that was moved in all that work from Crane to Burns?

Mr. HALEY. Yes, sir.

Mr. DE NEFFE. Now, in the Burns-to-Seneca section did you examine the profiles and the quantities and classifications that were used by the Malheur Railroad Company in that work?

Mr. HALEY. I did.

Mr. DE NEFFE. And those were given to you by Mr. Klobucher, the company's engineer, on yesterday, is that right?

Mr. HALEY. Yes, sir.

Mr. DE NEFFE. And what would be the cost of this work?
Mr. HALLOCK. Pardon me —

Mr. DE NEFFE (continuing). Let me withdraw that question and ask this: From the records shown you did it show how much work had been done to date?

Mr. HALEY. Yes.

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Mr. DE NEFFE. Now, I want the cost of the work done to date.

Mr. HALLOCK. Pardon me, so I can understand it: Is this witness's cost estimate based upon a physical reproduction, or does it purport to be an analysis of the costs that were incurred by Mr. Herrick?

Mr. DE NEFFE. Yes; of the costs incurred by Mr. Herrick as based on his profiles, the quantities and classifications that were given the witness by Mr. Herrick's engineer.

Mr. HALLOCK. Does this gentleman estimate the reproduction cast?

Mr. DE NEFFE. Yes.

Mr. HALLOCK. And he does not claim to give the actual cost to Mr. Herrick?

Mr. DE NEFFE. No; it is his opinion of what it would cost.

Mr. HALLOCK. All right.

Mr. DE NEFFE. What would be the total cost?

Mr. HALEY. My total estimated cost was $764,292.36, the cost of the work up to date.

Mr. DE NEFFE. And what does that include?

Mr. HALEY. That includes the moving of all quantities of earth, medium and solid; the building of their trestles, bridges, tunnel, culverts in place; clearing and fencing; laying track; cost of tips, and some cost of the steel.

Mr. DE NEFFE. What proportion of the cost of the steel?

Mr. HALEY. Ten per cent.

Mr. DE NEFFE. Now, then, what would be the additional cost, would you say?

The CHAIRMAN. I came in late and I did not catch just what this is. Is this the road from Burns to Seneca, or the cost of the road from Crane?

Mr. DE NEFFE. No; we have finished the portion from Crane to Burns.

The CHAIRMAN. And this sum of $764,000 is for extending it on from Burns to Seneca?
Mr. HALEY. To the north.

Senator WALSH of Montana. No; not that it was actually expended but this is the estimate of the witness of what would be necessary to be expended.

The CHAIRMAN. Oh, I thank you.

Mr. HALLOCK. May I have the figure again, what was it?

Mr. HALEY. It was $764,292.36.

Mr. DE NEFFE. Now, from the records shown you what would be the additional cost to finish the line?

Mr. HALEY. I have the figure $147,335.50.

Mr. DE NEFFE. Does that include the 90 per cent remaining unpaid on the steel?

Mr. HALEY. No; it does not.

Mr. DE NEFFE. What is that 90 per cent?

Mr. HALEY. That would amount to $233,126,06.

Mr. DE NEFFE. Then the total cost for completion would be what?

Mr. HALEY. It would be a summation of these two.

Mr. DE NEFFE. What is that?

Mr. HALEY. I do not happen to have that.

Mr. DE NEFFE. Will you add those up and tell up what it is?

Mr. HALEY. It is $380,461.56.

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Mr. DE NEFFE. That includes the total cost to build the remainder of the road, including the 90 per cent remaining unpaid on the steel?

Mr. HALE. Yes.

Mr. DE NEFFE. That includes how many miles of road that you have figured?

Mr. HALEY. Yes. It includes the track being laid on 45½ miles. The total length of the main line as it was given to me was 50.8 miles.

Mr. DE NEFFE. Then what additional mileage does it include?

Mr. HALEY. Then it includes also 8 miles of spur line graded to Shirt Tail Creek and in that vicinity.

Mr. DE NEFFE. And steel on that?

Mr. HALEY. No; no steel on that.

Mr. DE NEFFE. It does not include steel to be laid on that?

Mr. HALEY. No. I took my estimate of steel right from their tracks of the main line railroad. My amount for steel includes what steel that they have.

Mr. DE NEFFE. All right, I see. What would be the cost of equipment for this road?

Mr. HALEY. I did not go into the equipment especially myself. I simply had the cost of equipment as was given

in the prospectus, for building the camp, for logging purposes, etc., and used the various official figures, which are $410,500 as given by the forest offices.

Mr. DE NEFFE. By the prospectus known as Exhibit 8, do you mean?

Mr. HALEY. Yes.

Mr. DE NEFFE. That then would make it a total, including the cost of building this unfinished part and the equipment, of how much?

Mr. HALEY. That would have to be spent there yet, $790,961.56.

Mr. DE NEFFE. Now, from your experience in construction work, in the building of logging railroads, how long would you say it would take a competent railroad contractor, who was properly financed and equipped, to build this section of the railroad that you have just described, from Burns to Seneca, and this other spur into the woods?

Mr. HALEY. Why, if there was season job —

Mr. DE NEFFE. What do you call a "season job"?

Mr. HALEY. Good working weather, from spring until you finish in the fall; you might say with work like rock work and tunnel work, that could go on in almost any kind of weather.

The CHAIRMAN. How many months?

Mr. HALEY. Why, a 10-months' job.

Mr. DE NEFFE. How would a practical, competent contractor build it? I mean, as far as carrying on the work is concerned?

Mr. HALEY. If it was let to a contractor his idea would be to go after it and finish it as soon as possible. The quicker he finished it the more money he would make.

Mr. DE NEFFE. What part of the work would he do first?
Mr. HALEY. You are speaking of just the line north of Burns now?

Mr. DE NEFFE. Yes.

Mr. HALEY. Well, he would do all the light work immediately north of Burns, and get his steel down, and get his heavier equip-

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ment to the front where his heavy work would start, I mean the tunnel, timbers, etc., and powder for his rock work.

Mr. DE NEFFE. What part of the line would be do first, the hard work or the easy work?

Mr. HALEY. He would do the easy work.

Mr. DE NEFFE. That is, in what season would he do the light work?

Mr. HALEY. When the weather was good and in settled weather, as soon as the settled weather started in the spring.

Mr. DE NEFFE. When would he do the heavier rock work?

Mr. HALEY. He could do that at any time.

Mr. DE NEFFE. In the winter?

Mr. HALEY. Yes; he could do it in the winter.

Mr. DE NEFFE. Did you examine the mill site when you were down there the last time?

Mr. HALEY. Yes.

Mr. DE NEFFE. Have you had time to figure up the cost of the work down there?

,Mr. HALEY. Well, no. I could only say that I have been given the total amount of yardage in the embankments that form the mill pond. I could probably give a pretty close estimate as to what that work should cost.

Mr. DE NEFFE. What would you say that it would cost?

Mr. HALEY. Why, I would say $9,000 should cover the work done on the mill pond.

Mr. DE NEFFE. Did Mr. Klobucher give you the quantities and classifications of the concrete and materials that went into the power house?

Mr. HALEY. No; he did not.

Mr. DE NEFFE. And into the generator house?

Mr. HALEY. No.

Mr. DE NEFFE. You are going to get that, are you?

Mr. HALEY. I will try to do so; yes.

Mr. DE NEFFE. You may take the witness, Mr. Hallock.

The CHAIRMAN. Did you say $9,000 would cover all work that was done at the terminal?

Mr. HALEY. No; I did not say. I said that would be the amount probably that would cover the cost of building the mill pond.

The CHAIRMAN. How about the trackage?

Mr. DE NEFFE. He covered that before you came in, Mr. Chairman.

The CHAIRMAN. I did not get that. That came up the other day, that they had several miles of trackage, but if it is in the record all right, I can read it.

Mr. DE NEFFE. That was included in the $160,955.70 as the cost from Crane to Burns, as I understood you.

Mr. HALEY. Yes.

Mr. DE NEFFE. You had the spurs in there, did you?

Mr. HALEY. I do not think that the spurs were in there; no.

. Mr. DE NEFFE. Did they give you those figures?

Mr. HALEY. They gave them to me in a way, but not the absolute figures on that.

The CHAIRMAN. Well, if that is in the record, all right. You may take the witness, Mr. Hallock.

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(Cross-examination by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. I intend to interrogate you a little more logically, but right at this juncture let me ask: Is my

understanding correct that your figure of $9,000 is your estimate of the cost of constructing the mill pond?

Mr. HALEY. Yes.

Mr. HALLOCK. And that you have not undertaken to give us any cost estimate of any other structure on the mill site?

Mr. HALEY. No.

Mr. HALLOCK. That statement is correct in that regard, is it?

Mr. HALEY. Yes.

Mr. HALLOCK. Mr. Haley, did you —

Mr. DE NEFFE (interposing). I think they were going to get together again on that. They did not have time to finish the structures.

Mr. HALLOCK. Are you appearing here for Grant County?

Mr. HALEY. Why, I came here under a subpoena from the subcommittee.

Mr. HALLOCK. But I mean in the matter of your compensation?

Mr. HALEY. Why, I was directed to go to Burns and to Bear Valley by—or through the Grant County Court; yes.

Mr. HALLOCK. I do not want to pursue this to a point where it may embarrass you, Mr. Haley, but is Grant County itself to compensate you for this service?

Mr. HALEY. That is the way I understand it.

Mr. HALLOCK. Yes. You were not in any respect employed by Mr. Barnes.

Mr. HALEY. Well, Yes; Mr. Barnes asked me to go into Grant County for the Grant County court. He asked me to make this trip.

Mr. HALLOCK. Then you talked to the county court, made your arrangement for compensation with the court?

Mr. HALEY. No; I talked with Mr. Barnes.

Mr. HALLOCK. That is what I am getting at. Have you any arrangement with the county court that you made directly yourself?

Mr. HALEY. No.

Mr. HALLOCK. You have, then, been employed by Mr. Barnes as far as you know and not otherwise?

The CHAIRMAN. Mr. Hallock, Mr. Barnes has filed credentials here as the representative of the Grant County court. There is no use to try to confuse the subcommittee at all about that.

Mr. HALLOCK. Well, I did not intend that, but —

The CHAIRMAN. I do not want to interrupt your testimony, but that is the situation.

Senator WALSH, of Montana. You might ask whether Mr. Barnes was purporting to be representing the Grant County court?

Mr. HALLOCK. Will you be good enough to answer the Senator's question?

Mr. HALEY. Yes, sir; he did.

Mr. HALLOCK. It was my understanding that the Grant County court only appropriated $500 to cover all this expense, which prompts my question. I was a little curious to know what you might know

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about the arrangement under which the Grant County court can pay the expenses of this matter, including your compensation.

Mr. HALEY. I do not know anything about that.

Mr. HALLOCK. You have no fixed arrangement with the county for your compensation, through Mr. Barnes or otherwise?

Mr. HALEY. I have through Mr. Barnes for my trip into Grant and Harney Counties to look over that railroad, but none from the time that I left Portland to come here.

MT. HALLOCK. Will anyone other than Mr. Barnes or Grant County contribute anything toward your compensation, to your knowledge?

Mr. HALEY. No, sir.

Mr. HALLOCK. You are not appearing for any other interest?

MT. HALEY. No.

Mr. HALLOCK. Under what circumstances was it that you made this preliminary survey and estimate of cost in 1922?

Mr. HALEY. Mr. Barnes asked me to make that at that time.

Mr. HALLOCK. For whose account, Mr. Haley?

Mr. HALEY. For his own.

Mr. HALLOCK. Do you know who his principals were at that time?

Mr. HALEY. No.

Mr. HALLOCK. And he compensated you for that service?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. Did you prepare for him an estimate of the approximate cost of that railroad as you fixed it as a result of that investigation?

Mr. HALEY. I did.

Mr. HALLOCK. About how much money did it aggregate?

Mr. HALEY. I have forgotten the amount. It was a long while ago, and it was, of course, an estimate made on a very short investigation of the country, and as to which I had no preliminary lines or levels or anything of that sort to base my estimate on. It was simply a case of my judgment of what it would cost in that country for building a railroad.

Mr. HALLOCK. Do you recall the amount of it?

Mr. HALEY. No; I do not.

Mr. HALLOCK. Don't you remember that it approximated $1,500,000 for the line from Burns to Seneca?

Mr. HALEY. I do not.

Mr. HALLOCK. What is your best recollection of the amount, Mr. Haley?

Mr. HALEY. I really do not remember the amount, Mr. Hallock.

Mr. HALLOCK. Was the report reduced to writing?

Mr. HALEY. What did you say?

Mr. HALLOCK. Was the report reduced to writing?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. Did you preserve a copy of it?

Mr. HALEY. I think I did. I imagine I have one in my office in Portland.

Mr. HALLOCK. But you have not it here?

Mr. HALEY. No.

Mr. HALLOCK. When you undertake to give us an estimate of the time which you believe should be consumed in constructing a road

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from Crane to Burns, you have in mind an organization such as a transcontinental railroad has, with facilities to handle the preliminary work, I assume, and to get the matter in shape where the contractor goes to work?

Mr. HALEY. No. I would anticipate that the line be staked out on the ground for the contractor. That he would have stakes to work by. But it would be up to the contractor to assemble his materials and supplies for the construction of the work.

Mr. HALLOCK. So that the contractor, on the basis of the estimate that you gave us, would go in on that line with the stakes set for him?

Mr. HALEY. Yes.

Mr. HALLOCK. And the stakes could not be set until you had had first your reconnaissance survey, is that correct?

Mr. HALEY. No; in that particular case it was a very simple location, a very simple job to stake out, with a railroad from Crane to Burns.

Mr. HALLOCK. Let me get at it in another way, Mr. Haley: We will take the situation of Mr. Herrick. He signs his contract on the 15th day of June, 1923, you understand.

Mr. HALEY. All right.

Mr. HALLOCK. The first thing he would have to do would be, I assume, to employ an engineering force, is that right?

Mr. HALEY. Yes.

Mr. HALLOCK. Then after the engineering force would go into the field and lay out the reconnaissance of the line, a rough reconnaissance survey —

Mr. HALEY (interposing). They would make a preliminary survey and project their location.

Mr. HALLOCK. Then, having done that, and having perhaps selected one, two, or three proposed feasible

routes, they would adopt a definite alignment, is that correct?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. And would locate it on the ground, stake that out?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. Then they would proceed to plot that alignment, would they not?

Mr. HALEY. They would do that as they went along. When they had it staked off it would be plotted.

Mr. HALLOCK. They would have to make profile maps to determine the quantities?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. And their mass diagrams?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. And in short, a great many maps and plats and papers of that character would have to be prepared by a man going right into that country as Mr. Herrick did, without any organization behind him, is not that correct?

Mr. HALEY. Well, that would be a very short job, to prepare that line for contractors from Crane to Burns. It is the simplest kind of country, and no question about location at all. It is not necessary to make half a dozen surveys in there. The country was absolutely open, so that an engineer could get his crew over the line at the rate of several miles a day.

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Senator WALSH of Montana. How long should that preliminary work take?

Mr. HALEY. It should not take over 10 days to make a preliminary survey from Crane to Burns.

Mr. HALLOCK. You appreciate that that is an interstate —

Senator WALSH of Montana (continuing). Excuse me. What I want to know is how long it will take, the engineers being at work, to make plats and so on and get ready for the construction. Do you mean 10 days?

Mr. HALEY. No; I did not mean all of that.

Senator WALSH of Montana. That is what I wanted to know about.

Mr. HALEY. I would say a month.

Mr. HALLOCK. It is my understanding that that line you are discussing is a standard gauge, common carrier, interstate railroad?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. And you know, do you not, that railroad companies constructing or extending an interstate line must secure from the Interstate Commerce Commission a certificate of public convenience and necessity before they can turn a shovel full of dirt?

Mr. HALEY. No.

Mr. HALLOCK. You do not understand that to be the situation?

Mr. HALEY. No.

Senator KENDRICK. Mr. Chairman, I understood from the witness's statement that he had reference entirely to the question of surveys when he said it would require a month to do the necessary work of surveying in preparation for the contractors. Was that it, Mr. Haley?

Mr. HALEY. Yes.

Senator KENDRICK. And you have not in mind the question of permits from the Interstate Commerce Commission or any other source?

Mr. HALEY. No.

Mr. HALLOCK. Mr. Haley, if Mr. Herrick found it necessary in this instance to secure, before he could start construction work there, a certificate of public convenience and necessity from the Interstate Commerce Commission, and to prepare the character of maps and data that that body requires before it will consider such a certificate, do you not feel that if he were successful in doing all that work and getting the maps prepared, and securing the certificate of public convenience and necessity, and constructing the entire line from Crane to Burns, with all the side tracks and spurs and depot buildings and other structures of that kind, and stock yards and terminal layouts, all the matters that constitute a part of that system there, within one year that he had done a pretty good piece of work from the standpoint of time consumed?

Mr. HALEY. I do not understand from your question—well, in any railroad work that I was ever on I was never held up on account of obtaining a certificate of necessity or anything of that kind. We owned the right of way, and we went on and made our surveys, and then went to work immediately. Nobody ever—well, that question never came up with me.

Mr. HALLOCK. That had all been disposed of before you went into the field?

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Mr. HALEY. Oh, no. That was disposed of later in the job after the railroad was completed.

Mr. HALLOCK. Well, I wish I had your entree down at the Interstate Commerce Commission, if you are able to do all that.

Senator KENDRICK. Mr. Haley, you do not believe that that order of procedure is possible at the present time, do you?

Mr. HALEY. No, sir. I do not.

Senator KENDRICK. That is to say that because you own a right of way you can proceed to build on that right of way?

Mr. HALEY. Yes, sir.

Senator KENDRICK. Do you understand that that is your right?

Mr. HALEY. Yes, sir.

The CHAIRMAN. If there is any question about that it might be enlightening to the committee if Mr. Hallock will say whether Mr. Herrick was delayed on that account.

Mr. HALLOCK. Oh, yes; he was.

The CHAIRMAN. I think the subcommittee can very well conceive that if Mr. Herrick could have gone in and built the railroad and afterwards secured a certificate of public convenience and necessity it would have been different.

Senator KENDRICK. My question as to the witness's understanding of the present situation was prompted by a recent experience in building a proposed line of railway through my State and the State of Montana, in which a very strong pull had to be made here before the certificate of convenience and necessity, as referred to by Mr. Hallock, could be obtained.

Mr. DE NEFFE. The Northern Pacific were objecting very strenuously in that case, were they not?

Senator KENDRICK. I beg pardon.

Mr. DL NEFFE. I say the Northern Pacific, in the case of the railroad to which you have referred, were objecting very strenuously, were they not?

Senator KENDRICK. Oh, no; no one was objecting, that I knew anything about.

Senator WALSH of Montana. Mr. Hallock, let me inquire: Is the act of 1920 construed to require a certificate of public convenience and necessity in the case of the construction of a road such as this?

Mr. HALLOCK. Yes, Senator Walsh; in the case of the railroad from Crane to Burns, which is an extension of an existing transcontinental system. I have secured an expression from the Interstate Commerce Commission with respect to the line from Burns to Seneca, and we have been relieved from a lot of delay and preliminary work in connection with that.

Senator WALSH of Montana. What distinction do they make in the matter of the road between Crane to Burns as compared with the road from Burns to Seneca?

Mr. HALLOCK. There is this distinction: That the line from Burns to Seneca is owned by the Malheur Railroad Co., an Oregon corporation, located wholly within the State, and —

Senator WALSH of Montana (interposing). Do not the Malheur Railroad Co. own the line from Crane to Burns?

Mr. HALLOCK. No, sir. that was done by Mr. Herrick himself, as an individual, under a contract with the Oregon-Washington Railroad & Navigation Co., a subsidiary of the Union Pacific system.

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Senator WALSH of Montana. The Malheur Railroad Co. owns the line from Burns to Seneca only.

Mr. HALLOCK. That is correct.

Senator WALSH of Montana. And the other was constructed by Mr. Herrick under a contract with the Oregon Short Line?

Mr. HALLOCK. That is correct, and ultimately became a part of that system, and was consequently an extension of one of their branches, in contemplation of that requirement of the transportation act.

Senator WALSH of Montana. So, so far as that was concerned, he was simply a contractor for the Oregon Short Line?

Mr. HALLOCK. No, sir. It was under a very different arrangement. He had to do all the work, and purchase the necessary materials, and so on. He was not a building contractor.

Senator WALSH of Montana. I do not understand that situation at all.

Mr. HALLOCK. I have the contract that I would be glad to put in evidence. Perhaps a brief statement would clear that up. Mr. Herrick's contract with the Oregon-Washington Railroad & Navigation Co. required Mr. Herrick to secure the right of way, to actually construct the railroad on that right of way—that is to say, to grade it, and build the bridges and culverts, and lay ties and steel, and things of that sort. The Oregon-Washington Railway & Navigation Co., the contracting party on the other end of the contract, obligated itself to furnish ties and steel and property of that character. Then when the entire program is completed, including the construction of the sawmill in its completed state, and the construction of the line up to Seneca, Mr. Herrick is entitled to reimbursement from the Oregon-Washington Railway & Navigation Co. on account of the investment, and 5 per cent interest.

Senator WALSH of Montana. All that means that he had a contract by which he agreed to construct that for the Oregon Short Line?

Mr. HALLOCK. Yes; they ultimately took title, and have in this instance taken title to that part of it.

Mr. DE NEFFE. And they have reimbursed him, with interest?

Senator WALSH of Montana. The details are of no consequence. He had a contract with the Oregon-Washington Railroad & Navigation Co. by which he agreed to construct this road for them.

Mr. HALLOCK. As far as Burns, but not beyond Burns.

Senator WALSH of Montana. All right.

Mr. HALLOCK. He had all this preliminary work to do himself.

Senator KENDRICK. The road between Burns and Seneca is to be operated as an independent corporation.

Mr. HALLOCK. The road from Burns to Seneca, yes; necessarily will be because it is an independent corporation. It has no mainline affiliations; it has just a physical connection.

Senator KENDRICK. All right.

Mr. HALLOCK. Now, Mr. Haley, in your time estimate did you take into account the time to be consumed in acquiring right of way, including the trial of condemnation cases, and matters of that sort?

Mr. HALEY. No.

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Mr. HALLOCK. In brief, then, Mr. Haley, you just estimate a situation where, as you have said, the right of way was acquired, and all of the preliminary work was done, and the contractor went upon the ground with the stakes set and went to work upon it?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. And that likewise applies with respect to your time estimate on the line from Burns to Seneca?

Mr. HALEY. Yes, sir.

Senator KENDRICK. What is the length of the road from Crane to Burns?

Mr. HALLOCK. Thirty-two and a fraction miles.

Senator KENDRICK. That would mean that more than a mile of road must be staked out each day in a time limit of 30 days?

Mr. HALLOCK. Yes, sir. Mr. Haley, did you see any of this grading work performed on the line from Burns to Seneca?

Mr. HALEY. No, sir.

Mr. HALLOCK. So you do not know anything about the quality of the material that was encountered?

Mr. HALEY. Why, yes indeed, certainly I do.

Mr. HALLOCK. What do you mean, from what source?

Mr. HALEY. Well, I saw it on my last trip over there, and you have given me the quantities and classified it, or your own engineer here has done it, and common material in Burns would be common material in Portland, or anywhere else.

Mr. HALLOCK. You are basing your estimate upon the exposed slopes of the cuts as you saw them?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. But of course, you do not pretend to know what difficulties were encountered in handling the material, other than as disclosed by the cuts themselves as they now exist?

Mr. HALEY. Oh, no. I know the things that are usually encountered in railroad work, etc., I am familiar with this kind of material on this line.

Mr. HALLOCK. The difficulties that would result from a spring freshet, excessive rains, inclement weather, labor troubles, and things of that sort, necessarily you could not take into account, is that correct?

Mr. HALEY. Well, not any particular labor troubles, freshets, and so forth in the work on this particular line, but we always encounter the same things on all railroad work.

Mr. HALLOCK. Do you know that the builders of that line had steam shovels stuck in the mud, and equipment mired in the mud up along that line for considerable periods of time, and were compelled to work under difficulties of that character?

Mr. HALEY. Oh, that is very likely.

Mr. HALLOCK. Did you make any allowance for that sort of thing in your time estimate?

Mr. HALEY. It is not necessary.

Mr. HALLOCK. Your idea is what?

Mr. HALEY. My idea was that this work could have, been performed for those prices I have named here, either at that time or at any time between that time and the present time.

Mr. HALLOCK. What did you allow for cost of ties delivered?

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MR. HALEY. I allowed 55 cents apiece on the grade.

Mr. HALLOCK. And what was the cost of rails per ton delivered?

Mr. HALEY. $33.

Mr. HALLOCK. $33 delivered?

Mr. HALEY. Yes.

Mr. HALLOCK. Does that include freight?

Mr. HALEY. That is my understanding of it, to Burns. That was f. o. b. Burns.

Mr. HALLOCK. That is, $33 f. o. b. Burns?

Mr. HALEY. Yes, Sir; that is the way I understand it.

Mr. HALLOCK. Which includes everything at that point?

Mr. HALEY. Yes.

Mr. HALLOCK. That prices did you use in estimating the cost of excavation? Take first your material that would be classified as solid rock?

Mr. HALEY. $1 a yard.

Mr. HALLOCK. And the intermediate material, loose rock?

Mr. HALEY. Sixty cents, a yard.

Mr. HALLOCK. And the common or earth?

Mr. HALEY. Twenty-two cents a yard.

Mr. HALLOCK. Were you able to verify those prices by an examination of anything that would enable you to check them in that territory as prevailing at that time?

Mr. HALEY. Yes; I have a lot of work in that eastern Oregon country myself for prices similar to these. And these prices should cover the cost of that kind of material in that country.

Mr. HALLOCK. I see.

Mr. HALEY. In fact, I believe that my prices are very liberal, more liberal than what Mr. Herrick actually let this work for.

Mr. HALLOCK. What did you allow for the construction of that tunnel?

Mr. HALEY. $110 a lineal foot.

Mr. HALLOCK. How long is it?

Mr. HALEY. It is 462.03 feet.

Mr. HALLOCK. Your cost estimate was what?

Mr. HALEY. It was $110 —

Mr. HALLOCK (interposing). I mean in the aggregate, if you please.

Mr. HALEY. It was $50,823.30.

Senator WALSH of Montana. We are spending an awful lot of time on these details, that I am sure can not be of any very great interest to this subcommittee.

Mr. HALLOCK. I am going to stop now. I agree with you, Senator Walsh. I believe that it is not throwing very much light on the situation. Well, I am through.

Mr. MCGOWAN. No questions.

Senator WALSH of Montana. Mr. Haley, what is the most economical method of doing railroad construction work of this kind, with respect to the time that is occupied in doing it?

Mr. HALEY. To do it as quickly as you can.

Senator WALSH of Montana. I suppose that you could do it so quickly as to run the cost up. That is, you could rush it so that you would add to the cost.

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Mr. HALEY. Yes, there would be a point where it would add to the cost, where that would not be true of course.

Senator WALSH of Montana. Is the time that you gave us the time that would be required to do it in an economical way?

Mr. HALEY. Yes, when I said four months from Crane to Burns, that would have been an economical amount of time to complete that work in.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Perhaps I should ask one question. Mr. Haley, is there a very substantial investment in the railroad from Burns to Seneca at the present time?

Mr. HALEY. Yes, sir.

Mr. MCGOWAN. Approximately in round figures how much is it?

Mr. HALEY. The investment in that railroad at the present time?

Mr. MCGOWAN. Yes.

Mr. HALEY. I have it $764,292.36.

Mr. MCGOWAN. Do you know of anything in that country other than timber that would justify the building of a road such as that from Burns to Seneca?

Mr. HALEY. No, sir.

Mr. MCGOWAN. Then the man who builds the railroad and has to put his money into it, would have to have the timber to go in connection with the railroad, would he not, in order to make it a reasonable proposition?

Mr. HALEY. Well, no, the railroad would be a good investment of itself.

Mr. MCGOWAN. That is, the railroad would be self-supporting without the timber, do you mean?

Mr. HALEY. If there were timber operations to go on, whether they belonged to the same parties who owned the railroad or not, the railroad would be still a good investment, if they had the tonnage to haul.

Mr. MCGOWAN. What was that?

Mr. HALEY. If the railroad had the tonnage to haul it would be a good investment.

Mr. MCGOWAN. But you have to take the two operations together, as I understand it, to make the railroad a profitable proposition. That is, you must have the timber to come out over the railroad.

Mr. HALEY. Oh, yes.

Mr. MCGOWAN. Very well, then, if there is a present cancellation of the Herrick contract, leaving him with only the railroad and without the timber, that would put him in the place where he would have $700,000 invested with nothing to show for it, is not that true?

Mr. HALEY. Well, he might not have anything to show—he might not have any tonnage at the present, but I could not believe that somebody would not operate that timber just the same.

Mr. MCGOWAN. Could you answer my question yes or no and then make your explanation?

Mr. CHAIRMAN. I think Mr. Haley testified a while ago that even if some one else owned the railroad, who was not interested in the timber, the timber would be handled.

Senator WALSH of Montana. I think he answered the question.

Senator KENDRICK. I think the question he is trying to obtain an answer to is, whether or not Mr. Haley admits that the loss of this

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contract would be a substantial sacrifice of his investment in the railroad.

Mr. MCGOWAN. That is the point of the question.

The CHAIRMAN. Let the committee reporter read the question and then you may answer it.

(The committee reporter read the question, as follows:)

> Mr. MCGOWAN. Very well, then, if there is a present cancellation of the Herrick contract leaving him with only the railroad and without the timber, that would put him in the place where he would have $700,000 invested, with nothing to show for it, is not that true?

Mr. HALEY. I think Mr. Herrick still would have a good investment.

Mr. MCGOWAN. But his investment in the railroad without the timber would be very materially damaged in event the timber contract was taken away from him, is that correct or not?

Mr. HALEY. Well, probably Mr. Herrick would be damaged, all right, but the earning capacity of the railroad would still be there, and the timber would still be there, and I maintain that somebody would move it, and that he would get the hauling eventually.

Senator KENDRICK. To put the question in a little different light said as it appeals to me from a business standpoint: Let us suppose that the contract that Mr. Herrick has is canceled, and that the Government, or the Forest Department, proceeded to sell the timber to some one else, world not that place Mr. Herrick practically at the mercy or put him on the basis of depending upon the generosity of the purchaser of that timber, in view of the fact that it would represent the only business that the road could have? Would not Mr. Herrick be required to make a sacrifice in all probability in those circumstances?

Mr. HALEY. No, Sir: I do not think so.

Senator KENDRICK. You think that the purchaser of the timber would give him full value for the road?

Mr. HALEY. If he did not give him full value for the railroad he would have to pay the rates for freight out of there that would be allowed him by the commissions that control these things.

Mr. MCGOWAN. But it is separate and apart from the timber operation.

Senator WALSH of Montana. I think you have been over that.

Mr. MCGOWAN. Very well, I will drop that.

(Further cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. When did yon prepare the estimate from which you leave been testifying here, the two sheets of paper that you have?

Mr. HALEY. I prepared it on yesterday afternoon or on last evening.

Mr. HALLOCK. When did you assemble the data?

Mr. HALEY. Yesterday afternoon.

Mr. HALLOCK. In other words, your entire study was assembled and prepared as late as yesterday afternoon; is not that correct?

Mr. HALEY. Yes; but your man had assembled these amounts of yardage and the amounts of the different items here for me. It was simply a case of my putting the prices on them; that was all.

Mr. HALLOCK. That is what it amounts to. You took the inventory furnished to you by the company's engineer, Mr. Klobucher, and priced it according to your notions as to prices?

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Mr. HALEY. Yes, sir.

Mr. HALLOCK. And that is all that you claim for it?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. Have you ever done any work for the Brooks-Scanlon Lumber Co.?

Mr. HALEY. No sir.

Mr. HALLOCK. Getting back just a moment to the matter of speed in constructing this railroad: Is it good business from an engineering standpoint to lay steel right on top of your fresh grade, before it has had any opportunity to settle or solidify?

Mr. HALEY. Why, from the very beginning of the construction work there, from Crane to Burns, to provide a way to build that grade, and the way I imagine it was nearly all built, was by team work. Now, in building that grade by team work the grade is pounded down by the horses etc., and it makes the best kind of foundation for a railroad grade, being constructed in that manner. If it were thrown up by elevating graders and just allowed to drop loosely into the center of the roadbed, why, then you would probably have had some difficulty when you came to putting the steel on. But in the manner that that was done, in the construction there as I am well satisfied it was done, that roadbed should have been in good shape to receive steel the minute it was finished.

Senator KENDRICK. Well, it is a fact that hundreds of miles of railway is laid in that very way, is it not?

Mr. HALEY. Yes, sir.

Senator KENDRICK. Laid after the graders?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. That is the way the work is done with teamwork?

Mr. HALEY. Yes; and it is also laid on hand work or any other hind of work, but the teamwork provides the best grade for laying steel.

Mr. HALLOCK. I understand that, but what I am getting at is upon the other end of the work, from Crane to Seneca. You understand that that. Was steam-shovel work with two big steam shovels engaged in n that work?

Mr. HALEY. Oh, yes.

Mr. HALLOCK. They were employed in that work

Mr. HALEY. Oh, yes.

Mr. HALLOCK. You would not want to lay your ties and your steel on that soft material deposited by steam shovels in order to hurry that thing through and construct it in one season; would you?

Mr. HALEY. Oh, yes, that could have been done.

Mr. HALLOCK. Would it be the right thing to do from a construction standpoint?

Mr. HALEY. Sure.

Mr. HALLOCK. You think it would?

Mr. HALEY. Sure, it always is done.

Mr. HALLOCK. I wanted to ask you one, more question that Mr. Herrick suggested: I wonder if you will give us your idea of the quality of work up there that you inspected'?

Mr. HALEY. The work is well done.

Mr. HALLOCK. Would you say that it is equal to a standard branch line of any transcontinental railroad company in the Northwest?

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Mr. HALEY. Well, so far as the grading, and the width of the cuts, etc., are concerned, it is. I do not think that I care to go into all matures of the location of the line.

Mr. HALLOCK. I notice that Mr. De Neffe has offered in evidence a document signed by Mr. Hoffman in which that work is characterized as really a very fine piece of work. Do you share that view?

.Mr. HALEY. Why, I have not seen that article, but I agree that the work is done all right, in a workmanlike manner, and in good shape.

Mr. HALLOCK. Mr. Herrick wants me to develop one more point

Whether or not there were lots of ties along the road, whether or not the ties were close together and it was well tied up.

Mr. HALEY. Yes, sir.

Mr. HALLOCK. As well as a main line railroad?

Mr. HALEY. Yes, sir.

Mr. HALLOCK. And what about the quality and character of the steel?

Mr. HALEY. It was good relay steel.

Mr. MCGOWAN. Mr. Haley, the country is easy for construction purposes from Burns to the umber; is that true?

Mr. HALEY. Is it as easy, did you ask?

Mr. MCGOWAN. Is it reasonably easy railroad construction?

Mr. HALEY. Yes.

Mr. MCGOWAN. Is the right of way covered by the proposed Herrick line from Burns to the timber the only right of way into the timber covered by this sales contract?

Mr. HALEY. Oh, no; it is not the only way. There are other ways that could be opened up.

Mr. MCGOWAN. At somewhat the same expense?

Mr. HALEY. At a similar expense; yes.

Mr. MCGOWAN. Well, then, in event the Forest Service should cancel Mr. Herrick's contract and let a contract to another person, and that other person elected to build another railroad, Herrick's investment in there is an absolute loss, is it not?

Mr. HALEY. Not if Mr. Herrick's railroad was an absolutely common-carrier railroad. They would not be permitted to do that in that event, I do not think.

Mr. MCGOWAN. How would he be protected in such a situation if the contractor for the timber elected to take his logs out over a second railroad?

Mr. HALEY. Well, I think it is very doubtful if a man would want to put that much investment into a railroad if he is going to open up a tract of timber in there.

Mr. MCGOWAN. Well, the possibility is there nevertheless, under the question as I propounded it, is it not, that Herrick might be required to take an absolute loss with reference to the cost of the Construction of the present railroad?

Mr. HALEY. No; I do not think he would need to, because there is plenty of tonnage there for his road, and his road would always be a paying proposition.

Mr. MCGOWAN. Other than the timber tonnage?

Mr. HALEY. No; not other than the timber tonnage. But I can not conceive of anybody else tying up the entire timber tonnage of that country.

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The CHAIRMAN. Well, we are wasting a lot of time on that. The subcommittee understands that it would require the approval of the Interstate Commerce Commission and the issuance of a certificate of public convenience, and necessity in order to build another railroad, and, that if one were built, the loss would be no greater for one man than another.

Mr. HALLOCK. Mr. Herrick is very proud of this railroad, and he has asked me to ask one or two more questions, Mr. Chairman.

The CHAIRMAN. Well, hurry along, and do not repeat.

Mr. HALLOCK. Mr. Herrick wants me to ask you what your opinion is of the character of the bridges, of the big bridge up there, whether that is a good structure.

Mr. HALEY. Yes; the bridges are all good structures.

Mr. HALLOCK. And they rest on concrete pedestals, do they not—the timbers do, I mean?

Mr. HALEY. I did not examine that particular bridge.

Mr. HALLOCK. What can you say as to the character of the tunnel, whether it is constructed and properly lined?

Mr. HALEY. I did not go in the tunnel.

Mr. HALLOCK. That is all.

The CHAIRMAN. You are excused.

(The witness left the stand.)

Mr. DE NEFFE. I wanted to ask Mr. Barnes a few questions, to explain something that was brought out as to the Bear Valley unit.

Senator WALSH of Montana. Try not to repeat anything, if you please.

Mr. DE NEFFE. I Will.

FURTHER TESTIMONY OF E. W. BARNES, OF PORTLAND, OREG.

(The witness was duly sworn when he was called to the stand).

(Further direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Mr. Barnes, the prospectus and the contract here provide that cutting must begin on the private timber by April 1, 1925, and on the Government timber by October 1, 1925. Why were those two dates put in there?

Mr. BARNES. Well, the way the Forest Department explained it to me, you see on this Bear Valley Unit —

Mr. DE NEFFE (interposing). Show it on the large map here on the screen.

Mr. BARNES. This is the Bear Valley timber [indicating on the map] and here is a circle of private timber all round the edge of it, up in here, and here is Shirt Tail Creek.

Mr. DE NEFFE. That is private timber, you say?

Mr. BARNES. On the edge is private timber, not all of it but a little string around it here. For instance, this is all private timber [indicating] plumb up in here and along the edge, and then over in here and m this shape. Do you see, this is private timber? This is all open country. Well, the reason the Forest Department put that in the prospectus was, that whoever went in there on any part of this unit, this green coloring on the map, they would have to go into the private timber first, and the department put it into the prospectus for

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April 1, 1925, to begin cutting on the private timber. They knew that they would have to cut the private timber first; and then they put October 1, 1925, I think it was, to begin cutting on the Government timber.

Mr. DE NEFFE. And did Mr. Herrick acquire any private timber in there in front of the Government timber?

Mr. BARNES. Yes; he bought some timber right in here, and bought some right there [indicating on map].

Mr. DE NEFFE. Do you remember when that was?

Mr. BARNES. Commencing December, 1923.

Senator WALSH of Montana. Mr. Barnes has told us that before he went out here, that he went out and got options and turned them over to Mr. Herrick.

Mr. DE NEFFE. Yes; but I wanted to fix the date, that is all. Now, Mr. Barnes, have you ever gone over all of the Bear Valley Unit?

Mr. BARNES. Yes; all of the green part here.

Mr. DE NEFFE. How much timber does the Government own in that unit?

Mr. BARNES. There is close to 1,250,000,000 feet on that unit.

Mr. DE NEFFE. Do you say 1,250,000,000 feet on the unit?

Mr. BARNES. Yes.

Mr. DE NEFFE. So that under this contract with Herrick as drawn, under the new provision that was put in paragraph 3, instead of getting 890,000,000 feet in this purchase, Mr. Herrick would get about 1,249,800,000 feet, is that right, after deducting 10 per cent which is left on the ground?

Mr. BARNES. Yes; according to the way this last contract was made up if he was allowed to cut that amount on the start and keep doubling he would get that much timber off of there.

Senator KENDRICK. Excluding the timber from the privately owned lands?

Mr. BARNES. This privately owned land is not included in the 1,250,000,000 feet.

Mr. DE NEFFE. Did Girard ever tell you what salary he was getting from Herrick?

Mr. BARNES. Not directly.

Senator WALSH of Montana. Mr. Girard's testimony will give us positive evidence on that, I take it.

Mr. DE NEFFE. I wanted to lay a foundation.

Mr. BARNES. Well, it was $7,500 a year.

Mr. MCGOWAN. Mr. Barnes, the Brooks-Scanlon Lumber Co. submitted a bid on this timber, did it not?

Mr. BARNES. The Brooks-Scanlon people?

Mr. MCGOWAN. Yes.

The CHAIRMAN. That is all in the record.

Mr. MCGOWAN. And in connection with this last contract in so far as Herrick was concerned—well, any of these successful bidders would have gotten it?

Mr. BARNES. In the last contract?

Mr. MCGOWAN. Yes.

Mr. BARNES. No.

Mr. MCGOWAN. Why not?

Mr. BARNES. Because they did not make the contract according to the prospectus. I do not care what Brooks-Scanlon got, or what

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Herrick got, or what anyone got, the Forest Department has no right to change the contract to any one man or two men or three men, but only to go according to that prospectus.

Mr. MCGOWAN. Do you mean the original prospectus?

Mr. BARNES. Yes, sir. If they had done that with Brooks-Scanlon or with Herrick, they had no right to do that, not for anyone.

Mr. MCGOWAN. Let us pass that by for the moment. If as a matter of fact the Brooks-Scanlon Lumber Co., or Herrick, or John Jones Lumber Co. and all other members of the trade, had the right to bid on this timber in accordance with the clause that was included in the Herrick contract, and if they bid on this timber according to that, if they had the right to bid on the timber in accordance with the clause that was inserted in the Herrick contract, then there was no favoritism shown so far as Herrick was concerned, was there?

Mr. BARNES. If they did?
Mr. MCGOWAN. I mean the lumber trade.

Mr. BARNES. The lumber trade would have a chance to bid on it?

Mr. MCGOWAN. Answer the question yes or no, and then explain it later.

Mr. BARNES. Yes, if they did; but they did not have the chance.

Mr. MCGOWAN. Your position is that Herrick was given an undue advantage over somebody else in connection with this modified clause 3, is that the point?

Mr. BARNES. He was given —

Senator WALSH of Montana. (interposing). Oh, we have gone over all that.

Mr. BARNES. He was given an unfair advantage according to the prospectus, over all in the United States that had seen this prospectus.

The CHAIRMAN. I think everything has been shown along that line.

Senator WALSH of Montana. When you talked with the Brooks-Scanlon people, and they agreed to put in a bid, at least of the minimum price, did they have any information that any other contract would be permitted them

than that mentioned in the prospectus?

Mr. BARNES. Not that I know of.

Senator WALSH of Montana. All right.

Mr. BARNES. They went up to Minneapolis, Mr. Carter and Mr. Ames, and I went up there, or I went from Washington, and Ames went from Portland, and Carter came from here in Washington after I had asked Colonel Greeley to put the timber on the market the second time.

Senator WALSH of Montana. Do not go into all these details. I simply asked you if, so far as you know, at the time they agreed with you that they would put in a bid at at least the minimum price —

Mr. BARNES (interposing). Do you mean at the time they agreed that they would make an offer?

Senator WALSH of Montana. Yes.

Mr. BARNES. No; they did not. It was from this prospectus, that is all they had.

Senator KENDRICK. So it was your understanding at the time you had a talk with the Brooks-Scanlon Lumber Co. in reference to

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bidding on this timber, that the successful bidder would automatically receive a permit or contract to cut all the timber in this particular section of the country, or was it just the 890,000,000 feet?

Mr. BARNES. Just the 890,000,000 feet.

Senator KENDRICK. And If there was any left over it was your understanding that it would be eliminated from the contract?

Mr. BARNES. They would have to put up another unit later.

Mr. HALLOCK. If it develops that the Brooks-Scanlon Lumber Co. did base its bid upon the very clause which was ultimately written into the Fred Herrick contract as modified from the clause that appears in the prospectus, why, then, you have no complaint to make of the fact that that clause was changed, have you?

Mr. BARNES. Well, if they made any arrangement with the Brooks-Scanlon Lumber Co. as they did with Herrick, then they had no right to do it.

Mr. HALLOCK. Well, assume that they did, just the same.

Mr. BARNES. Well, I don't know whether they did or not.

Mr. HALLOCK. Well, I am asking you to assume that. If that develops to be the case, that these people bid on an equal footing in respect to that modification, would you then concede that all you had to say relative to what you claim on account of the change in that contract, can just as well be eliminated from this investigation?

Mr. BARNES. No; because if they did it with Mr. Herrick and with doctor Brooks, yet where was the Shevlin-Hixon people, and the Winton people, and the other people who were going according to that prospectus?

The CHAIRMAN. It would have been unfair to the trade, is that your contention?

Mr. BARNES. Certainly.

Senator WALSH of Montana. I suppose that the subcommittee will be advised about these facts and as to whether it was fair or unfair will be for us to determine and not for this witness to determine. Why take up our time on that? You gentlemen will submit, no doubt, just exactly what was done, what information was given to the bidders, and we will get all that from you.

Mr. MCGOWAN. Very well, sir.

Mr. HALLOCK. One more question, please. What price was the Brooks-Scanlon Lumber Co. to pay you for your optioned timber in event they were successful?

Mr. BARNES. The Brooks-Scanlon people had no price with me for anything.

Mr. HALLOCK. And no understanding?

Mr. BARNES. No.

Mr. HALLOCK. Did not you tell Mr. Girard that they were to pay you $2 for it?

Mr. BARNES. No, sir.

Mr. HALLOCK. Did not you tell Mr. Herrick that?

Mr. BARNES. I asked Mr. Herrick $2 a thousand for it.

Mr. HALLOCK. Did you tell him that the Brooks-Scanlon Lumber Co. would pay you $2 a thousand for it if they got the bid?

Mr. BARNES. No; I did not. I had this limber in there, and I knew whoever got the unit would buy this timber because I would turn over what right of way and mill sites I had, and I fixed every

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thing in that country for whoever was the high bidder. I went along with Mr. Herrick in this thing, right on down the line, and did everything I could, until Mr. Herrick was not doing the work, and then I quit him and I went after the Oregon delegation to make him do it.

Senator WALSH of Montana. Oh, well, we are getting away from the question before us.

Mr. HALLOCK. You did not tell Mr. Girard or Mr. Herrick that the Brooks-Scanlon people were to pay you $2 for your timber if they were the successful bidder?

Mr. BARNES. I never did. I had no arrangement with the Brooks-Scanlon people. I intended to sell to whomever got the unit.

The CHAIRMAN. I think that is sufficient.

Mr. DE NEFFE. Would the people of Burns and of Grant and Harvey Counties have the right to object if the contract was made with anybody else on the proposition —

Senator WALSH of Montana (interposing). Mr. Chairman, I am going to object to that. The committee will determine whether they had the right to object or not.

Mr. DE NEFFE. All right. I am willing to leave that to the committee. That is all, Mr. Barnes.

Mr. HALLOCK. Shall we proceed, Mr. Chairman?

Mr. DE NEFFE. I have finished.

TESTIMONY OFFERED IN BEHALF OF FRED HERRICK, JAMES W. GIRARD, AND FRANK J. KLOBUCHER

Mr. HALLOCK. We will call Mr. Manes, for a few questions, and then will call Mr. Flood. I am putting them both on out of order, in order to let them get away, and will only have one or two questions to Mr. Manes, and then will call Mr. Flood.

The CHAIRMAN. The only thing is that we wanted to respect the request of Mr. Flood that he get away.

Mr. HALLOCK. Mr. Flood is not in the room for the moment, and it will only require a few questions to finish with Mr. Manes.

The CHAIRMAN. Mr. Manes, hold up your right hand. You do solemnly swear that the testimony you are about to give in this hearing being held by the subcommittee of the Committee on Public Lands and Surveys of the United States Senate, to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MANES. I do.

TESTIMONY OF A. L. MANES, OF FULTON, ALA.

(Direct examination by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Please state your full name.

Mr. MANES. A. L. Manes.

Mr. HALLOCK. And you live where?

Mr. MANES. At Fulton, Ala.

Mr. HALLOCK. What is your business?

Mr. MANES. Treasurer and general manager of the Scotch Lumber Co.

Mr. HALLOCK. What is the Scotch Lumber Co.?

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Mr. MANES. It is a corporation that owns timber and manufactures it into lumber for the market.

Mr. HALLOCK. Does Mr. Herrick own an interest in that corporation?

Mr. MANES. Yes; a one-half interest.

Mr. HALLOCK. What do these properties consist of, just generally?

Mr. MANES. Timberlands, mills, railroads, and so on.

Mr. HALLOCK. About how many acres of land?

Mr. MANES. We have 120,000 acres of land.

Mr. HALLOCK. Is that in the Southern Yellow Pine Belt?

Mr. MANES. It is.

Mr. HALLOCK. And your mill is of what capacity?

Mr. MANES. We cut on an average about 33,000,000 feet a year.

Mr. HALLOCK. What kind of railroad is that that you have, just generally the length and character of it.

Mr. MANES. We have about 62 miles of rail, including main lines and spurs; six locomotives, three loaders, two pile-drivers, and everything necessary to operate a plant cutting about 33,000,000 feet a year.

Mr. HALLOCK. Something was said the other day, Mr. Manes, regarding the shutting down of Mr. Herrick's

operations. What are the facts with respect to the continuous character or otherwise, of the operations that Mr. Herrick and yourself have carried forward there with the Scotch Lumber Co.

Mr. MANES. We have been operating day and night since 1903.

Mr. HALLOCK. Continuously.

Mr. MANES. Yes; with the exception of a week each year through July, when we stop down there to tighten up our plant and make such necessary repairs as we have to make to keep going.

Mr. HALLOCK. Are you acquainted with the approximate value of the property of the Scotch Lumber Co.?

Mr. MANES. I am.

Mr. HALLOCK. Do you care to give to this subcommittee an idea of its approximate value?

Mr. MANES. Well, there are those interested beside Mr. Herrick, but the property there is worth over $2,000,000.

Mr. HALLOCK. Do you mean his interest or the property itself?

Mr. MANES. The property in general is worth over $2,000,000.

Mr. HALLOCK. You do not care to say how much over $2,000,000 it is worth?

Mr. MANES. In justice to the others who are interested I prefer not to say.

Mr. HALLOCK. Something was said the other day relative to the difficulty of securing a financial statement on Mr. Herrick's activities. Where do lumbermen and those interested in the lumber industry look for the credit rating of lumber producers?

Mr. MANES. Most manufacturers of lumber use the Lumberman's Credit Association Rating Book, which is published in Chicago, Ill. They use that for their information because it deals with lumbermen strictly. Dun and Bradstreet's have covered practically all businesses in commercial life, while the Lumbermen's Credit Association just takes the manufacturers and yards. They list the manufacturers and yards, but do not list contractors.

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Mr. HALLOCK. Is that work readily available so far as you know in most cities?

Mr. MANES. Yes. Practically every lumber manufacturer and practically every wholesaler of lumber in the larger cities uses the lumber trade book for this purpose.

Mr. HALLOCK. Did you consult that work here in Washington on yesterday?

Mr. MANES. I did.

Mr. HALLOCK. And did you find it readily available?

Mr. MANES. Yes, sir.

Mr. HALLOCK. Mr. Manes, Mr. Herrick owns in whole or in part the Milwaukee Lumber Co., of St. Maries, Idaho, does he not?

Mr. MANES. He does.

Mr. HALLOCK. And the Export Lumber Co., of Harrison, Idaho?

Mr. MANES. He does.

Mr. HALLOCK. And the Coeur d'Alene Mill Co.?

Mr. MANES. Yes.

Mr. HALLOCK. We will go into that more in detail later; but I am asking it preliminarily to this statement: Did you secure from a notary public, in the form of a certificate, an excerpt from the credit association, the credit-rating book, that you have mentioned, showing the rating of these companies in which you say Mr. Herrick is interested.

Mr. MANES. I did.

Mr. HALLOCK. Is that the document that I now show you?

Mr. MANES. It is.

Mr. HALLOCK. We would like to read it into the record.
Mr. DE NEFFE. I think the book itself would be the best evidence.

Mr. HALLOCK. I think so, too, and that is why we had this statement sworn to.

Senator WALSH of Montana. Oh, yes; but that is sufficient, I take it.

Mr. DE NEFFE. I will not make any objection.

Mr. HALLOCK. I will read the statement, which is as follows:

WASHINGTON, D. C., FEBRUARY 15, 1927.

I hereby certify that I have examined the Lumbermen's Credit Association Credit Rate Book, of Chicago, Ill., dated August, 1926 which shows that the Scotch Lumber Co., of Fulton, Ala., have a credit rating of very high; the Milwaukee Lumber Co., of St. Maries, Idaho, have a credit rating of over $100,000; the Export Lumber Co., of Harrison, Idaho, have a credit rating of over $100,000, and the Coeur d'Alene Mill Co., of Coeur d'Alene, Idaho, have a credit rating of over $100,000. The term "very high" is the highest rating which the reference book has.

[SEAL.] ELIZABETH R. BENZ,
Notary Public, District of Columbia.

Mr. HALLOCK. Mr. Manes, in the trade does that credit rating have any relation to the physical value of the properties or is it just the ability of the operator to go in and secure credit?

Mr. MANES. To go in the market and purchase his requirements.

Mr. HALLOCK. It has no relation to the physical value of the properties themselves.

Mr. MANES. No.

Mr. HALLOCK. Do you know whether or not the Scotch Lumber Co. is also rated in R. G. Dun & Co.?

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Mr. MANES. Yes; the Scotch Lumber Co. have a rating in R. G. Dun & Co.

Mr. HALLOCK. Have you likewise secured a certificate bearing upon that matter, or did Mr. Flood get it?

Mr. MANES. I got it.

Mr. HALLOCK. Is this the document, that I now show you?

Mr. MANES. It is.

Mr. HALLOCK. Without too much preliminaries I will read this into the record:

DISTRICT OF COLUMBIA, *SS*:

I, Florence M. Stephenson, a notary public in and for the District of Columbia, hereby certify that I have this day examined the January, 1927, issue of R. G. Dun & Co., volume 235, and find that it gives to the Scotch Lumber Co., of Fulton, Ala., a credit rating of from $800,000 to $500,000.
Witness my hand this 15th day of February, 1927.

[SEAL.] FLORENCE M. STEPHENSON,
Notary Public

My commission expires April 28, 1931.

Mr. HALLOCK. Will you tell us something of the character of the mill of the Scotch Lumber Co., of the structure itself, and the plant facilities there?

Mr. MANES. We have a wooden building, but all our machinery is set on concrete. We have a 9-foot band mill —

Mr. HALLOCK (interposing). I take it the committee does not want all these details. But is it a modern, up-to-date plant?

Mr. MANES. Yes; it is. Otherwise we could not operate as regularly as we do.

Mr. HALLOCK. Do you make a specialty of rift flooring?

Mr. MANES. Yes, sir; that is the edge grain flooring and we specialize in that.

Mr. HALLOCK. Are you the largest manufacturer of rift flooring in the South?

Mr. MANES. Well, running day and night, as we do, there are none in the South that cut any more. There are some mills able to cut more rift flooring than we do if they ran night and day, but they only run during the day time, and by reason of the fact of our running 20 hours a day we cut, I take it, probably a little more than do our larger friends. In other words, I do not think any of them cut any more than we do.

Mr. HALLOCK. Is that a high quality lumber?

Mr. MANES. It is. It is the best part of the trade.

Mr. HALLOCK. What can you say as to the pine lumber market during the past two or three years, or since this contract of June, 1923.

Mr. MANES. Well, since about 1922 the market conditions for pine lumber have been very low and we leave had to work harder to sell since 1922 than any time prior to that, to get orders to move our products.

Mr. HALLOCK. To what extent has the price declined on the market for pine over that period of time?

Mr. MANES. Our lumber has declined from a price in 1921— well, sometimes it dropped 50 per cent.

HALLOCK. That is all.

Mr. MCGOWAN. I have no questions.

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(Cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. You say you have been operating continuously since 1903?

Mr. MANES. Yes; we have been operating continuously since then. Mr. Herrick purchased the plant in 1902,

and we ran during the day time until 1903, and then we but on a night run in addition to that of the day time, and leave been running day and night continuously since 1903, with the exception of this little week or ten days, when we stopped to get our plant in condition to continue running day and night.

Mr. DE NEFFE. You are running now day and night?

Mr. MANES. We are.

Mr. DE NEFFE. And you are selling your lumber, you say?

Mr. MANES. We are marketing although our stock now is higher than it has been in some time, but it is a situation which we can not anticipate, as to the future.

Mr. DE NEFFE. You have not had a shutdown since 1903 on account of market conditions at all?

Mr. MANES. No Sir.

Mr. DE NEFFE. You are a business associate of Mr. Herrick in the Scotch Lumber Co.?

Mr. MANES. I am the manager down there, and treasurer.

Mr. DE NEFFE. Are you a stockholder?

Mr. MANES. Yes; I have some stock in it.

Mr. DE NEFFE. Then, Mr. Herrick could have at any time gotten all the money he wanted down there in the Scotch Lumber Co., that is, since the first of April, 1923, could he not?

Mr. MANES. Well, we plow our money back in each year as we cut and make profits, if any; we just plow it back in. In other words, we take our stumpage depletion and put it back in again, because there will be some future time when the timber will not be available, and instead of paying the money out each year, why, we buy more stumpage whenever it is available. In fact, the most of our money has been going back into additional stumpage to replace what we are sawing.

The CHAIRMAN. You are not declaring dividends?
Mr. MANES. Just occasionally. If we have no timber available, we declare a little dividend, but whenever we can buy timber we buy it and get the money back in there again.

Mr. DE NEFFE. The contract here in controversy was signed in June, 1923. If Mr. Herrick had needed money to develop the property he could have gotten the money out of the Scotch Lumber Co. if he wanted it?

Mr. MANES. Well, we have been buying each year nearly as much timber as we cut, some years more.

Mr. DE NEFFE. You did not answer my question, Mr. Manes.

Mr. MANES. Well, really we could not have spared any money. If we were directly asked to give him some money I expect we could have gone out and gotten it. ii. In other words, if the instructions had been not to buy timber to replace our cuttings, we could have just stopped buying timber and given it to him.

Mr. DE NEFFE. Did Mr. Herrick ask for any money after July 15, 1923?

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Mr. MANES. Well, I don't know. Is that a proper question?

The CHAIRMAN. I think it is. You may answer it yes or no.

Mr. MANES. Well, we were not pressed for any money.

The CHAIRMAN. The question was, did Mr. Herrick ask your company if he could get some money. Say yes or no.

Mr. MANES. No.

Mr. DE NEFFE. You never heard him ask or say anything about his needing any money to develop this Bear Valley project?

Mr. MANES. No. Mr. Herrick would never bother us down there about anything. Of course he knew if he needed it down there —

Mr. DE NEFFE. He could have gotten it.

Mr. MANES. Possibly he could have gotten it.

Mr. DE NEFFE. Do you know what his interest is in these other corporations you mentioned, the Milwaukee and the Coeur d'Alene, and so on?

Mr. MANES. Well, as I understand it —

Mr. DE NEFFE (interposing). I mean of your own knowledge.

Mr. HALLOCK. We will say that we do not know whether this gentleman possesses any knowledge of that or not.

Mr. DE NEFFE. Well, he can say that he does not know if that is a fact.

Mr. MANES. Well, I can say this, that I have heard from interested sources that I thought to be authoritative that he owned three-quarters of the stock of the Milwaukee Lumber Co., and about the same amount in the Coeur d'Alene Mill Co., and practically all of the Export Lumber Co., and practically all of the St. Maries Mill Co.

Mr. DE NEFFE. Do you know whether he could have gotten any money from them after June 15, 1923?

Mr. MANES. Of course I have no knowledge of that.

Mr. DE NEFFE. That is all I wish to ask.

Mr. HALLOCK. That is all, I think, unless some one wishes to ash a question.

The CHAIRMAN. Just one question: I do not understand whether it was brought out as to what Mr. Herrick's interest is in the Scotch Lumber Co.

Mr. MANES. A one-half interest.

The CHAIRMAN. That is all.

(Then the witness left the stand.)

Mr. DE NEFFE. May it please the committee, the question came up on yesterday as the result of a remark by Mr. McGowan, indicating that there was some other prospectus or something sent out to the trade at the time this timber was advertised the last time, while we have been acting on the assumption that Exhibit 8, this prospectus, was the same prospectus used when it was advertised for the 30-day period. Yesterday was the first information we had that there was anything other than that given out. I was under the impression this was the only prospectus, and I think the subcommittee was also of that impression until yesterday, and then I asked Mr. McGowan to produce anything they had so we could look it over.

Senator WALSH of Montana. We will assume that this is the only one until we have other information, and probably they will give us full information in due course.

Mr. DE NEFFE. I think I ought to be allowed to look it over.

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Senator WALSH of Montana. Then make your request to the gentlemen after adjournment, and if they will not let you have it, report it to the committee and we will see what we can do.

Mr. MCGOWAN. In order to be fair, Mr. De Neffe, you might say to the subcommittee that I told you we did not have that original here immediately in Washington, but that it is in the air mail now coming, as we are informed.

Mr. DE NEFFE. I understood that you were going to look through, your records and that you might find it here, and that you might have to send to Portland for it.

Mr. MCGOWAN. It does not make any difference what was said, then, but the point is this: That following this prospectus that we have here now —

Senator WALSH of Montana (interposing). Let us not take that up now, about any controversy that you gentlemen may have about it. In due course it will be presented, as we understand, and then we can take it up.

Mr. MCGOWAN. Let me tell you what I am trying to explain: We are trying to respond to the request, and I wanted to lay before the subcommittee that we are trying to furnish Mr. De Neffe with a specific copy of what he desires.

Senator WALSH of Montana. We are assuming that you will do that in due course, and unless there is some evidence to the contrary, we do not need to take it up now.

Mr. MCGOWAN. Very well.

Mr. HALLOCK. Mr. Chairman, shall we proceed?

The CHAIRMAN. Yes, call the next witness.

Mr. HALLOCK. Mr. Flood.

TESTIMONY OF E. E. FLOOD, OF SPOKANE, WASH.

The CHAIRMAN. Hold up your right hand. You do solemnly swear that the evidence you will now give in the hearing being held by this subcommittee of the Committee on Public Lands and Surveys of the United States Senate will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FLOOD. I do.

(Direct examination by Mr. Blain Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Your name is E. E. Flood?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. Where do you live?

Mr. FLOOD. Spokane, Wash.

Mr. HALLOCK. What is your business?

Mr. FLOOD. Banking.

Mr. HALLOCK. With what banking institution in the city of Spokane are you connected?

Mr. FLOOD. The Exchange National Bank.

Mr. HALLOCK. That is a bank of what magnitude as expressed in resources and liabilities?

Mr. FLOOD. It has a million dollars capital and $200,000 surplus, and about $13,000,000 resources.

Mr. HALLOCK. You say it has about $13,000,000 of resources?

Mr. FLOOD. Yes, sir.

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Senator KENDRICK. Will you just speak a little louder. I do not hear you.

Mr. FLOOD. I stated that our bank has a capitalization of a million dollars with $200,000 surplus, and resources of about $13,000,000.

Mr. HALLOCK. Are you connected with any other banks in the Northwest country?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. What are they, and what offices do you occupy with them?

Mr. FLOOD. I am president of the First Exchange National Bank, of Coeur d'Alene, Idaho, and director of one or two small banks about there, and stockholder in seven banks, I believe, small banks.

Mr. HALLOCK. Have you finished your statement?

Mr. FLOOD. Yes.

Mr. HALLOCK. Did you tell us what office you hold in the Exchange National Bank, of Spokane?

Mr. FLOOD. Vice president.

Mr. HALLOCK. What other interests do you have in the Northwest besides your banking interests?

Mr. FLOOD. I have a few sheep and cattle, and a farm or two.

Mr. HALLOCK. How long have you lived in that country?

Mr. FLOOD. Thirty-six years.

Mr. HALLOCK. How long have you been identified with the Exchange National Bank?

Mr. FLOOD. Eleven years.

Mr. HALLOCK. Have you a rather wide acquaintance up and down the coast among bankers and people engaged in the banking business?

Mr. FLOOD. I presume such as the ordinary banker will have; yes.

Mr. HALLOCK. To an extent that is true of your acquaintance in Chicago, is it?

Mr. FLOOD. Yes.

Mr. HALLOCK. You have banking connections and correspondents over the country?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. And correspondents in Chicago?

Mr. FLOOD. Yes.

Mr. HALLOCK. Are you acquainted with Mr. Fred Herrick?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. How tong nave you known him?

Mr. FLOOD. About 11 years.

Mr. HALLOCK. Are you pretty well acquainted with his financial condition?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. Under what circumstances, just briefly, did you acquire that knowledge, Mr. Flood, and extending over what period of time, and what occasioned your acquiring that knowledge of his affairs?

Mr. FLOOD. Well, I have had the accounts of one or two of his companies, and have loaned his companies money at different times.

Mr. HALLOCK. Over a period of years?

Mr. FLOOD. Yes, sir.

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Mr. HALLOCK. Has that necessitated your acquainting yourself with the properties that Mr. Herrick owns in the way of mills, timberlands, and things of that sort?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. And have you made a rather extensive study of that matter?
Mr. FLOOD. Yes, sir.

Mr. HALLOCK. Are you prepared to give us your opinion as to Mr. Herrick's worth, based upon that study?

Mr. FLOOD. Well, I think it would be highly proper that I should first have Mr. Herrick's permission so to do.

Mr. HALLOCK. I think so, too. Mr. Herrick, would you have any objection to Mr. Flood giving us that information?

Mr. HERRICK. No.

Mr. HALLOCK. Mr. Flood, I wish you would tell us, by way of preliminary statement and then you may support it with any data you want to support it with, what in your opinion is the present net worth of Mr. Fred Herrick?

Mr. FLOOD. I presume between $8,000,000 and $9,000,000.

Mr. HALLOCK. Have you a financial statement that you can put into the record if Mr. Herrick has no objection to it upon which you base that statement?

Mr. FLOOD. Yes, sir.

Senator WALSH of Montana. Now, gentlemen, I do not believe that we ought to go into the details of what Mr. Herrick owns.

The CHAIRMAN. I do not think so either.

Mr. HALLOCK. I thought it might be your wish that we should give full information in regard to this matter, inasmuch as certain statements have been made on the other side.

The CHAIRMAN. I think you are attempting to develop banking evidence of Mr. Herrick's financial stability. That might be important in connection with the extensions that have been granted to Mr. Herrick by the Forest Service, as to whether he qualified under the terms of the prospectus or not. But I do not think we are interested beyond that point.

Mr. HALLOCK. You see it is stated in Senate Resolution 332, under which you are holding this hearing, or this language is used:

> Whereas such citizens further charge that neither said Herrick nor said corporations ever had, and have not now, sufficient financial resources to perform such contract according to its provisions, and charge that said contract was secured, as aforesaid, as a pure speculation on the part of said Herrick and said Girard.

Senator WALSH of Montana. Mr. Hallock, of course, the subcommittee will have in mind the character of the testimony on this phase of the affair that has been introduced to impeach the financial responsibility of Mr. Herrick.

Mr. HALLOCK. Yes.

Senator WALSH of Montana. Now, this gentleman now on the stand is a banker, and says he knows about Mr. Herrick's business and all that kind of thing, and tells us that Mr. Herrick's net worth is something like $8,000,000. Why go into the details of how that is made up?

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Mr. HALLOCK. I will be very pleased to drop it there. But I did not wish the subcommittee to think that we were avoiding giving the details of the matter.

The CHAIRMAN. We have heard Mr. Flood's evidence—and no doubt you will produce other evidence—to the effect that Herrick is worth $8,000,000 or $9,000,000. I agree with my colleague here that we do not care to go into the intimate details of Mr. Herrick's business.

Mr. HALLOCK. Well, I will be pleased to stop there. But I thought maybe the subcommittee would think we were merely giving some conclusions and not supporting those conclusions.

Senator WALSH of Montana. I think we perfectly understand the situation.

The CHAIRMAN. You may go ahead.

Mr. HALLOCK. Mr. Flood, along in 1923 did you perform any service for Mr. Herrick in the matter of submitting a bid on the Bear Valley unit of the Malheur National Forest?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. Without too much detail I wish you would tell us what you did in that connection.

Mr. FLOOD. In 1923 Mr. Herrick came into our office in Spokane, with his manager from Coeur d'Alene, a gentleman named Eller, and asked me if I would go to Portland and put in a bid with the forest department there for some timber in Oregon. The following day I was in Portland, and —

Mr. DE NEFFE (interposing). What day was that?

Mr. FLOOD. I do not remember, but it was the day preceding the sale. And I mailed a bid, registered in Portland, the day previous to the bid, and was there at the opening of the bids. The day previous to the bidding I called at the forest office and got a prospectus, and visited with a gentleman in the Forestry Department whom I have known in the range section.

Mr. HALLOCK. Pardon me. I do not want to interrupt your statement, but wondered if the committee cared for so much detail.

Senator WALSH of Montana. I think not.

Mr. HALLOCK. I do not believe the committee does. The bids were opened, as I understand, and you might go along right there, unless you feel that you should make some statement as a foundation for what occurred?

Mr. FLOOD. That is not necessary, I take it.

Senator WALSH of Montana. You might tell us what conversation you had with the forest office.

Mr. FLOOD. I went into the Forester's office, and without advising them of my propose obtained a prospectus, which has been shown here, and made inquiry as to the proper kind of certified check that was used in putting up Government bids. Then, on the morning of the opening of the bids—well, on that day I will say that I had the proper evidence to go with the bid, which was a Federal reserve bank draft drawn on the Ladd & Tilton Bank, a Federal reserve bank of Portland of the San Francisco district. So I mailed the bid and went to my hotel.

The neat morning I was at the forest office about five minutes to 10 o'clock. I walked in, and as I remember it, there was Mr. Ames,

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Mr. Barnes, who has testified here, and perhaps one or two other forest officials present. The bids were opened, and I think the Brooks-Scanlon bid was opened first, and the Herrick bid second. Mr. Ames asked if there was anybody present representing Mr. Herrick. I stepped forward. He wanted to know if Mr. Herrick was ready to put up his money. About that time Mr. Barnes said "Who the hell is Herrick?" I said "He is a St. Maries lumberman." He said "I never heard of him." And then while they were tabulating the bids, Mr. Barnes called me to the back room and said, "Young man, you take down that check, and get the hell out of here, and I will give you another one just like it."

Mr. HALLOCK. Do you recall that quite distinctly?

Mr. FLOOD, Yes, sir.

Mr. HALLOCK. What was the amount of the check?

Mr. FLOOD. $25,000.

Mr. HALLOCK. Did you hear Mr. Barnes testify something to the effect that he made an appointment with you, or that you made one with him at the hotel for that afternoon?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. What are the facts regarding that?

Mr. FLOOD. After the Forest officials were through with us he asked me where I was staying. I told him the Portland Hotel. He asked if he might see me, and said he wanted to talk over some matters. So I told him I would be glad to see him at 3 o'clock, and he was up there then.

Mr. HALLOCK. My recollection of Mr. Barnes's testimony is that he said you made some statement to him to the effect that you understood the Shevlin-Hixon Lumber Co. expected to submit a bid, and that Mr. James Girard had told you so; that you made a statement of that kind to Mr. Barnes on that afternoon in April, 1923, there at the hotel. What are the facts about that?

Mr. FLOOD. I never knew of the Shevlin-Hixon Co., nor did I know of the Brooks-Scanlon Co. until I came down. I had heard their names mentioned, but I am not a lumber man.

Mr. HALLOCK. What are the facts as to whether you made such a statement as that to Mr. Barnes?

Mr. FLOOD. I did not.

Mr. HALLOCK. Would it have been possible for you to have referred to anything that James W. Girard had told you?

Mr. FLOOD. No, sir.

Mr. HALLOCK. Why not?

Mr. FLOOD. I never knew Mr. Girard until six months ago. I never saw him.

Mr. HALLOCK. Had he ever talked to you, or over the telephone, or had he ever written you a letter, or otherwise communicated with you in the years 1923 or 1924?

Mr. FLOOD. No, sir.

Mr. HALLOCK. Or at any time that would have enabled you to make such a statement as that?

Mr. FLOOD. No, sir.

The CHAIRMAN. To clear up that situation as I have it in mind and so that there may be no doubt, let me say: The testimony was not, as I recall it, that Mr. Girard had told Mr. Flood, but that Mr.

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Flood had said that Mr. Girard stated so and so. It might have come from a third person. I should like to have it made clear whether Mr. Flood had even heard anything that Mr. Girard had said about that?

Mr. HALLOCK. I think it would be a good thing to clear that up.

The CHAIRMAN. I should like to have that made clear.

Mr. HALT HALLOCK. Let me look here at the record.

The CHAIRMAN. Anyway, that will clear it up if you will ask that question. I do not want to suggest what you should ask; but I think it might be a good plan to propound that question.

Mr. HALLOCK. Mr. Chairman, I do not have clearly in mind what you wished. Do you mind propounding the question?

The CHAIRMAN. Mr. Flood; had you ever heard anything that Mr. Girard had said about this timber transaction, or did you know of Mr. Girard at all previous to your going to Portland?

Mr. FLOOD. Not until six months ago. I think it was about September 1926, that I met Mr. Girard for the first time.

Senator WALSH of Montana. Had you heard prior to that time when you went to Portland anything that Mr. Girard had said about this matter?

Mr. FLOOD. No, Senator. I did not know that there was such a man as Girard living when I was in Portland.

Mr. HALLOCK. Mr. Barnes testified that Mr. Flood told him that Jim Girard had made that statement to Mr. Flood. I have it here in the record.

Senator WALSH of Montana. But he has already answered.

Mr. HALLOCK. All right. Now, Mr. Flood, have you done some work for Mr. Herrick in the matter of arranging a bond issue in connection with these Oregon ventures?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. When did you begin that work?

Mr. FLOOD. Oh, it must have been about October when he came to me.

Mr. DE NEFFE. Of what year?

Mr. FLOOD. Of last year, 1926.

Mr. HALLOCK. We are referring to the Oregon timber sale in the Bear Valley unit of the Malheur National Forest.

Mr. FLOOD. Oh, we have loaned Mr. Herrick money at different times and sent some to Oregon.

Mr. HALLOCK. It was along in October, 1926, when you talked about it

Mr. FLOOD. About the bond issue, yes.

Mr. HALLOCK. What did you do in that connection?

Mr. FLOOD. In the first place, we sent independent auditors into the companies to get a statement, and also engineers. The one that handled the Oregon matter was James D. Lacey & Co., of Chicago. I went to Portland with him to see Mr. Robert Smith, of the Lumberman's Trust Co., and discussed it with them, but concluded that they were not, without taking in something else, to underwrite the bonds; that they were not the proper people to go to at that time. In fact, that we should have to pay an origination fee or a preferred fee to them, and in order to avoid that we came straight to Chicago. And

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it was necessary for him to get some of his work done, some of his railroad completed, before we could take it up in the proper manner.

Mr. HALLOCK. Was all this work done prior to your learning anything about the proposed investigation here?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. Was this work done in any manner in anticipation of such an investigation ?

Mr. FLOOD. No, sir.

Mr. HALLOCK. What did you do in Chicago in the matter of arranging for a bond issue?

Mr. FLOOD. We took up with the Continental & Commercial Co., a subsidiary corporation of the Continental &. Commercial National Lank, and arranged for a $2,500,000 issue.

Mr. HALLOCK. Previous to that had you secured funds there in Chicago for Mr. Herrick?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. Do you mind stating the amount?

Mr. FLOOD. Well, we got $80,000 for Mr. Herrick; he got a credit line of $850,000 to use this spring and got $350,000 for one of his corporations, what you might call a credit line.

Mr. HALLOCK. Making a total of $1,200,000?

Mr. FLOOD. Yes, sir. I might qualify one statement: The contract for the bonds was signed after the injection of the resolution here in Washington, subject, of course, to the outcome of this investigation and a continuation of the contract. If he does not continue with the contract, he does not need any money.

Mr. HALLOCK. Were you somewhat embarrassed in your work through the fact that this investigation was pending?

Mr. FLOOD. Yes, sir. I think Mr. Herrick has been greatly embarrassed by some unseen hand of some sort when it comes to getting surety bonds, etc. There is something, and we do not know where it is, that he has met up with, some difficulties by which he has always been confronted. But he has never had any trouble concluding his contracts.

Mr. HALLOCK. Your conclusion of the bond issue is, very naturally, dependent upon the outcome of this proceeding?

Mr. FLOOD. Yes, sir.

The CHAIRMAN We can understand that Mr. Herrick's financial evidence of availability is dependent upon the carrying out of this contract. And he has secured finances on his availability outside of this contract.

Mr. HALLOCK. Yes. I should like to make that a little clearer. This bond issue is to raise funds to use on this

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. So that if Mr. Herrick's rights are jeopardized out there it will necessarily involve the matter of securing this bond issue?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. That is the only point I wanted to make. Are you acting as Mr. Herrick's financial agent at this time?

Mr. FLOOD. Yes, sir.

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Mr. HALLOCK. And as arrangements have been perfected you will continue to act in the matter of disbursement of this money that is to be raised on the bond issue, and otherwise?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. In connection with this Oregon timber sale?

Mr. FLOOD. That is the understanding with the Continental & Commercial Co. and with Mr. Herrick.

Mr. HALLOCK. Have you started that you might term a Herrick financial account?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. And that money is to be disbursed under your direction, is that correct?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. Are you to have supervision of the expenditures in connection with the completion of the Oregon program?

Mr. FLOOD. That is the understanding.

Mr. HALLOCK. What do you know, if anything, relative to the opportunities that Mr. Herrick has had in the past to speculate with this contract?

Mr. FLOOD. Why, there are substantial people who have approached me to intervene and have Mr. Herrick sell this property, on two different occasions.

Mr. HALLOCK. You are talking about this Oregon contract?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. And what did he do? Did he decline to entertain any such idea?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. What has been Mr. Herrick's attitude toward this property as bearing upon his disposition to go ahead down there?

Mr. FLOOD. He wanted to make it a permanent operation, to build it up, and have it outstanding among his achievements.

Mr. HALLOCK. Has he spoken of his heirs and what he wanted for them down there?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. Has that been rather a hobby with him?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. I think that is all.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. Did I understand you to say that the money you have raised or will raise in connection with the bonds in Chicago, will be devoted to the building of the railroad under the Herrick contract, and the completion of the mill and the necessary buildings that must be there to make this a going proposition?

Mr. FLOOD. Yes, sir. You see he does not need any money for anything else than these operations. His other operations are all going concerns. The timber is being converted into lumber in those concerns, and if he does not buy any more timber he does not need any money.

Mr. HALLOCK. Does that also involve having a working fund to go ahead after the structures are completed?

Mr. FLOOD. Yes, sir.

Mr. MCGOWAN. From your inquiry into Mr. Herrick's financial affairs what have you to say with reference to the statement made

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by Mr. Herrick that he had $1,250,000 net about 1923 when this contract was entered into. Is your present information sufficient to enable you to answer a question like that?

Mr. FLOOD. Yes, sir.

Mr. MCGOWAN. What would be your statement on that?

Mr. FLOOD. I would say that it is a very conservative statement,
The CHAIRMAN. You mean by that that he did have that much or more?

Mr. FLOOD. Yes, sir; he has had that much or more for many years.

(Cross-examination by Mr. Frederick M. De Neffe, attorney, representing Grant County, Oreg.)

Mr. DE NEFFE. You say in 1923 Mr. Herrick had net assets of $1,250,000?

Mr. FLOOD. In excess of that.

Mr. DE NEFFE. How was that?

Mr. FLOOD. In excess of that amount.

Mr. DE NEFFE. I understand you to say that he was worth between $8,000,000 and $9,000,000; is that his present worth?

Mr. FLOOD. He has not accumulated very much in the last four or five years.

Mr. DE NEFFE. Was he worth between $8,000,000 and $9,000,000 in 1923?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. In all in the year 1923 he was worth that much?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. Well, I do not quite understand the difference between that and $1,200,000.

Mr. FLOOD. Well, I think he made the statement to the Forestry Department that he was worth in excess of that sum at the time he made his bond. That was his first statement that Mr. Herrick ever made personally, which was in 1923, at the time he had to make this bond.

Mr. DE NEFFE. That that was his net worth?

Mr. FLOOD. In excess of that amount.

Senator WALSH Of Montana. You said that his net worth was in excess of that?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. I see.

The CHAIRMAN. That he was worth between $8,000,000 and $9,000.000, but that he had cash assets of $1,200,000 is that it?

Mr. MCGOWAN. Yes.

Mr. DE NEFFE. All right. Did he make a written statement to the Forest Service at that time?

Mr. FLOOD. I think he did at that time. I think originally he intended to put up a surety bond with the Government and it was necessary for him to make a statement and he made the statement up, and then concluded that instead of paying for a surety bond lie would put up Liberty bonds, which are up now, I think, $50,000 of Liberty bonds that I purchased for him.

Mr. DE NEFFE. You have seen the statement that he gave to the Forest Service?

Mr. FLOOD. I saw the statement that was made up at the time, but I do not know whether he gave it to the Forest Service or not.

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Mr. DE NEFFE. Was that made up in your bank?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. He listed his assets and liabilities there?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. This $1,200,000, did he tell you he was going to use that in the development of this project down in Oregon?

Mr. FLOOD. That was not discussed.

Mr. DE NEFFE. He has banked at your bank considerable, has he not?

Mr. FLOOD. He has never had an account there yet. He borrows money there, but he carries his business account at the St. Maries (Idaho) Bank, and at the First Wisconsin National Bank, Milwaukee and at the Continental & Commercial National Bank of Chicago.

Mr. DE NEFFE. Have any of his companies ever borrowed any money at your bank?

Mr. FLOOD. Yes. Sir.

Mr. DE NEFFE. Which one?

Mr. FLOOD. The Coeur d'Alene Mill Co., and the Export Lumber Co.

Mr. DE NEFFE. Did he borrow very much?

Mr. FLOOD. We gave him a line of credit of whatever amount we could.

Mr. DE NEFFE. What is the largest amount you let him have?

Mr. FLOOD. We can only loan $120,000 to one person.

Mr. DE NEFFE. You have gone up to that limit several times?

Mr. FLOOD. Yes, sir. His companies do not borrow very much money from banks.
Mr. DE NEFFE. Do any of these companies owe your bank any money now?

Mr. FLOOD. Yes, sir. I think the Coeur d'Alene Mill Co. owes us about $120,000, and that the Export Lumber Co. owes us about $30,000.

Mr. DE NEFFE. Does the other one owe you anything?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Has Mr. Herrick personally borrowed any money from your bank?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. Does he owe your bank anything now?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Close to June 15, 1923, did he borrow any money from your bank?

Mr. FLOOD. Oh, yes; he has done it, in and out. He comes in and borrows money for 30 days and then pays it off.

Mr. DE NEFFE. Did he borrow any for this project, down here in Oregon?

Mr. FLOOD. I think he borrowed $60,000 at one time.

Mr. DE NEFFE. For this work down here in Oregon?

Mr. FLOOD. Yes; I think so.

Mr. DE NEFFE. Do you know what interest he has in these various companies?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. What is the proportion of the stock that he owns?

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Mr. FLOOD. He and Mr. Manes have 300 shares out of the 600 shares of the Scotch Lumber Co. Mr. Manes owns 20 shares and Mr. Herrick 280. There are two other persons who are stockholders, a widow living here in Washington, who has 290 shares, and her brother, who has 10 shares. There are four stockholders only in the Scotch Lumber Co. Do you want the other companies?

Mr. DE NEFFE. Yes.

Mr. FLOOD. He owns all of the stock, except for qualifying shares for directors, of the Coeur d'Alene Mill Co., and all of the stock of the Export Lumber Co. The capital stock of the Coeur d'Alene Mill Co. is $1,530,000, I believe, and the capital stock of the Export Lumber Co. is $1,000,000, together with some surplus. He owns all of the stock except the qualifying shares. To correct Mr. Manes's testimony, whereas Mr. Herrick owns three-fourths of the Milwaukee Lumber Co., the stock ownership is 50 per cent in Mr. Herrick's name, and the other 50 per cent in

the name of the Scotch Lumber Co., and Mr. Herrick owning a one-half interest in the Scotch Lumber Co., that gives him three-quarters of the stock in the Milwaukee Lumber Co. if liquidated. So he really owns, according to the stock, a half interest in the Milwaukee Lumber Co. He owns all of the stock of the Fred Herrick Lumber Co., and the Interior Lumber Co. of Mississippi, I think, he owns 50 per cent, and several other small corporations in which he is interested or controls.

Mr. DE NEFFE. You are the president of the Coeur d'Alene Bank. Does Mr. Herrick carry an account there?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Do any of his companies carry an account there?

Mr. FLOOD. The Coeur d'Alene Mill Co. does.

Mr. DE NEFFE. Are you interested in any of the companies that Mr. Herrick is interested in?

Mr. FLOOD. I think I have 250 shares in a steamboat company which we sold to Mr. Herrick, and I retained that amount of stock ownership, and am secretary of the company. It is a transportation company on the Coeur d'Alene Lake, running about 60 miles from Coeur d'Alene to St. Maries. We took it over under a forced sale, and sold it to Mr. Herrick, and I kept 250 shares out of the 1,000 shares of stock.

Mr. DE NEFFE. Are you interested in any of these companies that are developing this Oregon project?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. When Mr. Herrick came to you first to speak of this project in Oregon, did he come to borrow $25,000 that was sent down with the bid?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. What did he tell you about this project?

Mr. FLOOD. He did not tell me anything. I did not know anything about it. He told me he wanted me to put this bid in, and that I must be very careful not to discuss the thing with anybody.

Mr. DE NEFFE. Why not?

Mr. FLOOD. I do not know.

Mr. DE NEFFE. Do you remember when he came in?

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Mr. FLOOD. It would be in the afternoon, but I do not remember the date, but just about two days before the sale.

Mr. DE NEFFE. When was the sale?

Mr. FLOOD. It must have been in the spring of 1923. I do not know what month. It may have been April.

Mr. DE NEFFE. Do you remember the date the bids were opened?

Mr. FLOOD. I do not remember that.

Mr. DE NEFFE. It was on the 7th of April, 1923, was it not?

Mr. FLOOD. It must have been. It was in the spring.

Mr. DE NEFFE. Did he tell you how much he was going to bid?

Mr. FLOOD. How much per thousand?

Mr. DE NEFFE. Yes.

Mr. FLOOD. He made the bid out in my presence.

Mr. DE NEFFE. Do you know what the amount was per thousand?

Mr. FLOOD. I think it was $2.80.

Mr. DE NEFFE. Did he tell you who had told him about this project?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Did he say he had looked the timber over?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Or who had looked it over?

Mr. FLOOD. He never discussed it at all.

Mr. DE NEFFE. He did not go into the details at all about it?

Mr. FLOOD. How was that?

Mr. DE NEFFE. He did not go into the details at all about it?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Did he say anything about getting money from your bank in case he was the highest bidder?
Mr. FLOOD. No, sir; he never discussed it.

Mr. DE NEFFE. Did he say anything about the fact that the timber had been advertised before?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. He never talked that over at all?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Did he say anything about who would probably bid, or how high the bids would be?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. He never discussed it?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Why did not he go down there himself?

Mr. FLOOD. I could not tell you. I do not know about that.

Mr. DE NEFFE. What arrangement did he make there about getting the honey? Did he hand you a check?

Mr. FLOOD. I think he handed me a check on an eastern bank, but I would not say for sure. At any rate, I took with me a Portland draft for $25,000, which I exchanged for the necessary kind of item to make the legal bid.

Mr. DE NEFFE. Let us see. For that draft he gave you a check on an eastern bank for $25,000?

Mr. FLOOD. I don't remember, but something of that kind. He gave me exchange, anyway. I took the draft because we carry a Portland account. I had a draft on the Ladd & Tilton Bank.

Mr. DE NEFFE. That draft on the Ladd & Tilton Bank was for $25,000 and that is in your bank now, is it not?

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Mr. FLOOD. I would not know about that. Probably that draft the Federal Reserve Bank would be in the files of the Ladd & Tilton Bank in Portland.

Mr. DE NEFFE. Did you go down the same day that he came in?

Mr. FLOOD. No; I don't remember about that. I think so, about that same night.

Mr. DE NEFFE. On the S. P. & S.?
Mr. FLOOD. No, on the O. W. R. R. & N. {O.W.R.&N.}

Mr. DE NEFFE. At what time did you get to Portland?

Mr. FLOOD. In the morning.

Mr. DE NEFFE. The day you got in Portland you went up and got the prospectus and found out how to put the money in? Is that it?

Mr. FLOOD. Yes.

Mr. DE NEFFE. And then you bought the Federal Reserve draft. Where is that draft, do you suppose?

Mr. FLOOD. That draft would be canceled, probably, in the vaults of the Ladd and Tilton Bank.

Mr. DE NEFFE. I would like to ask Mr. McGowan if he has any record of the passing of that money at that time. What do your files show here, Mr. McGowan?

Senator WALSH of Montana. We ought not to take this time to go into that now. Go on and examine the witness.

Mr. DE NEFFE. Did you then send that in by mail? Is that right?

Mr. FLOOD. Registered mail.

Mr. DE NEFFE. Do you remember about what time?

Mr. FLOOD. In the afternoon.

Mr. DE NEFFE. That was the day that the bids were opened, was it not?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. Why did Mr. Herrick wait so long? Do you know?

Mr. FLOOD. I don't know.

Mr. DE NEFFE. He got it in just the last day?

Mr. FLOOD. He mailed it the day before the bids were opened.

Mr. DE NEFFE. And the day you mailed it—you had until midnight to put the bid in, did you?

Mr. FLOOD. I don't know about that.

Mr. DE NEFFE. Do you remember about what time of day you mailed it?

Mr. FLOOD. In the afternoon—in the evening, about dinner time, I should judge.

Mr. DE NEFFE. Did you talk with Mr. Ames before you mailed the bid?

Mr. FLOOD. I met Mr. Ames in the morning, I think it was.

Mr. DE NEFFE. What did you talk to him about? Do you remember?

Mr. FLOOD. Oh, about timber—just a general visit.

Mr. DE NEFFE. And then the next day, which was the 7th of April, you went up when the bids were to be opened. Who was there?

Mr. FLOOD. I think Mr. Ames and Mr. Barnes, as I remember it. And there might have been one or two forest men there. We were introduced afterwards.

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Mr. DE NEFFE. About what time of the morning was that? What time of day was it when you got there?

Mr. FLOOD. Ten o'clock.

Mr. DE NEFFE. When the bids were opened?

Mr. FLOOD. Right at ten, I should think.

Mr. DE NEFFE. And Arch McGowan was there, wasn't he?

Mr. FLOOD. I don't know. It seems to me that right afterwards Mr. Barnes came to my room, and there was a man from Burns with him.

Mr. DE NEFFE. A rather red-faced man with auburn hair?

Mr. FLOOD. I don't remember just what he looked like.

Mr. DE NEFFE. And then Mr. McGowan—who went into the room? Mr. Barnes?

Mr. FLOOD. You mean in the Forester's office, or in my room?

Mr. DE NEFFE. No, in the Forest office.

Mr. FLOOD. Oh, I presume—I think I came in last, and then later on a couple of the Forestry men. A couple of men, apparently, in the same building came in.

Mr. DE NEFFE. And then Mr. Barnes took you into another room? Is that it?

Mr. FLOOD. No, the same room; in the rear of the same room.

Mr. DE NEFFE. And who was there then?
Mr. FLOOD. They were figuring the bids and tabulating them on the table.

Mr. DE NEFFE. There were a number of men in there, were there?

Mr. FLOOD. Oh, I should judge there might have been three besides Mr. Ames.

Mr. DE NEFFE. And then he told you to take that $25,000 bid and get the hell out of there —

Mr. FLOOD. Yes. Sir.

Mr. DE NEFFE. And he would give you one like it?

Mr. FLOOD. Yes.

Mr. DE NEFFE. Who heard him besides you?

Mr. FLOOD. Mr. Barnes.

Mr. DE NEFFE. Did any one else hear it?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. There were others right in the room?

Mr. FLOOD. Yes, sir; there must have been three or four.

Mr. DE NEFFE. Mr. Barnes is quite a loud talker, isn't he?

Mr. FLOOD. I should say he was.

Mr. DE NEFFE. And he was rather angry, was he?

Mr. FLOOD. He did not seem to be just then. He was somewhat later.

Mr. DE NEFFE. That was the first time you had met, wasn't it, Mr. Flood?

Mr. FLOOD. Yes.

Mr. DE NEFFE. And you had only known him a few minutes?

Mr. FLOOD. I had not met him then. I was introduced to him later.

Mr. DE NEFFE. Oh, after he had made this offer?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. And then you saw him later at your room, didn't you?

Mr. FLOOD. Yes, sir.
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Mr. DE NEFFE. Did you ask him how it came that there was such a difference between the two bids, $2 for the Brooks-Scanlon and $2.80 for Herrick?

Mr. FLOOD. Oh, I don't remember about the details of that. A good many details were discussed. Mr. Barnes was very particular to see that he sold some timber that he had options on. He was very particular that he should get a position with Mr. Herrick—to become connected with him. Later on I provided a way for him to meet Mr. Herrick. I presume that as Mr. Barnes had become interested in putting this timber on the market, and as he knew more about it, that Mr. Herrick would hire him, and I think he did afterwards.

Mr. DE NEFFE. You were surprised afterwards at the difference in the bids?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Did Mr. Ames state what the different bids were?

Mr. FLOOD. Oh, he read the bids.

Mr. DE NEFFE. Can you produce from your bank any evidence of that money that was taken down to Portland?

Mr. FLOOD. Oh, I think so.

Mr. DE NEFFE. Can you send it to the committee?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. What form would that be in?

Mr. FLOOD. I couldn't tell you; I don't remember exactly.

Mr. DE NEFFE. What would you think?

Mr. FLOOD. Well, it would be just the same as a bank carries with any correspondent, just as you would with your bank; you get the canceled voucher back, or the canceled check.

Mr. DE NEFFE. The Ladd & Tilton Co. was your correspondent?

Mr. FLOOD. Yes. I do not know we could get at the files of the Ladd & Tilton bank, but I presume we could get it.

Mr. DE NEFFE. So that draft would be with Ladd & Tilton's records, would it?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. What record would your bank have?

Mr. FLOOD. We would have the draft on Ladd & Tilton for all equal amounts in payment.
Mr. DE NEFFE. Then you would have that draft, wouldn't you?

Mr. FLOOD. We would not have the one that was submitted to the forestry office; we would just have the one that was submitted in payment of the draft given the forestry office.

Mr. DE NEFFE. Can you furnish that to the committee?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. And when you get home you will send it by letter, by air mail?

Mr. FLOOD. I will be very glad to. I can wire for it if necessary.

Mr. DE NEFFE. Yes; I think that would be better, to wire for it. I believe that is all.

Senator WALSH of Montana. I want to ask Mr. Flood a question. Mr. Flood, when did you close this contract with the Continental & Commercial for the bond issue?

Mr. FLOOD. Have you got a —

Mr. HALLOCK Yes; we have it right here. Have you a copy of it?

Mr. FLOOD. I have the original here [producing a paper]. The4th day of February, 1927.

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Senator WALSH of Montana. Did the Continental & Commercial and you know at that time that default had already occurred in this contract?

Mr. FLOOD. Yes, sir.

Senator WALSH of Montana. And that default would be likely to occur in the matter of the time when the mill was to be constructed?

Mr. FLOOD. Yes, sir.

Senator WALSH of Montana. You were counting then, of course, upon further extensions of time?

Mr. FLOOD. The outcome of this investigation.

Senator WALSH of Montana. Well, suppose this committee should just dismiss the whole matter; the contract would still be in default, wouldn't it?

Mr. FLOOD. Yes, sir.

Senator WALSH of Montana. And you would be relying upon getting an extension from the Forest Service?

Mr. FLOOD. It is up to the forestry department whether he can continue or not. If he does not, he does not need any funds, Senator.

Senator WALSH of Montana. And he did not get any?

Mr. FLOOD. No, sir.

Senator WALSH Of Montana. That is to say, unless he got an extension from the Forest Service the contract would not go through?

Mr. FLOOD. No.

Senator WALSH of Montana. I am really very curious to know what occasion there was for you to go to Portland at the time these bids were opened. Why could not Mr. Herrick have just simply put his bid in the mail with a properly certified check and mailed it to Portland? Why take you away from your important business and go down to Portland?

Mr. FLOOD. That is what I thought. I don't know, Senator.

Senator WALSH of Montana. You were apparently acting as a messenger boy —

Mr. FLOOD. An agent.

Senator WALSH of Montana. A mail man, to take that bid down there?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. And he told you not to say anything about it, didn't he?

Mr. FLOOD. He said it was a confidential job, and he wanted me to go down there because I was acquainted and could get the transfer of this check and any other proper kind of documents that the forestry department would accept.

Mr. DE NEFFE. This financial house in Chicago, before they committed themselves conditionally, as you have stated, to this bond issue, did they take the matter up with the Forest Service?

Mr. FLOOD. It would be up to Mr. Herrick to take it up with the Forest Service.

Mr. DE NEFFE. Did Mr. Herrick take it up?

Mr. FLOOD. He would have to produce a contract satisfactory to the trustees of the bank in order to continue operations. Of course, you understand, he will offer other collateral.

Mr. DE NEFFE. Do you know whether or not has taken it up with the forest officials?

Mr. FLOOD. I do not.

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Mr. DE NEFFE. That is all.

The CHAIRMAN. Mr. Flood, I do not know whether it is material to this investigation or not, but I would like to have it clear in my own mind. You said Mr. Barnes said if you would take the Herrick bid out he would give you a check just like the check that was in there for $25,000?

Mr. FLOOD. Yes, sir.

The CHAIRMAN. Did you view that as the sum of $25,000 that Mr. Barnes was going to pay you in addition to the $25,000 that was up if Mr. Herrick would disappear in this transaction and leave it open for some one else?

Mr. FLOOD. I did not consider it

The CHAIRMAN. In other words, do you think he was attempting to bribe you?

Mr. FLOOD. I did not consider it, because it was not possible. I told Mr. Barnes that he might pay me a million and he might buy Herrick off for that, but he could not for $25,000.

Mr. DE NEFFE. Do you mean that Herrick would want at least a million dollars for this contract?

Mr. FLOOD. Well, I would take a chance on selling out for a million, but I could not for $25,000.

Senator WALSH of Montana. Let me understand this. He said for you to take it down. Did you understand that what he proposed to you was that you withdraw your bid and get your $25.000 back, and that he would give you $25,000 more?

Mr. FLOOD. Yes, sir.

Senator WALSH of Montana. That is the way you understood what he said?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. That is all.

Senator KENDRICK. In connection with your trip from your city of Spokane to Portland, did Mr. Herrick indicate to you that he thought that his presence there as a bidder might influence other bids?

Mr. FLOOD. I do not think it was discussed, Senator Kendrick, at that time. Of course, in the ordinary course of business we are often called upon to do things of that magnitude in a confidential capacity. I do not think it was discussed.

Mr. DE NEFFE. Did Mr. Herrick pay your transportation to Washington and your expenses?

Mr. FLOOD. I hope so. He has not yet.

Mr. DE NEFFE. Has he promised to?

Mr. FLOOD. No, sir.

Mr. DE NEFFE. Did he request you to come?

Mr. FLOOD. Yes.

Mr. DE NEFFE. Do you expect him to pay your expenses?

Mr. FLOOD. Yes, sir.

Mr. DE NEFFE. I think that is all—you were subpoenaed, were you?

Mr. FLOOD. I do not think so.

Mr. HALLOCK. We requested his subpoena, Mr. De Neffe.

The CHAIRMAN. It was requested by both Mr. Hallock and Mr. Barnes that Mr. Flood be subpoenaed, but for reasons that have been heretofore explained we did not subpoena him.

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Mr. FLOOD. You see, we were in Chicago finishing this deal when they asked us to come down.

Mr. DE NEFFE. That is all.

(Redirect examination by Mr. Blaine Hallock, representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Flood, when you had this talk with Mr. Barnes in Mr. Ames's office, did he discuss that proposition with you in his loud and boisterous manner or quietly?

Mr. FLOOD. Oh, quietly.

Mr. HALLOCK. As you understood it, was it possible for you to place any construction on it other than as you have told us?

Mr. FLOOD. No, sir.

Mr. HALLOCK. Do you remember whether Mr. Barnes said anything relative to the effort that he had made up in that country and the money that he had spent in bringing about the sale of that timber, or something to that effect?

Mr. FLOOD. He told me about it in the afternoon.

Mr. HALLOCK. That was not on that occasion?

Mr. FLOOD. No.

Mr. HALLOCK. Now, when this happened, Mr. Flood, when Mr. Barnes made this statement to you, did you communicate it to anybody else? Did you tell anybody about it?

Mr. FLOOD. I told Mr. Herrick about it when I came back, and Mr. Gardner about it in Portland.

Mr. HALLOCK. You told Mr. Herrick about it after you came back, and Mr. Gardner about it in Portland?

Mr. FLOOD. Yes.

Mr. HALLOCK. What Gardner do you refer to?

Mr. FLOOD. George L. Gardner, timber broker in Portland.

Mr. HALLOCK. You told him about it at the time?

Mr. FLOOD. He was in the room with Mr. Barnes in the afternoon.

Mr. HALLOCK. Can you tell us, Mr. Flood, of the condition of the yellow pine market during the past two or three years and what effect the market condition has had upon Mr. Herrick's finances?

Mr. FLOOD. I do not know that I am qualified to talk about the matter. We have had a large number of lumber companies doing business with us, and their statements do not indicate any particular prosperity. Occasionally there is one that makes some money. Lots of lumber companies have gone down. It has not been possible to make a proper showing. I think generally the lumber industry is in that condition.

Mr. HALLOCK. What is the source of Mr. Herrick's revenue? Has he any other source than lumber, as far as you know?

Mr. FLOOD. Oh, he has some; not a great deal.

Mr. HALLOCK. Does not Mr. Herrick have a 50 per cent. interest in a Mississippi timber contract?

Mr. FLOOD. I think it is about 75.

Mr. HALLOCK. And what is the unpaid balance on that contract, approximately, at this time?

Mr. FLOOD. It will liquidate about $600,000—$601,000 I think. It has five years more to run, payable yearly.

Mr. HALLOCK. Were Mr. Herrick's financial affairs more or less mixed up prior to your taking charge of them recently?

Mr. FLOOD. Yes.

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Mr. HALLOCK. Is that the entire reason why you are acting as his financial agent?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. Independent of this Oregon sale?

Mr. FLOOD. Yes, sir.

Mr. HALLOCK. I believe that is all.

Mr. DE NEFFE. That is all, Mr. CHAIRMAN.

The CHAIRMAN. The witness will be excused.

Mr. DE NEFFE. Mr. Chairman, there have been some rather serious charges made here against Mr. Barnes. I think we ought to have a chance to refute those charges. I have a telegram from Mr. Archie McGowan bearing on this question. Of course I realize this is not evidence, but we would like to take Mr. McGowan's deposition. He says he is sending an affidavit. I would like the pleasure of the committee on that. I think Mr. Barnes ought to be able to introduce some testimony on a charge of that kind.

Senator WALSH of Montana. What is the charge to which you refer?

Mr. DE NEFFE. That Mr. Barnes tried to give Mr. Flood $25.000 if he would draw down the Herrick bid.

Senator WALSH of Montana. What could Mr. McGowan say about that?

Mr. FLOOD. Mr. McGowan was present at the time.

Senator WALSH of Montana. But according to the testimony of Mr. Flood there was not anybody present.

Mr. DE NEFFE. There were others in the room.

Senator WALSH of Montana. In the room, yes; but he says the conversation was carried on so that no one could hear it except himself and Mr. Barnes.

Mr. BARNES. I understood there were a number of other people in the room. I think it would be material.

Senator WALSH of Montana. Well, suppose Mr. Barnes had tried to buy the contract from him for $25,000? There would be nothing reprehensible in that?

Mr. DE NEFFE. Not at all. Maybe I misunderstood Mr. Flood.

Senator WALSH of Montana. It practically amounted to the same thing, that if he would take down his bid he would pay him $25.000. It would be the same thing, practically, as buying his contract for $25,000.

The CHAIRMAN. If you will pardon me, Senator Walsh, I think perhaps there is more than that involved in it,

because there is the interest of the Forest Service and of the community out there which would have suffered at that particular time.

Mr. DE NEFFE. Assuming that this contract was entered into without any collusion —

Senator WALSH of Montana. Oh, I do not feel that Mr. McGowan could say that about it.

Mr. DE NEFFE. I have a telegram that indicates he might have something to say. That was all.

The CHAIRMAN. I think the committee is undoubtedly entitled to know what it is.

Mr. HALLOCK. We have no objection to the telegram. I have not seen it, but I do not want to object to it.

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Mr. CHAIRMAN. You may read the telegram.

Mr. DE NEFFE (reading):

PORTLAND, OREG., *February 13, 1927.*

E. W. BARNES,
Care Continental Hotel,
Washington, D. C.:

Reference Hallock's accusation of bribery Sunday morning's paper. Affidavit of mine being mailed by air vindicating you of such charge. Glad to do this and hope it may be of service to you on such a villainous attack.

ARCHIE MCGOWAN.

Mr. HALLOCK. It refers to some paper?

Mr. DE NEFFE. I just assume that the Portland papers carried the notice of your asking Mr. Barnes on cross-examination if it was not a fact.

Senator WALSH of Montana. You had better wire Mr. McGowan to send an affidavit.

Mr. DE NEFFE. All right. I should also like to request Mr. McGowan to produce what the Government has, either here or in San Francisco or any place else, in reference to that check or draft.

Mr. MCGOWAN. I have given you access to the files, Mr. De Neffe. If you will tell me what you want I may be able to help you.

Mr. DE NEFFE. The files are very voluminous, and I have worked on them until my head aches. If you could help me I would appreciate it.

Mr. MCGOWAN. I will be glad to.

Mr. DE NEFFE. Do you know what I want?

Mr. MCGOWAN. I do not know that I do, but I will bring you all of the data on that subject. If it is the check that had to do —

Mr. DE NEFFE. With the bid. I do not know in what form it was. Mr. Flood did not know exactly, so I can not tell you exactly.

Mr. MCGOWAN. We will try to get something for you.

Colonel GREELEY. Is anything more necessary than the fact that $25,000 was deposited in the Treasury of the United States to Mr. Herrick's credit?

Mr. DE NEFFE. There might be.

Senator WALSH of Montana. Has not Mr. Herrick got the receipt from the Treasury of the United States for the deposit of the $25,000?

Mr. HALLOCK. I think not. It was not his money, was it?

Mr. HERRICK. They were given a Federal reserve draft. I have the original right there at Burns —

Senator WALSH of Montana. What is the practice? What does the bidder have to show that you have had the $25,000?

Colonel GREELEY. He is given a receipt that credits his account with this amount of money. Then the money is deposited in the Treasury.

Senator WALSH of Montana. You keep the $25,000?

Colonel GREELEY. We keep the $25,000.

Senator WALSH of Montana. And turn it in to the Treasury?

Colonel GREELEY. Turn it in to the Treasury of the United States, credited against the stumpage payments.

Senator WALSH of Montana. You must have a receipt then from the Treasury for the $25,000?

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Colonel GREELEY. I think we can produce a record of the receipt, but we can not produce the original bank draft. They have all gone back to their sources.

Senator WALSH of Montana. That is not necessary. If you produce a receipt from the Treasury for having deposited $25,000 there to the credit of Mr. Herrick it would seem as if we would not need anything else.

Mr. DE NEFFE. When did you get the receipt? Right after the bids are opened? Is the receipt given right after the bids are opened?

Senator WALSH of Montana. We will get the date of the receipt.

Mr. MCGOWAN. We can get all that data together, Mr. De Neffe, this afternoon, and not take up the time of the committee now.

Senator WALSH of Montana. There is not much data to be obtained. About the only thing we need is the receipt from the Treasury to the credit of Mr. Herrick. Now, let us go on.

Senator KENDRICK. It is nearly 1 o'clock.

The CHAIRMAN. Can we listen to another witness?

Mr. DE NEFFE. We have no other witness at present.

The CHAIRMAN. Mr. Hallock, have you any more witnesses?

Mr. HALLOCK. Yes. It will be long, but I can get started.

Senator WALSH of Montana. Let us go on until 1 o'clock.

Mr. HALLOCK. Mr. Girard.

TESTIMONY OF JAMES W. GIRARD, VICE PRESIDENT AND GENERAL MANAGER OF THE FRED HERRICK LUMBER CO. AND THE MALHEUR RAILROAD CO., BURNS, OREG.

(The witness was duly sworn by the CHAIRMAN.)

(Direct examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard , and Frank J. Klobucher.)

Mr. HALLOCK. Your name is James W. Girard?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. What is your age?

Mr. GIRARD. Forty-eight.

Mr. HALLOCK. Where do you live?

Mr. GIRARD. Burns, Oreg.

Mr. HALLOCK. Your present occupation?

Mr. GIRARD. Vice president and general manager of the Fred Herrick Lumber Co. and the Malheur Railroad Co.

Mr. HALLOCK. And you are in direct charge of those operations there in behalf of Mr. Herrick, are you?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. I wish you would tell the committee briefly something of your experiences in forestry, lumbering, and logging.

Mr. DE NEFFE. Pardon me just a moment. I just want to make sure that Mr. Flood will send that telegram. Will you attend to that, Mr. McGowan?

Mr. MCGOWAN. Have you requested him, Mr. Hallock?

Mr. HALLOCK. I will catch him right now.

(After a little delay:)

Mr. GIRARD. Why, I have been working in logging and timber operations more or less for about 28 or 30 years. I commenced in the Forest Service in 1907—I am giving this very briefly—and worked up through the positions of ranger, scaler, lumberman, logging engineer, and when I was in Washington in January and February, I

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believe it was, 1922, rewriting the appraisal manual I took the forest valuation engineers examination in the Bureau of Internal Revenue. My work consisted of appraisal work, the study of logging costs, manufacturing costs, and all of the various steps of logging and manufacturing of lumber, just briefly stated.

Mr. HALLOCK. Had you been graduated along through the service, Mr. Girard, from more or less inconspicuous positions to some of greater consequence?

Mr. GIRARD. Yes. I commenced as a forest guard and worked up through these various positions. Mr. Klobucher and I have made a detailed study of all the methods of logging that are employed in the inland empire, which was conducted over a period of about five years, showing the output per unit of organization of the various activities. That was put into a bulletin, and, I believe, is used in most of the universities to-day.

Mr. HALLOCK. What is that document called?

Mr. GIRARD. I do not, know whether that has been given any official name, but our title was Logging Output Studies.

Mr. HALLOCK. Have you written manuals on other phases of logging and lumbering?

Mr. GIRARD. As I stated, I revised and rewrote the National Forest Stumpage Appraisal Manual. I believe that is the correct title.

Mr. HALLOCK. Have you written anything of an official nature on fire prevention and studies of that sort?

Mr. GIRARD. Yes. I assisted in compiling the fire manual back in 1917 or 1918; I do not know just the date.

Mr. HALLOCK. Did your work carry you over different sections of the country, Mr. Girard, and give you an opportunity to become familiar with the forests in different localities of the United States?

Mr. GIRARD. Yes. sir.

Mr. HALLOCK. And had you obtained some familiarity with the yellow-pine forests of the West?

Mr. GIRARD. I had. I was sent down into Arizona, I believe, in 1911, to look over a large tract of timber down there, involving the construction of about 60 or 70 miles of railroad.

Senator CAMERON. What section of Arizona was that in?

Mr. GIRARD. That was south of Clifton, Ariz., on the Apache National Forest.

Mr. HALLOCK. In the year 1922 where were your headquarters?

Mr. GIRARD. Missoula, Mont.

Mr. HALLOCK. You were then in the Forest Service?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. Occupying what position?

Mr. GIRARD. Logging engineer.

Mr. HALLOCK. At what salary, Mr. Girard?

Mr. GIRARD. $3,840, I think. I presume you have it in the files.

Mr. HALLOCK. And were there increases in prospect that were virtually assured at that time?

Mr. GIRARD. Why, at that time the prospects for reclassification, which would result in generally increasing the Forest Service salaries, was very good, and I believe later it went through and these increases were granted.

Mr. HALLOCK. Were those increases granted very shortly after the time you left the service—Oh, I don't care much about that.

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Mr. GIRARD. I do not remember the date. A year or two, I think.

Mr. HALLOCK. At any rate, you were logging superintendent in Missoula in 1922?

Mr. GIRARD. Logging engineer.

Mr. HALLOCK. Logging engineer, I should say. Were you detailed at that time by your superiors to appraise the Bear Valley unit of the Malheur National Forest in Oregon?

Mr. GIRARD. Why, when I was in Washington rewriting the appraisal manual I first learned of the Bear Valley unit, and I was informed that in all probability I would be called on to assist in its appraisal. I was sent to Baker, Oreg., in May, I believe it was, 1922, and met Mr. Hoffman —

Mr. HALLOCK. Who is Mr. Hoffman?

Mr. GIRARD. Mr. Hoffman is logging engineer for district 6, with headquarters at Portland, Oreg. We went over this Bear Valley unit and made the appraisal.

Mr. HALLOCK. What kind of crew did you have? Just generally, in numbers.

Mr. GIRARD. Oh, I would say there were 10 or 12 men cruising the timber. Mr. George Drake was in charge of the actual cruising, and Mr. Hoffman and I did the appraisal work.[2]

Mr. Hallock. And how much time did you devote to it?

Mr. GIRARD. I believe we completed that appraisal and had it ready about the 3d of July; somewhere along there.

Senator WALSH of Montana. Will you explain to us the difference between the cruising and the appraisal work?

Mr. GIRARD. The cruising consists of determining the volume of timber; the appraisal consists of determining its value.

Senator KENDRICK. Does the appraisal work require field service? Do you go out and see the timber yourselves as appraisers before you place an estimate?

Mr. GIRARD. The appraisal work consists of going over the area sufficiently in detail to be able to determine what, in the appraiser's mind, is the most feasible method of operation, and also the quality of that timber.

Senator KENDRICK. The size of the trees?

Mr. GIRARD. The size of the trees, of course

Senator KENDRICK. And the quality of the lumber that may be cut?

Mr. GIRARD. The size of the trees could be determined from the cruise that was being made ahead of the appraisal, but the quality of the timber—I believe Mr. Hoffman and I ran strips on about 120 forties in order to determine the quality of the timber.

Mr. HALLOCK. And how long were you engaged in that work on that occasion?

Mr. GIRARD. Oh, I do not remember exactly what time in May we started, but we completed the appraisal around the 1st of July.

Mr. HALLOCK. It was a period of some two months, do you think?

Mr. GIRARD. No; it would be about six or seven weeks.

Mr. HALLOCK. Prior to that time, Mr. Girard, had you had much experience in studying and appraising and dealing with sawmills. logging roads, and questions of that kind?

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Mr. GIRARD. I do not desire to appear boastful, but I have probably had more experience than any man in the

[2]George L. Drake. See Elwood R. Maunder, *A Forester's Log: Fifty Years in the Pacific Northwest*, Forest History Society, Durham, North Carolina, 1975. Mr. Drake has some interesting observations about the Malheur Timber Sale and the participants Barnes and Herrick.

Forest Service.

Mr. HALLOCK. On those structures, as well as timber?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. Were you in charge of the appraisal work yourself on the Bear Valley unit, or was Mr. Hoffman the head of the department?

Mr. GIRARD. I would not say that I was in direct charge of it. Mr. Hoffman and I were working together on this appraisal without any discussion whatever with reference to who had charge or was responsible. Personally I considered Mr. Hoffman responsible or in charge, because that was in his district.

Mr. HALLOCK. In any event, the two of you were in charge so to speak?

Mr. GIRARD. Yes, sir.

The CHAIRMAN. The committee will recess until 10 O'clock tomorrow morning.

(Whereupon, at 1 o'clock p. m., the committee recessed to meet to-morrow, Thursday, February l7, 1927, at 10 o'clock a. m.)

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HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREGON

THURSDAY, FEBRUARY 17, 1927

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON
PUBLIC LANDS AND SURVEYS,
Washington, D.C.

The subcommittee met at 10 o'clock a. m., pursuant to the recess on yesterday, in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (CHAIRMAN), Cameron, Kendrick, and Walsh of Montana.

Present also: Senator Smoot; of Utah; Colonel Greeley, Chief of the Forest Service, and D. F. McGowan, attorney representing United States Forest Service; Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher; Frederick M. De Neffe, attorney representing Grant County, Oreg.

The CHAIRMAN. The subcommittee will come to order. You may resume, Mr. Hallock.

Mr. HALLOCK. Mr. Chairman, may I again ask Mr. De Neffe and Mr. Barnes if we are to have access to all of their files here?

Mr. DE NEFFE. Mr. Hallock, we have submitted everything we have. You talk about somebody else having obsessions, but it seems to be over on your side. I had the telegrams here and offered them to the committee, and handed them to Senator Walsh, and he said to hold them, that if they were asked for, the committee would receive them and read them. I think the record will show that.

Mr. HALLOCK. Well, I do not care to indulge in any argument, but are we to understand that the telegrams and copies that you tendered me, and which, I think, consisted of 6 or 8 or 10 in number, constitute all of your files?

Mr. DE NEFFE. Yes, sir. And you asked for the memorial presented by Mr. Barnes, and he has had it in his pocket, and whenever you want it we will furnish it.

Mr. HALLOCK. I had supposed that we had asked for it and the other files. I will appreciate it if we may have it now. We also asked for the responses that Mr. Barnes received to the telegram of February 4.

Mr. DE NEFFE. He said he gave you everything he had. And you looked them over.

Mr. HALLOCK. I understood from Mr. Barnes's testimony that he received responses to the telegram dated February 4, in which he

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had dictated a form of a document which he wished the citizens of Burns to sign.

Mr. BARNES. I do not think I ever got an answer.

Mr. HALLOCK. Very well, I thank you for that.

Mr. BARNES. I do not think I did. I have not got it anyway.

Mr. DE NEFFE. So that there may be no misunderstanding about this matter, here is a copy of the memorial, so Mr. Barnes tells me. I do not know anything about it, as I did not have anything to do with it.

Mr. HALLOCK. Is my understanding correct that the papers which you have given me now, consisting of a copy of the memorial and 10 telegrams, or copies of telegrams, constitute your entire files with reference to this subject?

Mr. DE NEFFE. That is what Mr. Barnes tells me.

Mr. BARNES. That is all I have to give you.

Mr. HALLOCK. You say that is all you have to give us.

Mr. BARNES. That is all I have got.

Mr. HALLOCK. That is your entire files, do I understand you, Mr. Barnes?

Mr. BARNES. Yes, sir. I might say that there are lots of telegrams that I wrote with a lead pencil and I never kept copies of them.

Mr. HALLOCK. Mr. Chairman, before we proceed with Mr. Girard, may we have one other question to Mr. Haley on cross-examination? Is there any objection, Mr. De Neffe?

Mr. DE NEFFE. Certainly not. But let us settle this one point now once and for all: Are you going to introduce these papers now that I just handed to you? I should like to have that point disposed of.

Mr. HALLOCK. I wanted an opportunity to look them over and determine what we cared to do with them. We are busy in the examination now, and as I have not had them to look over in the intermission I can not very well stop and do it now.

Mr. DE NEFFE. You have looked at them on day before yesterday.

Mr. HALLOCK. I have not had time to look at them right here at the table.

Mr. MCGOWAN. Let me say that I certainly have not had an opportunity to look at them, and I should like to look them over.

Mr. DE NEFFE. Well, I should like to keep them over here in the meantime, so that they may not get mislaid, because they are not fastened together very well.

FURTHER TESTIMONY OF H. D. HALEY, OF PORTLAND, OREG.

(The witness was duly sworn when he was put on the stand.)

(Further cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. I intended to ask Mr. Haley, but overlooked it when he was on the stand, for the dates when he was over this line between Burns and Seneca.

Mr. HALEY. February 2 and 3 of this year.

Mr. HALLOCK. Will you be kind enough to tell us how you went over that land?

Mr. HALEY. I walked over portions of it, but I rode through the country in an automobile.

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Mr. HALLOCK. Now, you walked over what portions, please?

Mr. HALEY. Well, whenever I got close to the line with the car I would get out and walk over that portion of the line.

Mr. HALLOCK. At how many places is the highway close to the line so that you could get out and walk?

Mr. HALEY. Well, the section from Burns until you enter Poison Creek, where the highway crosses the line, I believe.

Mr. HALLOCK. Yes. So that afforded you an opportunity to walk over how much of the line and at what points, please.

Mr. HALEY. Well, I imagine, I only walked over a few miles of the whole line.

Mr. HALLOCK. That is rather indefinite. Could you give us a little more definite statement on that?

Mr. HALEY. No ; I couldn't tell you how much of it I walked over.

Mr. HALLOCK. Would you say that it would exceed two miles in the aggregate?

Mr. HALEY. Oh, yes.

Mr. HALLOCK. Would it exceed four miles?

Mr. HALEY. Probably not.

Mr. HALLOCK. Out of the fifty-odd miles?

Mr. HALEY. Yes.

Mr. HALLOCK. And did you go through the tunnel?

Mr. HALEY. No.

Mr. HALLOCK. Or walk over the big bridge, the 400-foot bridge?

Mr. HALEY. What do you refer to as the big bridge?

Mr. HALLOCK. The 400 foot bridge there.

Mr. HALEY. No; I did not.

Mr. HALLOCK. You have no personal knowledge of their present appearance at all.

Mr. HALEY. No.

Mr. HALLOCK. What was the longest bridge you saw on the line.

Mr. HALEY. I could not tell you the length of it, I am sure.

Mr. HALLOCK. Was it a large structure or a little culvert?

Mr. HALEY. Well, as you enter —

Mr. HALLOCK (interposing). Oh, I withdraw that; I do not care about that. I thank you very much. That is all I think.

(The witness left the stand.)

Mr. HALLOCK. Now I will resume with Mr. Girard.

TESTIMONY OF JAMES W. GIRARD—Resumed

(The witness was duly sworn when first put on the stand.)

(Direct examination resumed by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Guard, and Frank J. Klobucher.)

Mr. HALLOCK. My recollection is, Mr. Girard, that you were discussing I think, Senator Walsh's question as to the difference be an appraisal and a cruise.

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. I think you explained that. Now, will you go ahead and tell us, please, what you and your forces did up in the Bear Valley unit in the spring of 1922 in the matter of determining the quantity and quality of that timber, and the practicability or feasibility of a location for a railroad line?

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Mr. GIRARD. Well, as I stated on yesterday, the timber crew was determining the volume of the timber, of which Mr. George Drake was the head. They also made a topographical map of that area and Mr. Hoffman and I took this map, which we made up from rough sketches in the field prior to the time when the map was completed in the office. We would take this map and go over the various water sheds and the various units in order to get an idea of, the cost of
railroad construction, of grades, and the amount of railroad necessary to get the timber out. I might say that probably we made a detailed examination of somewhere around 20 or 30 per cent of all the railroads. There is a lot of our railroad, as shown on the map, that we did not actually go over, because we could spot these railroads with a topographical map, and we went over a sufficient portion of the area to satisfy ourselves that we had a reasonable average.

Mr. HALLOCK. And when you use the term "the railroad" do you mean the possible location for a future railroad, was that it?

Mr. GIRARD. I am talking about the railroad in the logging unit proper, the logging spurs.

Mr. HALLOCK. You are talking about the proposed or prospective railroad?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. And not of any constructed railroad as of that time?

Mr. GIRARD. No, sir.

Mr. HALLOCK. As the result of that work did you and Mr. Hoffman—and I suppose you can only speak for yourself—determine in your own mind what the fair value of that timber was at that time?

Mr. GIRARD. Yes, Sir; we did.

Mr. HALLOCK. And ultimately incorporated your conclusions in the form of a report?

Mr. GIRARD. We did.

Mr. HALLOCK. What are the facts as to whether or not while you were doing that work on the ground, as you say, Mr. Barnes visited you?

Mr. GIRARD. He came into our camp after we had been there I would say four or five days, while we were camping at the ranger station, at the upper end of Bear Valley, known as the Bear Valley range station.

Mr. HALLOCK. What was the object of Mr. Barnes's visit, and what did he do and say?

Mr. GIRARD. Well, he brought a report up there, a report that had been prepared by Mr. Haley, who is here, I think that was it, showing the estimated cost of a railroad as made by Mr. Haley.

Mr. HALLOCK. Right at that juncture, did you look at that Haley report?

Mr. GIRARD. I did.

Mr. HALLOCK. Do you remember what he estimated would be the cost of a railroad?

Mr. GIRARD. I don't remember exactly, but my recollection is that it was somewhere around $1,500,000.

Mr. HALLOCK. All right. Go ahead and give us the rest of the conversation.

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Mr. GIRARD. Mr. Barnes went out with us the next day, went out with Mr. Hoffman and me. I think he stayed just only one day. And he was discussing the appraisal of this timber in a general away. I remember one thing that he emphasized, which was that our appraisal should not show or that the timber should not be advertised for more than $1.50 a thousand. But in order to be fair with Mr. Barnes in this thing I will say that he said that should be the minimum.

Mr. DE NEFFE. He said it should be what?

Mr. GIRARD. That it should be the minimum. But he emphasized time and again $1.50 for stumpage. I told Mr. Barnes that we could not quote any figure on this until the appraisal was made, and even then not until after the Forest Office, or rather the Forester, had approved the appraisal. But I knew, by comparing this chance with other logging chances with which I was familiar, the stumpage would never be advertised for $1.50.[3] I did not know how much more, but I knew that it would be a considerable amount over $1.50.

Mr. HALLOCK. Did Mr. Barnes endeavor to secure an expression from you as to what value you would place upon it?

Mr. GIRARD. Yes. He asked what we thought the timber was worth.

Mr. HALLOCK. And you declined to advise him, as I understand it.

Mr. GIRARD. Yes. But I had a fairly definite idea.

Senator WALSH of Montana. Mr. Hallock, please try to avoid repetition. Mr. Girard has told us about that.

Mr. HALLOCK. That is true. I am sorry.

[3]Chance: A logging operation, or show. McCulloch, Walter F. *Woods Words*. Portland: Oregon Historical Society & Champoeg Press, 1958.

Senator KENDRICK. I should like to have the witness make a little more clear the principle employed in the minimum price fixed upon the timber.

Mr. GIRARD. I will be glad to do that.

Senator KENDRICK. In order that we, may understand better Mr. Barnes's position in suggesting that figure.

Mr. GIRARD. The timber in the Forest Service sales, under the law, can not be advertised for less than the minimum shown by the appraisal. The appraised price becomes the minimum price at which it will be advertised. Do you want some explanation of the method of arriving at this value matter?

Senator KENDRICK. I guess that makes it clear.

Mr. MCGOWAN. Senator Kendrick, that principle is from the act of June 4, 1897; which covers the sale of national forest timber.

Mr. HALLOCK. What was the minimum figure that you worked out for the pine?

Mr. GIRARD. It was $2.75 a thousand.

Mr. HALLOCK. Will you please, just briefly state how you arrived at that figure, what elements you considered, and generally how you got at it?

Mr. GIRARD. Well, just, briefly stating it this is how it is arrived at: Take the total cost of the logging, plus the total cost of manufacturing, plus a reasonable margin for profit, and subtract it from the selling value of the manufactured product, to arrive at the stumpage value. In arriving at this, for a sale of that size, we took into consideration the logging conditions and selling values over a period of four to five years, as being the best index for the next four or five years in the business.

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Mr. HALLOCK. Was your figure of $2.75 submitted in the form of a report to your superiors, or to some officer of the Forest Service?

Mr. GIRARD. Why, that was submitted to the district forester in the form of a detailed report, and I wrote the operating part of that report.

Mr. HALLOCK. Yourself?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. And the district forester was then Mr. Cecil?

Mr. GIRARD. George H. Cecil.

Mr. HALLOCK. Then of Portland?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. In arriving at this value of $2.75 for the pine, did you take into consideration the transportation problems, the distance from the probable location of the mill, and matters of that sort?

Mr. GIRARD. That is a part of your operating cost. It is handled in two ways: By determining the average annual profit-bearing investment; or, of figuring it as an operating cost and wiping it off against the stumpage involved. In this particular case, if I remember correctly, we handled the railroad under the investment method, and took into consideration not only the timber of the Bear Valley unit as now under contract, as shown on the map there, but several other units there, in depreciating this railroad against the timber, which would naturally be tributary to it.

Mr. HALLOCK. Are you familiar with the regulations of the Forest Service dealing with the matter of time which is ordinarily stated in these contracts to cover the construction period?

Mr. GIRARD. Yes. I have made a lot of big appraisals in different districts.

Mr. HALLOCK. And what are the facts as to whether or not the two-year period, such as was stated in the prospectus in this case, is the general thing in that character of work?

Mr. GIRARD. Why, I believe that the regulations provide for a reasonable period for the construction of improvements. I believe that is two years, which was the result of the experience of the Forest Service in opening timber areas.

Senator KENDRICK. You say you believe that is so. Is there any fixed rule that is followed by the department?

Mr. GIRARD. Why, my recollection, Senator Kendrick, of that is that the regulations state that a reasonable period shall be allowed for the construction of initial improvements not to exceed two years—is that it? Perhaps Colonel Greeley can tell us.

Colonel GREELEY. There is no fixed limit on it, but ordinarily it is fixed at two years.

Mr. GIRARD. I did not know whether there was any fixed limit or not. I do not see how the construction of that railroad from Burns to the timber could be done, that the whole thing could be done while it is physically possible to do it in two years, to build railroads of that character perhaps—yet railroads of that character and length are not constructed in that length of time by any concern that I know of, except by transcontinental lines. It would be entirely feasible for a transcontinental line to go in there and build a railroad in less than two years, but that is not the way it is done by

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lumber companies, and the records will show that that is not the way lumber companies develop their projects.

Mr. HALLOCK. When you refer to a transcontinental line do you have in mind a preexisting and completed and efficient engineering and construction organization?

Mr. GIRARD. No; it would be physically possible to go in there and make a survey and do all the construction. But I would like to explain further as to this two-year period: You will find by examining the appraisal report that we did not make any allowance for the construction of a line front Crane to Burns.

Mr. HALLOCK. That is what I was leading up to. My question was more or less preliminary, and I waited to direct your attention to this matter, appearing on page 5 of the prospectus, and I will read it:

> Considering the low cost of construction, maintenance and operation, and the fact that the present road into Crane carries too little tonnage, the extension would obviously be a desirable undertaking for the Union Pacific system.

What extension is referred to there?

Mr. GIRARD. We figured that there was a prospect of a saw mill going in there which would furnish 10 to 12 cars of freight per day, and therefore that it would be the most logical thing to do to assume that the Union Pacific would extend their line from Crane to Burns, and in making this appraisal we did not make any provision for the extension of that line.

Mr. HALLOCK. You mean in the matter of time.

Mr. GIRARD. Yes; in the matter of time, and cost too, that is another thing.

.Mr. HALLOCK. That is what I am getting at. What can you say as to whether or not, from your knowledge of the matter that went into this prospectus, which was prepared upon the theory both with respect to time and cost, that that line from Crane to Burns would be constructed by the Union Pacific system?

Mr. GIRARD. That is correct. And I believe that Mr. Hoffman suggested that we discuss that matter with the Union Pacific officials, but I did not think it was necessary because it was obvious to me that they would build it.

Hr. HALLOCK. And in that same connection I direct the attention of the subcommittee to page 7 of the prospectus:

> For the first year's operation the estimated initial outlay in railroad, railroad and logging equipment and improvements, but exclusive of line from Crane to Burns, is as follows:

And then appears a calculation. Does that again bear out your statement that the line from Crane to Burns was not considered in this prospectus, either with respect to the matter of cost or of time?

Mr. GIRARD. Yes, sir.

Senator WALSH of Montana. Mr. Hallock, is there any controversy about this matter at all?

Mr. HALLOCK. Yes. Senator; there has been a great deal said about the time that we consumed in building the whole structure, and it would seem that there is a disposition to limit us in the matter of extensions, and we are criticized for not having built the entire project, the whole 90 miles, within a certain period of time. My

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purpose was to show that the two years' time that was provided in the prospectus was intended to cover considerably less work than what Mr. Herrick found it necessary to perform, even though he performed much of it through the agency of the Union Pacific Railroad.

Senator WALSH of Montana. That does not seem to me a very important matter in connection with the questions that are before this subcommittee.

Mr. HALLOCK. Very well. Mr. Girard, having completed your appraisal, and having made your report, what did you then do?

Mr. GIRARD. I went back to my district, Missoula, Mont.

Mr. HALLOCK. You resumed your business as what?

Mr. GIRARD. Logging engineer of that district.

Mr. HALLOCK. When did you learn that the timber had been advertised and that there were no bids?

Mr. GIRARD. Why, after the expiration of the first advertised period. I do not remember just how long.

Mr. HALLOCK. Do you remember under what circumstances you learned that?

Mr. GIRARD. Why, when I came in from a field trip there was some correspondence on my desk which showed that the timber had been readvertised for $2 for a period of 30 days I think.

Mr. HALLOCK. What effect did that have upon you in the matter of your interest in the sale?

Mr. GIRARD. Well, I was disappointed, of course, that we had not got any bids, because it appeared to me that at least to some extent the appraisal had been discredited.

Mr. HALLOCK. Did you then entertain any plan of undertaking to get some bidders interested yourself?

Mr. GIRARD. Why, I had three men in mind: Mr. Fred Herrick, and Mr. Rosenberry, of the Winton Lumber Co., and Mr. Leuthold, of the Deer Park Lumber Co. And I believe that I had talked to Mr. Rosenberry prior to that time about this timber, and that he had made a trip over there. But I figured that I would see these men.

Mr. HALLOCK. Just in this connection will you tell us: Were these men substantial lumber operators?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. Men who could have handled a deal of this kind?

Mr. GIRARD. I figured that they could.

Mr. HALLOCK. Why were you interested to see Mr. Herrick?

Mr. GIRARD. Well, for two reasons I was particularly interested in seeing Mr. Herrick: One was, that I figured he was the only man who had enough nerve to tackle a railroad that long, with that much investment, and pay the full price for the timber; and, secondly, he was very much interested in forestry. He was one of the first men that practiced brush disposal of the white-pine type.

Mr. HALLOCK. Had you known Mr. Herrick for some years?

Mr. GIRARD. I had.

Mr. HALLOCK. For about how long?

Mr. GIRARD. I guess back to about 1910 or 1911.

Mr. HALLOCK. Had he ever purchased any timber on your cruise or recommendation?

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Mr. GIRARD. He had purchased the holdings of the Coeur d'Alene Mill Co. And I might say that I resigned from the Forest Service in May, 1913, and was out until May, 1914, practically one year. And I cruised and appraised timber holdings for some people known as the Largey Estate, of Butte, Mont. Mr. Herrick bought that timber, I believe, at the appraised price.

Mr. HALLOCK. Do you know whether he was to any extent influenced by the fact that you had done the work of appraising this timber?

Dlr. GIRARD. I presume he was influenced to some extent, because he had been logging, and he had purchased considerable timber that I had estimated.

Mr. HALLOCK. If I may interrupt a moment, I should like to ask —

Senator WALSH of Montana (interposing). Did you do that work under the employment of the Largey people or of Mr. Herrick?

Mr. GIRARD. I did it for Mr. J. T. Carroll, who has charge of the Largey Estate.

Mr. HALLOCK. In that connection, what is the custom of the Forest Service, after a prospectus such as we have been discussing here has been sent out in numbers of 600 or 800 to the trade and to the people generally and no bids have resulted: Is it customary for the service to interest itself to find bidders if it can?

Mr. GIRARD. Of course, that is good business.
Mr. HALLOCK. But is it done, to your knowledge?

Mr. GIRARD. It is.

Mr. HALLOCK. Now, getting back to what occurred there in Missoula, Mont., when you learned that there were no bids: You say you intended to see these three men?

Mr. GIRARD. I did, but Mr. Herrick called me up, and —

Mr. HALLOCK (interposing.) From where?

Mr. GIRARD. From Coeur d'Alene, Idaho.

Mr. DR NEFFE. Will you fix that date?

Mr. GIRARD. No; I could not.

Mr. HALLOCK. I think we can fix it approximately. We do not care for the exact date, Mr. Girard, but give it to Mr. De Neffe approximately.

Mr. GIRARD. I would say that it was a week or 10 days prior to the time of the expiration of the second advertisement.

The CHAIRMAN. The expiration of the 30 day period?

Mr. GIRARD. Yes, sir; but I am not sure of the exact date.

Mr. HALLOCK. Mr. Herrick called you from where?

Mr. GIRARD. From Coeur d'Alene, Idaho. The supervisor of that section, McHarg, had given him a prospectus, and he said, "Mack, who knows anything about this timber? " And McHarg said, "Girard." And from that Herrick called me up.

Mr. HALLOCK. You had at the same time concluded to see him and these other gentlemen?

Mr. GIRARD. Yes.

Mr. HALLOCK. What did you do as a result of that?

Mr. GIRARD. I went to Coeur d'Alene.

Mr. HALLOCK. From where?

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Mr. GIRARD. From Missoula, Mont., and took a map that I had that had been prepared on a scale of four inches to the mile on that unit, and showed Mr. Herrick this map and the estimates.

Senator KENDRICK. May I ask a question right there, Mr. Hallock?

Mr. HALLOCK. Certainly, any time.

Senator KENDRICK. You made a trip, and was it to Coeur d'Alene that you went?

Mr. GIRARD. Yes, sir.

Senator KENDRICK. Did you make that trip at Government expense, or at your individual expense, or at Mr. Herrick's expense, or how did you go?

Mr. GIRARD. I made that trip at Government expense. I was in the Government employ.

Mr. HALLOCK. Was that all, Senator Kendrick?

Senator KENDRICK. Yes.

Mr. HALLOCK. All right. Mr. Girard, tell us whom you saw when you got to Coeur d'Alene and what you did.

Mr. GIRARD. I saw Mr. Herrick and Mr. Eller, his manager, of that plant, who went over this proposition. I offered all the arguments I could think of why it was worth two and six bits; and Mr. Herrick said that he was interested and was going to submit a bid.

Mr. HALLOCK. Did he at that time, Mr. Girard, state or intimate, that if he were the successful bidder he would wish you to enter his employ?

Mr. GIRARD. That was not discussed.

Mr. HALLOCK. Was it intimated in any way?

Mr. GIRARD. It was not.

Mr. HALLOCK. What can you say as to whether or not Mr. Herrick made any statement, suggestion or intimation to the effect that —

Mr. GIRARD (interposing). He did not. It was not mentioned, but I might state that I felt it would have been perfectly all right if it had been mentioned.

Mr. HALLOCK. I am just anxious to know whether anything was done or said or intimated in any way to the effect that if he were the successful bidder he would give you employment?

Mr. GIRARD. No, sir; it was not intimated at all.

Mr. HALLOCK. Or that you had some standing with Colonel Greeley that might assist him if he was the successful bidder, or anything of that kind?

Mr. GIRARD. No, sir; it was not suggested or even intimated in the discussion.

Mr. HALLOCK. Did he tell you that he was going to submit a bid?

Mr. GIRARD. Yes, sir.
Mr. HALLOCK. Did he express any confidence in you in the matter of the quality of that timber?

Mr. GIRARD. Well, he said he thought maybe my judgment was as good as anyone else's.

Mr. HALLOCK. Do you know whether or not he had started a man down there, in fact, already had a man down there to look at the timber at that time?

Mr. GIRARD. I believe that he told me he had a man on the road, by the name of Douglas, a very prominent cruiser in the St. Maries country.

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Mr. HALLOCK. Who had gone to look at this timber?

Mr. GIRARD. Yes, sir.

Senator KENDRICK. Did you discuss with Mr. Herrick at that time the price that he—or did he discuss with you the price that he expected to offer for the timber?

Mr. GIRARD. Mr. Herrick indicated what he was going to bid; Yes, sir.

Mr. HALLOCK. Do you remember how he indicated it?

Mr. GIRARD. He said, "I will sustain your appraisal and go you 5 cents better."

Mr. HALLOCK. Your appraisal was $2.75?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. So that indicated a $2.80 bid, of course?

Mr. GIRARD. It did.

Mr. HALLOCK. Did you feel, Mr. Girard, that the timber could have been purchased at a less amount than that?

Mr. GIRARD. Why, I feel confident in my own mind that practically anything over $2 would leave bought it, yes, sir; absolutely so.

Mr. HALLOCK. Why was it that you arrived at that conclusion?

Mr. GIRARD. Well, there had been no bids submitted and it was readvertised for $2.

Mr. HALLOCK. Well, then, do you feel, Mr. Girard —

Senator WALSH of Montana (interposing). I do not quite understand that situation. Mr. Girard, I understood you to say that the law required it to be advertised at the minimum or the appraised price. Being appraised at $2.75 a thousand, how then could $2 be fixed as the price in the new advertisement?

Mr. GIRARD. There was so much pressure brought to bear by all these petitions, Mr. Barnes, and so forth, that the Forestry Department decided in order to open up that community it would be good business to readvertise it for $2, and when they decided to readvertise it for $2 that became the appraised price.

Mr. MCGOWAN. Senator Walsh, might I interject right there, in order to make this clear?

Senator WALSH of Montana. All right.

Mr. MCGOWAN. Mr. Girard, in making an appraisal, the matter of judgment enters into it to quite a large extent, does it not?

Mr. GIRARD. That is correct.

Mr. MCGOWAN. That is, the final appraised price is a matter merely of the information, you have gathered, the facts, and what a man might possibly consider was proper, according to his best judgment?

Mr. GIRARD. That is correct.

Senator WALSH of Montana. That is perfectly obvious, Mr. McGowan.

Mr. MCGOWAN. Very well.

Senator WALSH of Montana. It is his judgment about the matter and as confirmed by the Forestry Service.

Mr. GIRARD. The fact that no bids were received for $2.75 might indicate that the appraised price was too high.

Senator WALSH of Montana. Yes; but I rather gathered from what you said about the matter that it would necessitate a new appraisal, and I was wondering if a new appraisal took place.

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Mr. GIRARD. As I understand it, the thing was gone over in the forester's office, and that it was then decided that they would consider a new appraisal price.

Senator WALSH of Montana. I was wondering how that would conform to the law, though?

Mr. GIRARD. I could not answer that, Senator.

Senator WALSH of Montana. All right.

Mr. HALLOCK. To get that a little more clearly, Mr. Girard: Some of these other witnesses have told us that it was pretty generally understood, as I recollect the testimony, that the Brooks-Scanlon Lumber Co. had made an offer of $2, or was going to offer $2 a thousand feet, or something to that effect. Do you recall the testimony I am talking about?

Mr. GIRARD. Yes; I recall it.

Mr. HALLOCK. In any event, prior to the time when you went to see Mr. Herrick, had the timber been again advertised at the $2 minimum?

Mr. GIRARD. It had.

Mr. HALLOCK. So you knew that

Mr. GIRARD. I knew that it was being advertised. These offers I referred to showed it was being advertised at that time for $2.

Mr. HALLOCK. Did you know anyone other than the Brooks-Scanlon Lumber Co., of whom you had heard, I assume, that was going to bid on the timber at all?

Mr. GIRARD. No; I did not know of anyone else that was particularly interested at that time.

Mr. HALLOCK. And, as you have told us, you had known Mr. Herrick for many years?

Mr. GIRARD. Yes.

Mr. HALLOCK. Do you feel that had you been disposed to give Mr. Herrick any advantage, or had he been disposed to secure any advantage, improper or otherwise, it would have been an easy matter to have arranged a bid at much less than the figure of $2.80?

Mr. GIRARD. Why, if I had been inclined to do anything to defraud the Government, I think that would have been my chance to get in my real work.

Mr. HALLOCK. So that when Mr. Herrick indicated that lie was going to bid, did you feel that you could then, in fairness, go to these other two men you had mentioned—Mr. Leuthold and Mr. Rosenberry?

Mr. GIRARD. No, sir. I figured that Mr. Herrick had put me in a hole by indicating what he was going to bid.

Mr. HALLOCK. As far as your efforts for prospective bidders was concerned?

Mr. GIRARD. Yes, sir.

Senator KENDRICK. Did you have the idea at that time what price the Brooks-Scanlon people were going to bid?

Mr. GIRARD. I figured that their bid would be $2 or a little over, because I had understood that they had made a bid; and as the basis of that bid, which I understood Mr. Barnes had secured, why it was readvertised for $2. And I had every reason to believe that it would be sold for that price or probably a few cents more.

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Senator WALSH of Montana. Mr. Girard, I do not quite understand why you should have felt embarrassed about seeing these other men in reference to getting them to bid.

Mr. GIRARD. Because Mr. Herrick had indicated to me that he was going to make a bid and at what amount.

Senator WALSH of Montana. Of course, if he did that it was confidential and you would not have disclosed that offer to the other people?

Mr. GIRARD. No.

Senator WALSH of Montana. But what was there to restrain you from going to these other people and endeavoring to induce them to bid?

Mr. GIRARD. Why the thing that I was primarily interested in, Senator Walsh, was to get a bid of two and six bits; and if I should go and talk to these people, and suppose they had bid $2.80, why, Mr. Herrick would say: "You went and told those fellows what I was going to bid."

Senator WALSH of Montana. Of course, that would not have been true.

Mr. GIRARD. What was that?

Senator WALSH of Montana. But, of course, that would not have been true.

Mr. GIRARD. No: it would not have been the truth, but it would have been hard to convince a man who had already indicated what he was going to bid that it was not true.

Mr. HALLOCK. To put it in another way. Did you feel that when one of your friends had indicated what he was going to bid that you could, with much grace or impunity, interview some other friends?

Mr. GIRARD. I didn't, feel that it was necessary.

Senator WALSH of Montana. Mr. Hallock, I do not think that question was quite fair to the witness, to speak of his friends.

Mr. HALLOCK. Well, I want to be clear. I think they were his friends, as I understood it.

Mr. DE NEFFE. And that is what we claim.

Senator WALSH of Montana. But, as I understand it, so far as those people were concerned, they were perfectly indifferent to him on personal grounds; they were just in the lumber business.

Mr. HALLOCK. Well, I want to clear that up a little.

Senator WALSH of Montana. I think you should do that.

Mr. HALLOCK. Mr. Girard, were your relations with Mr. Herrick quite friendly during those years you had known him?

Mr. GIRARD. My relations with all of those fellows were friendly, absolutely so.

Mr. HALLOCK. Did you feel that you could very well get them to bid against each other when you knew the amount that one man was going to bid?

Mr. GIRARD. Well, I figured that if I could get anybody interested, and I did not care which one it was, to the extent that they satisfied me they were sufficiently interested to submit a bid that would approach the appraised price, I was satisfied.

Mr. MCGOWAN. Might I ask a question right there?

Senator KENDRICK. I want to ask in connection with the prices, the minimum price as originally named and the minimum more recently

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advertised, were you consulted by the department, or the heads of the department, in connection with the rejection of the minimum price in the 30-day advertisement?

Mr. GIRARD. No, sir.

Mr. MCGOWAN. Mr. Girard, at the time that you conferred with Mr. Herrick in response to his telephone call, were you there in the nature of a salesman for the Government, prompted by a desire to get for the Government as much money as you could for the timber?

Mr. GIRARD. Yes; I —

Senator WALSH of Montana (interposing). Now, Mr. McGowan, he has told us what he was there for.

Mr. MCGOWAN. But I did not think he quite expressed what prompted him to be there.

Senator WALSH of Montana. He has told us exactly about the matter that he wanted to see that his appraisal was justified and at the same time to get a good price for the Government. We have got all the facts on that.

Mr. MCGOWAN. All right.

Mr. HALLOCK. Now, Mr. Girard, I think we had covered the matter as to whether there was any intimation about your employment or anything of the kind on that occasion. Then, did you return to Missoula?

Mr. GIRARD. I did.

Mr. HALLOCK. When did you learn that Mr. Herrick was the successful bidder and through what medium?

Mr. GIRARD. I think I first read it in the Oregonian, but I am not sure about that.

Mr. HALLOCK. Shortly thereafter did you enter Mr. Herrick's employ?

Mr. GIRARD. I did, in a very short while after that.

Mr. HALLOCK. I wish you would explain to the subcommittee just how that occurred, what was done and said, and everything connected with that relationship.

Mr. GIRARD. Well, Mr. Herrick wrote me a letter and asked me if I would consider, I believe I first got a letter from Colonel Greeley, and that then I got a letter from Mr. Herrick asking me if I would be interested in taking charge of that proposition.

Mr. HALLOCK. Right, at that juncture —

Mr. DE NEFFE (interposing). Could you fix the date of that letter?

Mr. HALLOCK. I have it here. Is this the letter that you refer to as having been addressed to you by Colonel Greeley?

Mr. GIRARD. Yes; of April 17, 1923.

Mr. HALLOCK. We should like to offer it in evidence.

Mr. DE NEFFE. We have no objection, but he said he got a letter from Mr. Herrick —

Senator WALSH of Montana (interposing). He did, and he said he got a letter from Colonel Greeley, too. Let us go along, please.

Mr. DE NEFFE. Pardon me.

Mr. HALLOCK. I think he said he first got this letter from Colonel Greeley.

Mr. GIRARD. That is my recollection.

Mr. HALLOCK. May this go in as evidence?

Mr. DE NEFFE. The is no objection.

Mr. HALLOCK. The letter is dated April 27, 1923, and is as follows:

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UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,

Washington, April 17, 1923

MR. JAMES W. GIRARD,
Care District Forester, Missoula, Mont.

DEAR JIM : I have just, learned of the important part you played in securing the bid of $2.80 for the pine timber on the Bear Valley Unit from Mr. Fred Herrick, and I want to tell you, so far as can be done in a letter, of my appreciation. The fact that Mr. Herrick had such confidence in your judgment must be gratifying to you and is certainly gratifying to the Forest Service. Mr. Herrick wrote me that he was going to try to get the best man in the Forest Service to take charge of the railroad building and logging, and under the circumstances I suppose he meant you. I wrote him back that we never stood in the way of any of our men who were offered good jobs in outside employment, which is true; but I need hardly say that if you

should be offered a satisfactory position in Mr. Herrick's new business undertaking, you would leave a hole in the Forest Service which would be hard to fill. From the purely selfish standpoint we would be sorry to see you go, but we would wish you Godspeed and good luck.

Very sincerely yours,

W. B. GREELEY, *Forester*.

Mr. HALLOCK. Now, at this juncture let me say that this letter mentions a letter from Mr. Herrick to Colonel Greeley, and one from Colonel Greeley to Mr. Herrick. I wonder if you could find those letters, Mr. McGowan? Are they readily available; if not I will go on.

Mr. MCGOWAN. I will have to look them up.

Mr. HALLOCK. Very well. Now, Mr. Girard, what did you then do in the matter of —

Senator WALSH of Montana (interposing). Mr. Hallock, could not you give us the letter from Mr. Herrick now?

Mr. HALLOCK. The letter from Mr. Herrick to you, Mr. Girard, of which you spoke; where is that?

Mr. GIRARD. I have not the letter that Mr. Herrick wrote me.

Senator WALSH of Montana. Perhaps you have a copy of it.

Mr. HALLOCK. No, sir. We were discussing it the other day and I do not think we were able to find it.

Mr. GIRARD. No, sir. It was written on a little piece of yellow paper, scratch pad.

Mr. HALLOCK. Do you remember what it contained, the substance of it?

Senator WALSH Of Montana. He has told us that.

Mr. HALLOCK. I wanted to get it in if it is not already in. And at this point I should like to be permitted to put those other letters in that I referred to.

Mr. MCGOWAN. Is this it?

Mr. HALLOCK. I want the letter from Mr. Herrick to Colonel Greeley, and the letter from Colonel Greeley to Mr. Herrick. I understood that is what this other letter that I put in referred to.

Mr. MCGOWAN. I will get it in a minute or two.

Mr. HALLOCK. See if you can not find them. So, Mr. Girard, you then concluded your arrangements for employment by Mr. Herrick?

Mr. GIRARD. Yes Sir.

Mr. HALLOCK. Where was that arrangement made and what was it?

Mr. GIRARD. That arrangement was made in Coeur d'Alene Idaho, at the same place where we discussed it before.

Mr. HALLOCK. Now, may I get back to the subject of these letters, which may give the committee a little more assistance? I have here

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what purports to be a copy of a letter from Fred Herrick to W. B. Greeley under date of April 7, 1923, and a carbon copy of a letter from . B. Greeley, Forester, to Fred Herrick, under date of April 13, 1923. Will you gentlemen concede that they are copies?

Mr. DE NEFFE. Yes; and will you read them into the record?

Mr. HALLOCK. That is what I should like to do. This first one is on the letterhead of the Milwaukee Lumber Co. and reads as follows:

MILWAUKEE LUMBER CO.
St. Maries, Idaho. April 7, 1923.

COL. WILLIAM B. GREELEY,
Forester, Washington, D. C.

DEAR SIR : I understand I am the highest bidder on the Bear Valley unit sale and if I can qualify for this job will ask if you have a name for the railroad from Crane to Seneca.

I am giving you due warning that I am going to take your best man and put him at the head of the railroad building and logging operations with instructions to work for the best interests of reforestation and establish unit No. 1 that will be a monument to your good efforts and leave something for our future people, and I believe that this is the best spot to make the best showing possible.

If I am awarded the contract, my plans are to begin railroad work in May and push to Burns this season. I will build an all steel and cement mill, the best that money can build. The principal thing is to surround oneself with the best men to be found and give them your support and she will go.
I shall be pleased to have an expression from you along these lines.
Yours respectfully,

FRED HERRICK.

And the answer is this:

APRIL 13, 1923.

MR. FRED HERRICK,
President Milwaukee Lumber Co., St. Maries, Idaho.

DEAR MR. HERRICK: I have your letter of April 7 and am glad to know of your plans.

I do not know that I have any special name to suggest for the railroad from Crane to Seneca. There are, of course, any number of names which would be appropriate, such as the Harney Valley or the Burns, Bear Valley and Eastern; but I suppose you are looking for something more distinctive. One man to whom I showed your letter suggested that you might call it the "Pine, Alfalfa & Market," which would certainly be unusual.

I do not know whom you have in mind as our best man. but of course we never stand in the way of anyone of our good men taking a good job. There is certainly the opportunity for any man to leave a monument to himself through the bringing of transportation into the Harney Valley region and through developing a permanent unit of lumber production. based on the timbered country tributary to Burns. I need not say that I shall watch the development of the enterprise with the greatest of interest and with the best of wishes for your success if, as I assume will be the ease, the sale is awarded to you.

Very sincerely yours,

W. B. GREELEY, *Forester*.

Mr. HALLOCK. Were these letters both written after Mr. Herrick's bid was found to be the high bid?

Mr. GIRARD. Yes.

Mr. HALLOCK. I do not want to pursue this too far, but I think it is your understanding that subsequently you got a letter from Mr. Herrick. If you said that I will not pursue it further, but I do not recollect that you did.

Mr. GIRARD. I stated that.

Mr. HALLOCK. All right.

Mr. DE NEFFE. I don't remember him stating it subsequently. He said it was written on a little blank piece of paper.

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Senator WALSH of Montana. That is after I asked him did he have the letter, prior to that time he had given the entire substance of it.

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. In that connection, what is Mr. Herrick's custom about addressing letters to you, what stationery does he use?

Mr. GIRARD. Practically all the letters I have received from Mr. Herrick were in lead pencil written on yellow scratch pad paper.

Mr. HALLOCK. And this was such a letter, was it?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. Will you go ahead and tell us about your employment by Mr. Herrick, when the arrangement was made and what it was?

Mr. GIRARD. Well, I went to Coeur d'Alene and entered into an agreement with Mr. Herrick to go to work for him, to go down and handle his operations.

Mr. HALLOCK. Was that reduced to writing?

Mr. GIRARD. Yes; we made a contract.

Mr. DE NEFFE. I wonder if we might fix that date.

Mr. HALLOCK. We have the contract here, I think. I do not find it right now, but I will look it up in a few minutes.

Mr. DE NEFFE. Do you remember the date?

Mr. GIRARD. No; I don't think I do, but I think it was around the first of May.

Mr. HALLOCK. What were you employed by Mr. Herrick to do?

Mr. GIRARD. The contract states that I am employed as logging superintendent.

Mr. DE NEFFE. Well, let us get the contract.

Mr. HALLOCK. Is this the contract that you refer to?

Mr. GIRARD. Yes, sir; this is the contract.

Mr. HALLOCK. That bears your signature and the signature of Mr. Herrick?

Mr. GIRARD. It does.

Mr. HALLOCK. I should like to read it in evidence.

Mr. DE NEFFE. Sure.

Mr. HALLOCK. Do you want to read it first?

Mr. DE NEFFE. No, go ahead and read it.

Mr. HALLOCK. It is as follows:

This agreement, made this the 1st day of May, 1923, by and between Fred Herrick, of St. Maries,

Idaho, party of the first part, and James W. Girard, of Missoula, Mont., party of the second part, witnesseth:

That the party of the first part agrees to employ the party of the second part for a period of five years, from the 1st day of May, 1923, as logging superintendent, to have charge of the railroad construction and logging operations on the Bear Valley unit, Malheur National Forest, Oreg., at a salary of $7,500 per annum, payable monthly, together with traveling and subsistence expenses when away from Burns Oreg.

That the party of the second part agrees to enter upon said employment and to continue in the employment of the party of the first part, giving his time and best efforts to said employment, at the salary above named, for a period of five years from the date thereof.

In witness whereof the said parties have hereunto set their hands the day and year above written.

FRED HERRICK,
Party of the First Part.

JAMES W. GIRARD,
Party of the Second Part.

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Mr. HALLOCK. Where was the agreement with respect to compensation reached?

Mr. GIRARD. It was reached at Coeur d'Alene city.

Mr. HALLOCK. Do you remember what Mr. Herrick first offered to you, if it was different from this?
Mr. GIRARD. He offered $6,000.

Mr. HALLOCK. Did you decline to accept employment at that figure.

Mr. GIRARD. I would not accept the position for that price.

Mr. HALLOCK. And so told him?

Mr. GIRARD. And so told him.

Mr. HALLOCK. And as a result of that was it finally agreed that it should be $7,500?

Mr. GIRARD. It was.

Mr. HALLOCK. Mr. Girard, at that time when you were employed by Mr. Herrick, or discussing the matter of your employment with him, did he state or in any manner intimate to you that because of your former connection with the Forest Service, or because of your acquaintance and friendship with Colonel Greeley or otherwise, he would expect from you assistance in the matter of securing extensions or favors or anything at all from the Forest Service?

Mr. GIRARD. No, sir; he did not.

Mr. HALLOCK. Was anything of that kind indicated in any way?

Mr. GIRARD. It was not discussed in any way whatsoever.

Air. HALLOCK. What are the facts as to whether or not you were employed under any such arrangement?

Mr. GIRARD. I was not.

Mr. HALLOCK. Now, I think the testimony discloses that the contract Mr. Herrick signed was dated June 15, 1923?

Mr. GIRARD. Yes.

Mr. HALLOCK. That was some six weeks after you were employed?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. Did you have anything to do with the preparation of that contract?

Mr. GIRARD. I did not.

Mr. HALLOCK. Did you ever see it before it was executed?

Mr. GIRARD. No, sir.

Mr. HALLOCK. Did you ever indicate in any manner to anyone what its provisions should be?

Mr. GIRARD. No, sir.

Senator WALSH of Montana. When you had the talk with Mr. Herrick about biding on the tract, and he had agreed to bid your appraised value and 5 cents better, did you have a copy of the prospectus there?

Mr. GIRARD. Mr. Herrick had a copy of the prospectus.

Senator WALSH of Montana. I remember now you said he got a copy from the forest supervisor.

Mr. GIRARD. Yes, sir.

Senator WALSH of Montana. Was there anything else there upon which his bid was made?

Mr. GIRARD. Not that I remember of. But Mr. Herrick had a mimeographed sheet, and I don't remember what it was, and I never went over the sheet, and don't remember what was on that sheet.

Senator WALSH of Montana. You did not know what was on it?

Mr. GIRARD. No, sir.

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Senator WALSH of Montana. So far as you were concerned you understood that he was bidding upon the basis of the contract mentioned in the prospectus.

Mr. GIRARD. As far as I knew, he was.

Senator KENDRICK. In that connection, do you know whether or not when contracts are awarded by the department, the general plan or policy is to have an exact amount of timber cut—a certain area of country—or whether it is intended that the contractor shall cut all the timber in that area?

Mr. GIRARD. It is always understood that the sale is by area.

Senator KENDRICK. By acreage?

Mr. GIRARD. But the amount is stated from the best information that is available, which is estimated, and which anyone knows may fall above or below. It is never exact.

Senator KENDRICK. Then the contract states specifically "more or less"?

Mr. GIRARD. Yes, sir; and it was specified a certain definite area.

Senator KENDRICK. I want to ask you this: After you had this first expression from Mr. Herrick in connection with the purchase price of the timber, he suggested that he was going to use your appraisal and raise you 5 cents better?

Mr. GIRARD. Yes, sir.

Senator KENDRICK. Did he at that time raise the question or was any mention made as to your employment in

case he was the successful bidder?

Mr. GIRARD. No, Sir; it was not mentioned.

Senator KENDRICK. That is all.

Mr. HALLOCK. Did Mr. Herrick at any time mention to you, or intimate to you, prior to the time that the bid was awarded to him, that he expected to employ you or desired to employ you?

Mr. GIRARD. No; I didn't know anything about it until I saw in the paper that he was the successful bidder. I will tell you one thing his letter stated that I remember now, and it said: "I guess you have seen from the papers that Fred Herrick has bought something in Oregon. Would you consider handling this operation for me?" I believe that is about the exact wording of the letter.

Mr. DE NEFFE. When was that again, please?

Mr. GIRARD. That was a few days after the bids were opened and it had been announced in the newspapers that Mr. Herrick was the successful bidder.

Mr. DE NEFFE. Then he asked you if you would consider employment?

Mr. GIRARD. He did.

Mr. HALLOCK. That was the first suggestion of that kind he had given you?

Mr. GIRARD. Yes, sir; and I don't remember whether that was received after the letter from Colonel Greeley, but I am under the impression I received Colonel Greeley's letter first. I might be able to find that letter if it is considered of any importance.

Mr. HALLOCK. I wish you would, indeed, if you can. I remember that we were discussing it, and I do not think you were able to locate it then. About this time, shortly after the contract of employment with Mr. Herrick was signed, say, on May 1, 1923, did the district forester at Missoula, Mont., address you in the matter?

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Mr. GIRARD. Yes, sir; and that is the letter.

Mr. HALLOCK. Do you recognize the signature of Mr. Morrell, district forester, on the paper I show you?

Mr. GIRARD. I do.
Mr. HALLOCK. May we offer this in evidence?

Mr. DE NEFFE. We have no objection.

Mr. HALLOCK. The letter is as follows:

FOREST SERVICE,
Missoula, Mont., May 5, 1923.

MR. JAMES W. GIRARD,
Burns, Oreg.

MY DEAR JIM: It is hardly necessary to tell you of my great feeling of loss when I returned to Missoula and found that you had not only decided to leave but had already gone. I had hoped that in some way it would work out so that you would stay on in the Forest Service.

So much has been said in the past in the way of appreciation for what you have accomplished that it seems in a way not worth while to repeat it. I want, nevertheless, at this last opportunity to express again a word of admiration for your splendid achievements, starting in as you did handicapped by a lack of the amount of schooling that most men who have risen to a high degree of responsibility in the service had. It is the best example of what a man gifted with a good mind and good physique and the willingness to work can accomplish that I have seen in the Forest Service.

In your going the service loses its most able logging engineer. That in itself is a serious loss, but a

much bigger one is the loss of your leadership and stimulating influence throughout the whole organization. Perhaps there are other men who in due time will make just as good appraisals, but it is unlikely that any of them will fill your shoes in other broader and more vital ways.

Of course, we all wish for your complete success in the job that you have undertaken, and I hope that you will find in it a line of duty which will satisfy your ideals of service. I am sure this is the big thing with you.

Very sincerely yours,

FRED MORRELL, *District Forester*.

Mr. HALLOCK. Now, Mr. Girard, just prior to your leaving for the West, having made this arrangement with Mr. Herrick, were you tendered employment in Missoula?

Mr. GIRARD. Yes; I was tendered employment. I got back to Missoula on Saturday and I was tendered employment on Sunday morning.

Mr. DE NEFFE. What was that date, again?

Mr. GIRARD. I could not give you the date, but it was something like —

Mr. DE NEFFE (interposing). Just approximately.

Mr. GIRARD. It was along—oh, the 15th or 20th of April; somewhere along in there.

Mr. HALLOCK. Go ahead.

Mr. GIRARD. Mr. Baird, of the Baird-Harper Lumber Co., came to Missoula on Sunday morning after I had made my deal with Mr. Herrick and offered me employment.

Mr. HALLOCK. At what compensation?

Mr. GIRARD. Well, he did not definitely state what compensation, but he said it would beat the figure that Mr. Herrick had quoted.

Ml'. HALLOCK. You had told him what that figure was?

Mr. GIRARD. Yes, sir.

Mt. DE NEFFE. I did not get that date.

Senator WALSH of Montana. Fifteenth of April, he said.

Mr. GIRARD. Somewhere along there, but I do not remember exactly.

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Mr. HALLOCK. Your contract with Mr. Herrick was signed May 1, 1923?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. Had you agreed upon the amount of the compensation before the date when the contract was signed?

Mr. GIRARD. We had.

Mr. HALLOCK. So that when you talked to this gentleman about employment it was after you lead agreed with Mr. Herrick.

Mr. GIRARD. Yes, sir; but we had not signed the contract.

Mr. HALLOCK. Was it following your return from the West?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. What has been your desire in the matter of ultimately finding private employment in a big enterprise during these years when you have been working in the Forest Service?

Mr. GIRARD. Well, I had figured for several years that sooner or later I would get out with some lumber company.

Mr. HALLOCK. And I believe you stated that you were out once.

Mr. GIRARD. I was out one year. I had had several offers, as far as that was concerned, but did not have anything that appealed to me like the Burns proposition.

Senator KENDRICK. May I ask a question right here?

Mr. HALLOCK. Certainly, Senator.

Senator KENDRICK. In your talk with Mr. Herrick about the $7,500 a year, was there any understanding, either directly or indirectly, as to any other compensation?

Mr. GIRARD. No, sir.

Senator KENDRICK. None whatever?

Mr. GIRARD. None whatever.

Senator KENDRICK. Did you at that particular time have any, as I have already asked, any direct understanding that yon were later to become associated with him in the enterprise?

Mr. GIRARD. No, sir; not at that time, not until about October or November, I believe, of that year, was the first time I knew I was to be associated in any other capacity than as logging superintendent, as stated in the contract.

Senator KENDRICK. All right.

Senator WALSH of Montana. Perhaps you better go on and tell us about that.

Mr. GIRARD. Mr. Herrick came to Burns and said, "Now it is getting time to incorporate. I want you to be my general manager, so you will see to the incorporation" —

Senator KENDRICK. (interposing). Instead of logging superintendent?

Mr. GIRARD. The title of logging superintendent was dropped and I was made vice president and general manager of the Fred Herrick Lumber Co. and of the Malheur Railroad Co., when those two organizations were incorporated.

Mr. HALLOCK. That was in the fall of 1923. I had intended to lead up to that.

Senator KENDRICK. Has there been any change in regard to that position?

Mr. GIRARD. No, sir. I hope to have some day, when get to operating.

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Mr. HALLOCK. Have you any understanding with Mr. Herrick, either direct or indirect, that your salary is to be increased?

Mr. GIRARD. No, sir.

Mr. HALLOCK. But you are just entertaining that hope?

Mr. GIRARD. Yes, sir.

Senator KENDRICK. If you did that would be entirely consistent with the understanding that when the business was put on a paying basis you would be given increased compensation?

Mr. GIRARD. Mr. Herrick has not discussed that with me.
Senator KENDRICK. I say, that would be along the line of business principles.

Mr. GIRARD. Yes, sir; that is along the line of business principles, and I hope if I make good in this operation, the same as I have on the railroad construction, that I will get a substantial increase. I am certainly expecting that, and I will be in no wise backward in putting it up to Mr. Herrick when the proper time comes, either.

Mr. HALLOCK. Without too much stress on that, and without being facetious or otherwise, is there any understanding between you and Mr. Herrick that you will receive any increase in salary at any time or in any amount?

Mr. GIRARD. No, sir.

Senator KENDRICK. I think Senator Walsh would like to have developed a little further the question of this change of title. Your change of title and all was made without any increase in salary, but what interest, if any, did you succeed to in the company under this new arrangement?

Mr. GIRARD. I subscribed for some stock in the company—I don't remember just the number of shares, but it is shown in the book and I have two shares in the Fred Herrick Lumber Co., which I paid for at par. And I will keep on paying for the rest of it.

Senator KENDRICK. You do not recall the amount of your subscription?

Mr. GIRARD. $200 was the amount I paid in.

Senator KENDRICK. I understand, for the two shares; and now, what else?

Mr. GIRARD. $5,000 in each company by myself, and the same amount by Mr. Klobucher.

Senator KENDRICK. You mean by each company, all the companies that Mr. Herrick owns. Or the different subdivisions of the company that you are connected with?

Mr. GIRARD. Only the two companies at Burns.

The CHAIRMAN. How many shares of stock have been issued?

Mr. HALLOCK. In that connection, let me say that I have offered the stock books to Mr. De-Neffe at his request and they have been available to him; and if he has examined them, I should like to get in all the facts in regard to them in the record at this juncture.

Mr. DE NEFFE. I have no objection at all.

Senator WALSH of Montana. Why do we need that?

Mr. HALLOCK. I thought these gentlemen wanted it in the record.

Mr. DE NEFFE. No; we do not care about that.

Senator WALSH of Montana. Just tell us how many shares of stock he has; and if there is no controversy about the matter, please do not take up our time to go into the matter.
Mr. HALLOCK. Very well.

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Senator WALSH of Montana. Mr. Girard, have you paid in $5,000 worth of stock?

Mr. GIRARD. No, sir. I have paid in $200 covering two shares of stock in the Fred Herrick Lumber Co., but have not paid in anything on the stock of the Malheur Railroad Co. or the —

Senator WALSH of Montana (interposing). You have subscribed to $5,000 worth of stock in each company?

Mr. GIRARD. Yes, sir.

Senator WALSH of Montana. Why have not you paid the money in?

Mr. GIRARD. I have not figured that it was necessary. And I have not been called upon to pay it in.

Senator WALSH of Montana. The company has been in need of funds.

Mr. GIRARD. The company has been in the need of funds, and so have I.

Senator WALSH of Montana. All right.

Senator KENDRICK. You would have participated in any earnings of the company heretofore up to the present time. Now, have you been required to pay any interest on the $5,000 of stock that you subscribed for?

Mr. GIRARD. No, sir.

Mr. HALLOCK. The stock books disclose that the shares that Mr. Girard paid cash for have been delivered to him physically, and that the shares that he and Mr. Klobucher subscribed for, in the amount of $5,000 each, are still in the books unissued.

Senator KENDRICK. I did not understand the answer to the chairman's question as to the total capitalization, if it was answered, and what was it? How many shares are included in the names of the incorporators?

Mr. GIRARD. Five hundred shares I believe in each corporation covers it.

The CHAIRMAN. Of what par value?

Mr. GIRARD. I believe it is $500,000, with shares of the par value $100 a share.

Mr. HALLOCK. It would be 5,000 shares, then?

Mr. GIRARD. Yes, sir; 5,000 shares instead of 500 shares.

Senator KENDRICK. And you subscribed for 500 shares, did you say?
Mr. GIRARD. No; it would be 50 shares.

Senator KENDRICK. If the entire capitalization is 500 shares then you would have absorbed it all under that statement, would you not?

Mr. GIRARD. No, sir; I would have only 50 shares.

Mr. HALLOCK. Might I correct that situation?

Senator KENDRICK. Certainly.

Mr. HALLOCK. Under this arrangement each corporation was capitalized at —

Senator KENDRICK (interposing). But he subscribed for $5,000 worth of stock.

Mr. GIRARD. Yes, sir; for 50 shares of the par value of $100 each.

Mr. HALLOCK. The capital stock of the Fred Herrick Lumber Co., has been increased to $2,000,000 without any change in Mr. Girard's subscription, so the value of it has been reduced to 25 per cent and the record shows all

that.

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The CHAIRMAN. Has all of the stock been subscribed?

Mr. HALLOCK. No, sir; not all of the stock. You understand that the stock has since been increased to $2,000,000.

The CHAIRMAN. But prior to that?

Mr. HALLOCK. It was oversubscribed before that. The contributions had largely exceeded the capitalization, largely exceeded the total authorized capital of both companies.

Mr. GIRARD. In answer to Senator Walsh's question, why I had not paid for that stock, and referring to the company needing money that is true, we needed money several times, and several times I have paid out my own money in the construction work.

Senator WALSH of Montana. What was that?

Mr. GIRARD. I say, several times I have had some of my own money in this construction program.

Senator WALSH of Montana. Advanced to meet bills?

Mr. GIRARD. Yes, sir.

Senator WALSH of Montana. But that has been refunded to you of course.

Mr. GIRARD. Yes, sir.

Senator KENDRICK. Then the arrangement of deferring payment was one of mutual accord between yourself and Mr. Herrick?

Mr. GIRARD. It was never discussed.

Mr. HALLOCK. Following your employment did you and Mr. Herrick go over into the Burns country in the spring of 1923?

Mr. GIRARD. We did.

Mr. HALLOCK. Who accompanied you? I do not care who all they were except did Mr. Barnes accompany you?

Mr. GIRARD. No, not from Saint Maries, Idaho to Burns.

Mr. HALLOCK. Well, I do not care about that.

Mr. GIRARD. Mr. Barnes was in Burns when we got there.

Mr. HALLOCK. All right. Then, did you, Mr. Herrick, and Mr. Barnes make an inspection trip over that country?

Mr. GIRARD. We made—well, I would not call it exactly an inspection trip. We got in an automobile and went from Burns to Prineville, and in going to Prineville we went through this timber, through this Bear Valley unit.

Mr. HALLOCK. On that occasion did Mr. Barnes undertake to interest you and Mr. Herrick in the purchase of his timber that he had under option?

Mr. GIRARD. Well, I don't know as he did on the way to Prineville, but he did on the trip before we finally started —

Mr. DE NEFFE (interposing). Could you fix that date, when you and Mr. Herrick came to Burns?

Mr. GIRARD. No; I can not. I do not see that that is at all material, however.

Mr. DE NEFFE. Well, it is material in connection with some questions I want to ask you, if you please.

Mr. GIRARD. I believe it was around the 29th or 30th of April, I would say, that we arrived at Burns. It was the last of April.

Mr. HALLOCK. Did Mr. Barnes endeavor to interest you and Mr. Herrick in the purchase of his timber on that occasion?

Mr. GIRARD. He did. On our way—well, we went to Prineville, and then came back to Burns, and on our way from Burns to Ontario, why, Mr. Barnes approached Mr. Herrick on his timber, in the

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Portland Hotel, and said he thought he ought to have a contract with him, and emphasized very strongly that he was to have at least $2 per thousand.

Mr. HALLOCK. Did he make any statement with respect to whether he had been offered $2 a thousand or had an understanding with anyone that they would pay him $2 per thousand?

Mr. GIRARD. I don't remember whether Mr. Barnes made reference to that at this particular point, but he did tell me that he was offered by the Brooks-Scanlon Lumber Co. $2 for his timber if they were the successful bidders.

Mr. HALLOCK. Do you recall the place and date when that statement was made to you, Mr. Girard, if not on this occasion?

Mr. GIRARD. I think he made that statement to me when we were in the woods cruising the timber, or on our way up there, and I am not sure about the date.

Senator WALSH of Montana. When you speak about cruising timber you must have made a subsequent cruise, then.

Mr. GIRARD. I might explain that by saying that Mr. Barnes had this timber and wanted to sell it, and Mr. Herrick would not consider the proposition until I had looked over it and made an examination.

Senator KENDRICK. You were cruising privately-owned timber?

Mr. GIRARD. Yes. When we returned to Burns I figured that in view of the fact I would have to have a man to help me that I would put Mr. Barnes on our pay roll, and I went up and cruised this timber. I made a cruise of Mr. Barnes's timber and he helped me on it, and was on our pay roll for two or three months. We have the canceled vouchers here that will show.

Mr. HALLOCK. In that conversation relative to Brooks-Scanlon attitude toward the purchase of Barnes's timber, did Mr. Barnes also tell you anything about the Brooks-Scanlon people were going to employ him in any capacity?

Mr. GIRARD. Well, he said he had an understanding with them that they were to take his timber at $2 a thousand, and give him a position with them to look after tax matters, etc.

Mr. HALLOCK. You ultimately arranged to purchase Mr. Barnes's timber in behalf of Mr. Herrick, did you?

Mr. GIRARD. Yes.

Mr. HALLOCK. And I think there has already been read into the record the contract covering that feature.

Mr. GIRARD. I do not know about that, but just briefly stated, it was at $1.49 per thousand.

Mr. HALLOCK. In that connection I wish you would explain to the subcommittee the so-called mill site at

Burns, how that was treated in that transaction, and how it was paid for by Mr. Herrick.

Mr. GIRARD. Well, the mill site at Burns, as the contract recites, was a part of the consideration. But in order to arrive at some rate per thousand for the timber, so that those options could be taken up, we divided the total estimated amount of timber included in this first tract into the total agreed price, $55,000, and the result was a rate per thousand of $1.49 approximately. It would be applied to those options as they were taken up, and this figure applied to the total estimated amount of timber, resulting in the price of the total amount of approximately $55,000 And it figured out that way for

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convenience sake in order to get the options. The contract might indicate that. Mr. Barnes did make a gift of this mill, but that was certainly a part of the consideration.

Senator WALSH of Montana. You mean the mill site.

Mr. GIRARD. Yes; the mill site. But that was certainly a part of the consideration, and so were certain rights of way which he had under his option, practically 30 miles from Crane to Burn, that we did not know at that time but. what we would want to use, but later determined we did not want to use any of them.

Mr. HALLOCK. That contract, as I recall it, and it is in evidence, requires that you shall build a mill on this mill site, but does not state any time within which the work shall be done. Following the making of that contract and payment of full consideration to Mr. Barnes as these timber options matured, did you demand a deed from Mr. Barnes to the mill site?

Mr. GIRARD. I did. And I might say in that connection that the contract does provide we have to put a mill on this site, and I believe Mr. Barnes will remember that I made the suggestion—he said: "I have got this mill site now, but if you do not build on it what am I going to do with the mill site?" I said: "If you have any doubt whatever whether or not we are going to build a mill on that, stipulate in the contract and deed that this mill site will revert to you if the mill is not built."

Senator KENDRICK. How far is the mill site from this —

Mr. GIRARD. From the town of Burns?

Senator KENDRICK. Oh, I see. The mill site is near Burns and not the terminus of the road.

Mr. GIRARD. No, sir; the mill site is at the end of the branch of the Oregon Short Line. It is 2½ miles south of Burns.

Senator KENDRICK. I recall now.

Mr. HALLOCK. What effort did you make to secure a conveyance of that mill site from Mr. Barnes?

Mr. GIRARD. Well, I asked Mr. Barnes on several occasions to turn over a deed to the mill property, and that was after we had taken up the most of these timber options strictly according to our agreement.

Mr. HALLOCK. What was his attitude?

Mr. GIRARD. Well, he always had some excuse to offer, to wait a little later and he would fix it, that he is going to turn this over to me, and so on.

Senator WALSH of Montana. We understand that that is a matter that is in controversy.

Mr. DE NEFFE. Yes; that is in litigation.

Mr. HALLOCK. We are not trying to try any lawsuit here. At any rate, did the citizens of Burns finally have to come to your rescue in order to get this deed, and, if so, in what manner?

Mr. GIRARD. I do not know exactly how to answer the question in reference to what manner.

Mr. HALLOCK. Tell us what occurred.

Mr. GIRARD. Several of the leading citizens of Burns, and Mr. Byrd, who is present here, is one of them; the president of the Commercial Club; Mr. Brown of the bank; and Mr. Mothershead, the secretary of the irrigation district—there had been considerable dis-

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cussion, and the people of Burns were wondering why Mr. Barnes had not turned over this mill site. So they came over and wanted to see our contract. Mr. Barnes had put certain stipulations in the deed which were disagreeable to me, or at least objectionable to me —

Mr. HALLOCK (interposing). Do you mean in the deed which he had prepared and tendered to you?

Mr. GIRARD. Yes, sir. And I would not accept the deed with any strings on it whatever, so those gentlemen came over to see me —

Mr. HALLOCK (interposing). Pardon me, but you mean except as covered by the contract with Mr. Barnes; is that correct?

Mr. GIRARD. Well, I would not call that a reservation, because that was provided for in the contract.

Mr. HALLOCK. Well, that is what I wanted to clear up.

Mr. GIRARD. They came over and wanted to look at the contract and to see, whether or not I was justified in my claims. So then they had certain negotiations with Mr. Barnes and made certain concessions to him, which finally induced him to turn over the mill site.

Mr. HALLOCK. And those concessions were the conveyance to Mr. Barnes of a tract of land owned by the Harney County Fair Association, were they?

Mr. GIRARD. I believe so.

Mr. HALLOCK. Will you concede that this document is a copy of the resolution adopted by the Harney County Fair Association, Mr. De Neffe? The secretary of the association, Mr. Byrd, is here, who identifies it.

Senator WALSH of Montana. Of what importance is that?

Mr. HALLOCK. It shows that we have become —

Senator WALSH of Montana (interposing). Gentlemen, I may be a little irritable this morning, or seemingly so, but it is because I am just neglecting other business in order to be here, and it is distressing me. I shall be obliged to leave in the midst of this hearing unless we can expedite matters. These interminable details seem to me at least utterly irrelevant.

Mr. HALLOCK. Very well, Senator, we will eliminate much of it from now on and will do our best to speed up. Our only intention and desire was to make a full showing here of the situation.

Senator WALSH of Montana. There is a controversy we understand between these gentlemen, and about the transfer of the thing is in the court, but how does that really affect the questions that we are considering, as to whether this contract ought or ought not to be canceled?

Mr. HALLOCK. It goes more particularly to the charge of delay, that with respect to getting the mill site, the time consumed in getting in there and getting the work done. But I will not pursue it any further along that line. It is a long story, I admit, and would take up a good deal of time.

Senator WALSH of Montana. Let us get along.

Mr. HALLOCK. Now. Mr. Guard, I believe vote have told us the circumstances under which the two companies were incorporated, the Fred Herrick Lumber Co. and the Malheur Railroad Co.

Mr. GIRARD. Yes, sir.

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Senator WALSH of Montana. Mr. Hallock, excuse me. Let me say that if there is anything in this that you claim accounts for any delay in the construction of the mill I wish you would bring that out.

Mr. HALLOCK. Well, Senator Walsh, I thank you for that.

Senator WALSH of Montana. But do it, please, without going into an infinity of detail.

Mr. HALLOCK. I shall certainly try. Mr. Girard, will you state briefly the reasons why you were a long time in acquiring title to this mill site, and ultimately in getting the construction material in over Mr. Barnes' premises, and matters of that kind, just as briefly as you can?

Mr. GIRARD. I believe I have covered the difficulty we had with Mr. Barnes in getting this mill site turned over. But. after it was turned over he filed suit to recover the mill site, and it was necessary to get a right of way over some land that he owned before we could build our railroad down there; and he was going around and telling the people of the community that he was very anxious for us to hurry up, and, on the other hand, filing suits against us to stop us.

Mr. HALLOCK. And he had necessitated your removing the highway over on to Barnes's premises?

Mr. GIRARD. Mr. Barnes had nothing to do with that. That was necessary anyway. It was necessary for us to cross his land with this highway.

Mr. HALLOCK. Did you have to institute condemnation proceedings in order to get the right of way for the highway on its new location?

Mr. GIRARD. We did. He notified us that he was going to take action and would keep us from constructing the highway, and we happened to beat him a little on that by going before the county court and getting permission to go ahead. Just to show the inconsistency of his general attitude, he was telling the people of Canyon City that he was trying to rush us along, and yet he was trying in every conceivable way to block us. I am not trying to offer that as an argument that we were trying to rush that work, because we did go slowly, and, as I see it, delay is the only thing that we could be criticized for whatever.

Mr. HALLOCK. Mr. Girard, who suggested that yourself, Mr. Klobucher, and Mr. Herrick should be the incorporators of these two companies?

Mr. GIRARD. That would naturally suggest itself, because we were the only ones connected with it.

Mr. HALLOCK. Did any member of the Forest Service suggest it?

Mr. GIRARD. No, sir.

Mr. HALLOCK. Did they ever at any time intimate to you in any way that they wanted to direct your activities or to participate in them at all?

Mr. GIRARD. Absolutely not.

Mr. HALLOCK. Except as their interests under the contract necessitated some correspondence and extensions and things of that sort.

Mr. GIRARD. No; they never did.

Mr. HALLOCK. There are a lot of questions that I will have to ask Mr. Girard with reference to certain statements made by other witnesses that were predicated to him, but I will not go into that now. You may take the witness.
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Mr. GIRARD. I would like to bring out one thing at this time. It was reported in the newspapers and Mr. Barnes

said that I immediately got an increase of $5,000 from hint in salary. I want you people to know that I resent any such stuff as that, because that is absolutely untrue. The record here will show what salary I got.

Mr. HALLOCK. What salary did you get?

Senator WALSH of Montana. He said $3,800.

Mr. GIRARD. $3,840.

(Cross examination by MT. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Mr. Girard, you said that after you had told Mr. Herrick the minimum appraisement was $2.75 and he said he would bid $2.80, that he had put you in a hole?

Mr. GIRARD. I said that I considered he had, Yes, sir.

Mr. DE NEFFE. How had he put you in the hole?

Mr. GIRARD. Because I was not in a position to go and discuss that with anybody else and get them to bid $2.75 or $2.85.

Mr. DE NEFFE. Who were you working for at the time?

Mr. GIRARD. At that time I was working for the Government.

Mr. HALLOCK. May I have one more question there?

Mr. DE NEFFE. When I get through here, Mr. Hallock. Don't interrupt this cross-examination now. At that time you were working for the Government, weren't you?

Mr. GIRARD. Absolutely, and I was primarily interested in getting $2.75 for that timber, and that was all.

Mr. DE NEFFE. That was all you cared about? If you could have got $3 would you have objected?

Mr. GIRARD. I would rather get $2.75 than to get $4.

Mr. DE NEFFE. You would?

Mr. GERARD. Absolutely.

Mr. DE NEFFE. Why?

Mr. GIRARD. Simply because if a man bids so high that his margin is cut down and he has no chance to make money it will be impossible for the Forest Service to get that man to pile his brush and do other things which are necessary for reforestation purposes. They have had a lot. of experience along that line of men bidding too high. and as a result of this bid that was too high they were not able to make a profit and comply with the Forest Service regulations and the various conditions.

Mr. DE NEFFE. Then you are more interested in the operator's getting his profit than you were in the Government's getting the best price?

Mr. GIRARD. No, sir. I was interested in the Government getting the proper price, and I was interested in the operator making a profit regardless of who he was. Otherwise I would have recommended $4 for this timber, or $5. That is the only way we can build up a successful timber sale business, giving the operator a chance to make a reasonable margin.

Mr. DE NEFFE. Suppose you had gone to Mr. Leuthold and he had said he would bid $2.90, would not that have been to the advantage of the Government?

Mr. GIRARD. That would have been to the advantage of the Government; Yes, sir.

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Mr. DE NEFFE. And you think he would have fallen down on his bid and could not make it go, and the Government would have had to take it over?

Mr. GIRARD. At $2.90?

Mr. DE NEFFE. Yes, sir.

Mr. GIRARD. No, sir.

Mr. DE NEFFE. Why did you not go and see if you could get Mr. Leuthold interested?

Mr. GIRARD. Because I was satisfied that Mr. Herrick would bid the full appraised value. That was all I was interested in.

Mr. DE NEFFE. He told you he would bid $2.80, didn't he?

Mr. GIRARD. He told me he would stand on my appraisal and go me 5 cents better.

Mr. DE NEFFE. And if you had gone to the other mail he might have bid $2.95. Would not that have been a good thing for the Government?

Mr. GIRARD. It would have been a good thing for the Government if he did not go so high that he could not carry out the contract.

Mr. DE NEFFE. Of course, if Mr. Leuthold had bid $2.90 Mr. Herrick would not have gotten the contract, would he?

Mr. GIRARD. No; be would not have gotten the contract.

Mr. DE NEFFE. And you were rather interested in seeing him get that contract, were you not?

Mr. GIRARD. I was not any more interested in Mr. Herrick's getting that contract than in anybody else's getting it, except to this extent. As I stated before Mr. Herrick was the first man in north Idaho that piled brush on white pine lands. It was a big operation, and he was a man that would comply with the Forest Service requirements with reference to reforestation, and I figured he was the best man in that whole territory and I still figure that way.

Mr. DE NEFFE. Then you consider that because Mr. Herrick was a good brush piler that would outweigh any additional money that the Government might get if there were two or three more bidders there that would go higher than Herrick? Did you figure that was of more importance?

Mr. GIRARD. I did not figure the Government was entitled to any more than $2.75. That is, I did not figure that I should go out and try to get anybody to bid more than the appraised price.

Mr. DE NEFFE. Was your sense of duty then to the Government or to Mr. Herrick?

Mr. GIRARD. My sense of duty was first to the Government. If it had not been I might have told Mr. Herrick that he could buy that stuff for $2.10 per thousand, which I was reasonably sure in my own mind he could have done. If my interest had not been with the Government that is exactly what I would have done.

Mr. DE NEFFE. You were acting in a confidential capacity for the Government?

Mr. GIRARD. I should say not.

Mr. DE NEFFE. You were not?

Mr. GIRARD. There was nothing confidential about going down there and discussing this timber.

Mr. DE NEFFE. No; nothing wrong at all. But then you told him that the appraisement was $2.75, didn't you?

Mr. GIRARD. Absolutely; Yes, sir.

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Mr. DE NEFFE. Then when you found that Mr. Herrick had bid $2.80 you quit?

Mr. GIRARD. I quit; Yes, sir.

Mr. DE NEFFE. And you did not make any more effort to see these other gentlemen whom you intended to see?

Mr. GIRARD. No, sir; I did not. I knew that Mr. Rosenberry had been over this chance; he said he had. And I said, "That is a good chance." He said, "Certainly it is a good chance, but," he said "I am not particularly interested because there is too much investment in the railroad." He said, "We figure it will take two and one-half or three million dollars to get it through down there before we cut the first saw log." I realize that probably it may be possible to twist this thing around —

Mr. DE NEFFE. I arm not trying to twist it around, Mr. Girard. You said, I believe, that if you had tried to get somebody else and they bid higher than Mr. Herrick, and Mr. Herrick had found that you had given him away —

Senator WALSH of Montana. Oh, no.

Mr. DE NEFFE. Am I in error in that?

Senator WALSH of Montana. You said he figured that Mr. Herrick would charge him with having —

Mr. DE NEFFE. With having told —

Senator WALSH of Montana. Told what his bid was.

Mr. DE NEFFE. That his bid was $2.80. Suppose somebody had bid $2.90. Then you would say that Mr. Herrick might charge you with having told this party that he had bid $2.80, and you did not want to incur his displeasure? Was that the idea?

Mr. GIRARD. No. It looked like it was not doing what was right, and as between man and man I would not be doing the proper thing to do that because I had accomplished all that I had started out to do.

Mr. DE NEFFE. To get $2.75 and no more, and that your duty as between man and man, between Mr. Herrick and yourself, was paramount to your duty to your Government? Was that it?

Mr. MCGOWAN. We object to that, Senator. This is the first time I have objected.

Senator WALSH of Montana. I think we have got all the facts about that matter.

Mr. HALLOCK. Mr. De Neffe. Would you mind my asking one question in there that may make his examination more complete?

Mr. DE NEFFE. Not at all.

Mr. HALLOCK. I just want to ask you, Mr. Girard, about the circumstances surrounding the employment of Mr. Klobucher. Just tell us all about that; how you happened to become acquainted with him, and how you happened to employ him.

Mr. GIRARD. I have worked for years, or for quite a while, with Mr. Klobucher in the Forest Service, and I knew something about his ability as an engineer and of his knowledge of logging costs, and manufacturing costs, etc.; and when I returned to Missoula, Mont., some time in June, after I went over to Burns in May, I did a few days' work for the Government completing this logging outfit study and bulletin, and I made Mr. Klobucher a proposition to join me at Burns.

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Mr. HALLOCK. At how much of a salary?

Mr. GIRARD. At $3,000 a year—$250 per month.

Mr. HALLOCK. What was he drawing at that time, if you know?

Mr. GIRARD. I think he was drawing, including the bonus, about $2,540—something like that.

Mr. HALLOCK. And you subsequently increased his salary several times?

Mr. GIRARD. I have.

Mr. HALLOCK. And he is drawing how much now?

Mr. GIRARD. He is drawing $5,200.

Mr. HALLOCK. Is he worth it?

Mr. GIRARD. Yes, sir.

Senator KENDRICK. What direct interest does he have in the company?

Mr. GIRARD. He has the same amount of stock that I have, and he has subscribed for the same amount of stock that I have.

Mr. HALLOCK. Did Mr. Herrick know anything about your plan to employ Mr. Klobucher, as far as you know?

Mr. GIRARD. He did not know that there was such a man, as far as I know, until I had had him in our employ for two or three months.

Mr. HALLOCK. And has Mr. Klobucher had charge of all this construction work?

Mr. GIRARD. He has been in direct charge of all the location and construction work; Yes, sir.

Mr. HALLOCK. Has he performed his work faithfully and well?

Mr. GIRARD. I think the railroad that he has constructed is the highest evidence of his ability and that I made the right choice when I selected him.

Mr. HALLOCK. Thank you very much, Mr. De Neffe, for the courtesy of letting me get that in at this juncture.

Mr. DE NEFFE. There has never been any definite agreement between you and Mr. Herrick, has there, as to your salary?

Mr. GIRARD. Why, you have the contract there. I think it is as definite as anything could be.

Mr. DE NEFFE. Is the thing left open between you—the amount that you are to get—the amount of salary that you are to get? Isn't there some secret understanding that you are to get more, or some other consideration?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. You are sure of that, Mr. Girard

Mr. GIRARD. Absolutely.

Mr. DE NEFFE. That you and he have no understanding that you are to get some other consideration of some kind?

Mr. GIRARD. I am sure of that; Yes, sir. If there is, I have no knowledge of it.

Mr. DE NEFFE. Why was it that the amount of your salary did not go into the minutes some place here? Why was not that specified in the minutes?

Mr. GIRARD. The amount of salary that I was to receive?

Mr. DE NEFFE. Yes.

Mr. GIRARD. Why, I can not tell you why that did not go into the minutes. Maybe our attorney can explain that to you.

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Mr. HALLOCK. I did not prepare those minutes. I think Mr. Biggs did it.

Mr. GERARD. It seems to me like that contract is very definite for a period of five years.

Mr. DE NEFFE. I know it is, but for some reason or other you did not put it in here, and I was just curious to know.

Mr. GIRARD. No, sir; it is not in there. So far as I know it is not.

Mr. DE NEFFE. In both the records here on February 9—I am reading from the minute book of the Fred Herrick Lumber Co. appears this:

> *Resolved*, That James W. Girard be elected general manager of this company and that he have, subject to the approval of the president, the right to employ all officers, persons and assistants necessary for the full and complete operation of the business of this company, and that he receive such salary as may be agreed upon between him and the president of the corporation.

Why wasn't it stated here that you were to get $7,500 a year? Was there any particular reason for keeping it out of the minutes?

Mr. GIRARD. No, sir; absolutely no reason in the world, and Mr. Biggs is the man that went over those minutes, and if he knows any reason why it was left out I will be glad indeed to have him give it.

Mr. DE NEFFE. That appears in the railroad company's minutes too?

Mr. GIRARD. Yes, sir. I think I would have a right, however, to receive any salary that might be agreed upon between Mr. Herrick and myself.

Mr. DE NEFFE. Certainly, but I was just wondering why it was not put in there. You said that the first you learned of the Bear Valley timber was in 1922. Who told you about it? Did Colonel Greeley tell you about it?

Mr. GIRARD. Mr. Carter, assistant forester. I was here in Washington, D. C., at the time, rewriting the appraisal manual, and he told me of this proposed sale.

Mr. DE NEFFE. In your position as appraiser, are you shifted around from place to place?

Mr. GIRARD. Yes, Sir; I was shifted around a great deal.

Mr. DE NEFFE. Mr. Herrick had bought timber from your district 1—that is where the timber is, isn't it?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. He had bought timber in that district?

Mr. GIRARD. I might say that he bought a large body of timber that the Government had nothing to do with—bought privately owned.

Mr. DE NEFFE. Surely, but I mean Government timber.

Mr. GIRARD. Oh, yes; he had

Mr. DE NEFFE. How much did he buy there?

Mr. GIRARD. I could not say how much.

Mr. DE NEFFE. Did he buy it all at one sale, or different sales?

Mr. GIRARD. Oh, quite a number of small sales.

Mr. DE NEFFE. And you handled the matter for him, did you, when he bought those tracts?

Mr. GIRARD. For him, did you say?

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Mr. De NEFFE No. I do not want to mislead you. Did you handle the matter for the Government when he bought those tracts?

Mr. GIRARD. I made the appraisal; yes.

Mr. DE NEFFE. How many were there? How many different sales?
Mr. GIRARD. I do not know; probably Mr. Herrick could give you that better than I could.

Mr. DE NEFFE. You were there and knew all about that. I am asking this for a purpose. Can't you give us an estimate of the amount of timber?

Mr. GIRARD. Just what he bought that I cruised?

Mr. DE NEFFE. Yes.

Mr. GIRARD. Now, he bought this large tract of timber that I told you of.

Mr. DE NEFFE. That was privately owned?

Mr. GIRARD. Yes. He has probably cut quite a bit of that. But the exact number of sales that he has bought from the Government which I appraised personally I could not tell you. I know that he bought some timber —

Mr. DE NEFFE. All right. Then he operated in there, didn't be?

Mr. GIRARD. Yes, sir; he has been operating in that country for a long time.

Mr. DE NEFFE. Wasn't that on a contract like this?

M. GIRARD. Similar kind of contract.

Mr. DE NEFFE. Did he build any railroad?

Mr. GIRARD. No. Sir.

Mr. DE NEFFE. Did he have a railroad of his own operating up into the timber?

Mr. GIRARD. Not in this particular timber as I remember it, sir.

Mr. DE NEFFE. I am asking about any of it.

Mr. GIRARD. Any timber.

Mr. DE NEFFE. Yes; any that he bought from the Government.

Mr. GIRARD. None that I know of that he bought from the Government. The stuff that he bought from the Government in that country is on a driable {*sic*} stream. The other—I didn't appraise it, but he bought a watershed on the St. Joe, known as Big Creek, which required some of the hardest railroad construction that has ever been done in flat country.

Mr. DE NEFFE. Did not the Forest Service have some trouble with Mr. Herrick before that Bear Valley sale? Of any kind?

Mr. GIRARD. I could not answer that.

Mr. D E NEFFE. While you were there, I mean?
Mr. GIRARD. While I was in the employ of the Government?

Mr. DE NEFFE. Yes; there at the Missoula office.

Mr. GIRARD. I could not say whether they had or not. I heard that he had been behind on a few items.

Mr. DE NEFFE. And that he did not pay his bills? Wasn't that it?

Mr. GIRARD. No, Sir; I would not say that he did' not pay his bills. Mr. Herrick always paid his bills. I do not think that anybody can say that he ever turned down a bill.

Mr. DL NEFFE. Eventually he pays, when he has to, but was not that the substance of various charges up there at the Missoula office, that he never paid anything until he had to?

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Mr. GIRARD. I think the Forest Service closed Mr. Herrick down two or three times, because if you don't pay in advance you are closed down right then. I have seen some of the best companies in the country turned down.

Mr. DE NEFFE. Was not that his reputation up there in district 1. that he never paid anything until he had to?

Mr. GIRARD. No, sir; I would not say that was his reputation.

Mr. DE NEFFE. Was not that the reputation that he had with the Forest Service people?

Mr. GIRARD. Mr. Herrick's reputation for paying his bills as far as his men were concerned, or as far as his labor was concerned, was as good as anybody else's. As far as the purchase of supplies end materials is concerned from these business houses he is listed in Dunn's as slow—30 days, 60 days, 90 days.

Mr. DE NEFFE. Then if the Forest Service record shows to the contrary which is right.?

Mr. GIRARD. The Forest Service records are absolutely right. If you have the records here —

Mr. DE NEFFE. I have a letter from E. E. Carter to the Forest Service, dated February 20, 1925 —

Mr. GIRARD. I thought you were talking about something that happened before the Bear Valley sale. I can tell you about that particular sale —

Mr. De NEFFE. Yes; I am.

Mr. GIRARD. And you won't have to look it up.

Mr. MCGOWAN. Is that paper in the Foresters' file or the district forester's file?

Mr. DE NEFFE. I found it in the district forester's file of the Portland office, and then the next day I looked for it and I could not find it.

Mr. GIRARD. I think, Mr. De Neffe, probably I can tell you about that. The Forest Service had quite a little trouble, as I understand it, on that.

Mr. DE NEFFE. Go ahead and tell us then.

Mr. GIRARD. That was one of these units on Marble Creek that was burned over in 1922 by a light ground fire.

Mr. Herrick later purchased it and he did not quite agree to the stipulations of the contract. Some of this timber died or deteriorated, and the Government required him to pay a certain sum of money for damages.

Senator WALSH of Montana. Where was that?

Mr. GIRARD. That was on the St. Joe National Forest.

Senator WALSH of Montana. Where is that? In Idaho?

Mr. GIRARD. In Idaho; Yes, sir.

Senator WALSH of Montana. When did this transaction occur?

Mr. GIRARD. The timber was bought, I believe, in 1922 or 1923; I am not sure which.

Senator WALSH of Montana. And when did the controversy arise?

Mr. GIRARD. The controversy arose in 1925—1925 or 1926.

Mr. DE NEFFE. I would like to offer this in evidence.

Senator WALSH of Montana. What is the purpose of that, Mr. De Neffe?

Mr. De NEFFE. It is just one or two lines I want to read. It is just to show that the Forest Service was advised before they ever let this contract that he was not financially responsible; that he had

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never complied with any of his contracts previously; and in spite of that fact they went ahead and gave him this contract.

Senator WALSH of Montana. Read that. Give us the date.

Mr. DE NEFFE. The date is February 20, 1925.

Senator WALSH of Montana. Now, read it.

Mr. DE NEFFE. This is a memorandum for the forester, signed E. E. Carter.

Senator KENDRICK. Who is E. E. Carter?

Mr. DE NEFFE. He is assistant forester.

Mr. HALLOCK. May I ask a question? Was that prior to April, 1923?

Mr. DE NEFFE. If was afterwards.

Senator WALSH of Montana. He has given the date; some time in 1925.

Mr. DE NEFFE. Under paragraph 5, "Financial ability and customs of Mr. Herrick":

> Mr. Herrick apparently never pays out anything until he can no longer delay. The experience of district 1 is distinctly to this effect.

Mr. MCGOWAN. That was February, 1925?

Mr. DE NEFFE. February 20, 1925.

Mr. MCGOWAN. Mr. De Neffe, may I ask this just for my own information? To what point is that primarily directed?

Senator WALSH of Montana. He has told that, Mr. McGowan.

Mr. MCGOWAN. Perhaps I did not understand, Senator.

Senator WALSH of Montana. It was to the effect that when this contract was made the Forest Service knew that Mr. Herrick was slow in his payments and never made any payments until he was obliged to do so.

Mr. DE NEFFE. And it says more that I will read after a while, Mr. McGowan.

Mr. HALLOCK. May I just get a question in there? This purports to have been written in the year 1925. Is it your claim that it disclosed some knowledge possessed by officers of the Forest Service in 1923 when the contract with Mr. Herrick was signed?

Mr. DE NEFFE. It gives his past history there, and it is supposed to be information that the Forest Service has for keeping track of what is going on in many of these developments.

Mr. MCGOWAN. Senator, we certainly would object to that as not being evidence of any kind whatsoever contrary to the financial statement, if any was filed by Mr. Herrick, in connection with the —

Senator WALSH of Montana. That is all right, Mr. McGowan

Mr. MCGOWAN. It is a matter of evidence, as we see it, Senator.

Mr. DE NEFFE. Yes; it is a matter of evidence. It is a statement of the Federal Forest service heads concerning past transactions with Mr. Herrick.

Mr. MCGOWAN. May I just say a word? This resolution under which the committee is proceeding here now states that Mr. Herrick was not properly financed. Do I understand that is the issue.? As to whether he would be slow in making payments would be absolutely immaterial if the man was properly financed.

Senator WALSH of Montana. Get this idea in mind perfectly clear: This committee is not going to even assume that there is any charge

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here. We are trying to find out the fact, and none of us is guided by what is in this resolution. I am speaking for myself, at least.

Mr. DE NEFFE. You said that when you were appraising the timber Mr. Barnes was with you once and he suggested that the minimum price should be fixed at $1.50 a thousand. Is that right?

Mr. GIRARD. I said that he emphasized that the timber could not be advertised to exceed $1.50 per thousand, and then stated that that was the minimum.

Mr. DE NEFFE. You could not see anything wrong with that suggestion, could you?

Mr. GIRARD. I could see this wrong with it. If you have something to sell and you advertise to all the prospective bidders that you do not think it is worth very much, I do not think it would stimulate competition very much.

Mr. DE NEFFE. Did not that encourage bidding? Suppose he put the price way up, where everybody looking at the price and the layout and the investment and everything would say "That is too high; we are not going to bid on that." And then, if you put the estimated price low would not that encourage more bidders?

Mr. GIRARD. No; I would not say it would encourage more bidders. I would say that if you advertised it at four bits I do not think you would get many men to come down and look at it.

Mr. DE NEFFE. It would have brought better prices, wouldn't it?

Mr. GIRARD. If the Forest Service had gone on record as thinking that this stuff was worth only four bits it would not look to me reasonable —

Mr. DE NEFFE. We are not talking about four bits here, Mr. Girard.

Mr. GIRARD. I am trying to show you it is not logical.

Mr. DE NEFFE. The Forest Service has the right to reject any and all bids that are received?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. So how would the Government be harmed if they were just fixing a minimum price and then rejected that?

Mr. GIRARD. There would not be any object in getting bids if they were going to reject the bids. Anyway, timber is not sold that way. I have never known of any Government timber sold that way.

Mr. DE NEFFE. You said that usually two years was the time that the Government gave for the construction of a railroad on a project of this kind?

Mr. GIRARD. I said that ordinarily two years was the maximum time for the construction of initial improvements.

Mr. MCGOWAN. May I interrupt just a moment? Senator Walsh, Mr. De Neffe read about two or three lines from this report. If what he has read is to go in I ask that the report in full go in without further discussion.

Senator WALSH of Montana. I understood that it would.

Mr. DE NEFFE. Yes; I thought that was in. I want to read a good deal more of it, Mr. McGowan, from time to time as the different paragraphs bear on the points I want to develop.

(The memorandum referred to is here printed in full, as follows:)

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FEBRUARY 20, 1925.

Memorandum for the Forester:

The discussion of the Herrick sale at Burns, Oreg., on February 15, between District Forester Granger, Assistant District Forester Ames, Logging Engineer Hoffman, Supervisor Reid and myself, representing the Forest Service, and Mr. J. W. Girard, and Mr. Klobucher, representing Mr. Herrick, was followed by an informal meeting with about 25 citizens of Burns who were invited to state any pertinent facts bearing on the case. The attitude of all was fair and reasonable.

STATEMENT OF FACT

1. The Crane-Burns Railroad : The railroad from Crane to Burns was completed at a total cost to Mr. Herrick of $170,000, of which $161,292 was actual construction cost and the balance preliminary expense and engineering. Prior to its construction, a contract was entered into with the Union Pacific under which —

(a) The Union Pacific furnished ties, steel and some other material for this line.

(b) The Union Pacific agreed to buy this line at cost of construction, with interest, on completion of the other improvements incident to the project specifically the railroad to the timber and the mill.

(c) Steel for the railroad to the timber is to be sold to Mr. Herrick, at reasonable terms—10 per cent down and 6 per cent interest.

Under this contract, the Union Pacific is operating trains into Burns, but has not paid any part of the $161,292, although the bills have been audited, pending completion of the logging railroad and mill. Mr. Herrick was very slow in settling, or in furnishing the cash for settlement, with the construction contractors.

2. The Burns-Seneca Railroad:

(a) Burns to millsite, 2 to 3 miles. Nothing done except survey.

(b) Burns to edge of Malheur Valley flat, about 12 miles, graded, and 9 out of 10 small bridges in place.

(c) Edge of Malheur Valley flat to Silvies Valley flat 18 miles. (This is subdivided later in this memorandum.) This includes all of the really heavy construction—important bridges, expensive cuts and fills, tunnel, etc. Nothing done except survey.

(d) Silvies Valley flat, 12 miles. Contracts for grading let, and about 75 per cent completed. It is very easy work. Work was suspended when ground froze in November.

(e) Upper end Silvies Valley flat to end main line, about 7 miles. Not heavy construction but harder than the flats. Nothing done except survey.

The company's records show a total expenditure of $109,000 charged to this logging railroad to January 31, 1925, of which $44,500 has been paid to grading contractors on whom 25 per cent has been held out to insure completion of contract, rentals or purchases of equipment, etc., and $22,188 for bridges, trestles, and culverts. The total amount of grading work done to date may therefore be valued at $80,000—possibly 15 per cent of the total below ties and steel. An estimate of the cost of completing the railroad from sawmill to first logging camp on the sale area is attached.

Other items in the present total expenditure of $109,000 include $21,600 for engineering and overhead, $6,000 for fences and fence posts, and about $5,000 for ties and steel—including for steel merely the cost of unloading some unpaid-for steel at Burns.

Practically speaking, the summer of 1924—an unusually favorable summer for construction work in this region—was wasted. No real work has been done on any except the parts of the line easiest to grade and easiest of access. No work has been done on the parts of the line which will be slow and heavy construction, or where the heavy fills should settle over at least part of a winter before steel is laid.

3. The mill: The mile site—2 to 3 miles south of Burns—was bought from E. W. Barnes in a trade which included the timber held under option by Barnes in the logging unit. The total payment was $92,214.26[4] without the mill site being segregated. The trade was made possible by the action of the town of Burns, which gave Mr. Barnes a large acreage between, the mill site and the present town.

The Crane-Burns Railroad was built to pass this mill site. Had it been intended to build the mill elsewhere, the railroad could have been shortened by 4 miles or more.

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No work except surveying has been done at the mill site. The plans call for the excavation of a large pond. It would be business prudence to dig this pond a year before operation of the mill, to settle any question as to porosity of soil, necessity for concrete work or puddling, etc. On account of water conditions, the pond should be dug during the months of August-October inclusive, if extra costs are to be avoided. Also, the construction of a mill of the size proposed is not economically done as a rush job. Concrete foundations should not be poured in freezing weather. Therefore, good business prudence would call for the putting in of the mill foundations possibly a year before the mill is to be actually operating.

4. Interests of the town of Burns: For years the State board of health has been demanding the installation of a water and sewage system in Burns. The town, in view of the growth anticipated from the presence of the sawmill, has voted to issue $280,000 of bonds for these improvements. These bonds are practically unsalable until there is concrete evidence that the mill will be located at or near Burns. Credits for other improvements, needed if the town is to have a larger population, such as schools, a hotel, more residences, enlarged telephone and electric service, etc., can not be had until outside investors are convinced that the mill will be built; as planned. Even Mr. Herrick's public announcement of intent does not weigh heavily in this balance, in view of lack of accomplishment on the ground.

The Forest Service has at no time required that the mill be built at any particular place. The site held by Mr. Herrick under conditional deed appears to be the most logical site in the region, and the location of the railroad is evidence of intent to use it. The interest of the Forest Service is primarily that a mill be ready to operate by the date by which logging is required to begin, and further requirements should be drawn up on that basis.

5. Financial ability and customs of Mr. Herrick: Mr. Herrick apparently never pays out anything until he can no longer delay. The experience of district 1 is distinctly to this effect. In the work done on the Malheur project to date he has delayed all payments to contractors and even to his own employees as long as possible. The Herrick Lumber Co., has had no substantial bank balance at any time. Checks to employees have been protested for lack of funds in the bank. Delaying actual disbursements appears to be a firmly fixed habit with him.

At the same time, he is reputed to be wealthy. Two years ago a Dun-Bradstreet report rated him as worth between $15,000,000 and $30,000,000, with almost complete ownership of his Idaho lumber companies unencumbered. He has heavy stocks of lumber and logs at his Idaho mills. Possibly he has a

[4]Was this amount paid to Barnes or did he suffer loss from Herrick's bankruptcy?

dislike for interest-bearing debt, and an indifference to any other kind.

On the basis of the little evidence available, the best guess seems to be that Mr. Herrick is trying to finance the Malheur project out of the profits of his Idaho projects, which would mean a delay of five or more years before logging and milling were actually under way; but that this is unnecessary.

There is also evidence that Mr. Herrick has refused to sell out the Malheur project to the Brooks-Scanlon Lumber Co. Exact terms of the offer are unknown. A certified check for $200,000 was displayed by Mr. Barnes as, constituting part of the offer.

GENERAL

Mr. Herrick had delayed work on this project to an extent that throws very serious doubt on his intent to comply with the contract requirements. He probably could not have been ready to operate by April 1, 1925, in any event, but could have been ready by October 1, 1925. By wasting the summer of 1924, the date by which it is feasible to begin operations has been pushed ahead to October 1, 1926 ; and unless work is conducted vigorously in 1924, operation by that date will be impractical. The engineering plans are finished. There is not now and has not been any cause for serious delays due to right-of-way matters. The failure last summer was due to Mr. Herrick's refusal or inability to put up the cash. In the judgment of all of the service men who were at Burns, he has failed to show good intent and good faith to an extent that justifies prompt cancellation of the contract unless there is an immediate and sustained reversal of his previous practices.

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RECOMMENDED PROGRAM OF REQUIREMENTS

(a.) Objectives: The prompt resumption of construction on a scale that will enable the railroad to be ready to haul logs by October 1 1926, and the continuance of construction on that scale, allowance being made for seasonal difficulties, are the objectives in railroad construction. For mill construction, the accomplishment in 1925 of the work which should be done in that season if the mill is to be ready to saw longs on October 1, 1926, is the first objective. The district forester and I agreed that as expenditures for the railroad and mill increased, the need for securing a return on the investment should be a strong incentive to push to completion the remaining parts of the construction program and probably no specific requirements for accomplishment between April 1, 1926 and October 1, 1926, were necessary.

(b) Practical limitations in defining requirements: The uncertainty of the ground water conditions in the early part of the summer of 1925, and the uncertainties as to the presence of rock or dirt in the deeper cuts and the tunnel make it undesirable to fix specific job requirements before October 1, 1925, and limit those that can be defined for that date. Requirements as to expenditures, rather than as to physical accomplishments, are undesirable from the viewpoint of the Forest Service as a rule, although the representatives of Mr. Herrick in Burns urged strongly that all requirements be expressed in terms of expenditures. In order that the contract may be canceled unless there is a prompt resumption of construction on an adequate scale, a definite requirement, in terms of expenditure, to be met on July 1, 1925, is recommended. All subsequent requirements can and should be expressed in terms of physical accomplishment.

(c) Program of requirements: A modification of contract is recommended to provide:

(1) That operations in Government timber must begin by October 1, 1926 and that by that date the railroad from the mill to the timber and the sawmill itself shall be ready for operation.

(2) That, as a necessary step if the October 1, 1926, requirements are to be met, construction work on the railroad be resumed at the earliest practicable date, and on a scale that will require expenditures, to be evidenced by paid vouchers or paid and canceled checks, for railroad construction between Burns and Seneca, exclusive of equipment purchases, purchases of unapplied construction material, and the engineering and overhead, all as defined by the Interstate Commerce Commission in its instructions for railroad accounting, to the amount of at least $100,000 between April 1, 1925, and July 1, 1925 ; and on July 1 1925, the purchaser shall make a complete statement of his expenditures, as defined in this paragraph, to the forest supervisor and will give him, or any other officer of the Forest Service authorized by the district forester for the purpose, free access to all books, records and accounts as may be necessary to determine whether this requirement has been met.

(3) That, on October 1, 1925, at least the following work shall have been done:

(a) The construction of railroad grade, to the point of being ready for the laying of ties and steel for the permanent line; except for bridges and trestles and except for minor ditching or other work best done, in the judgment of the forest supervisor, after permanent steel has been laid, on the following portions of the line; from a point at or near the town of Burns to a point in the NW. ¼ SW ¼ sec. 29, T. 20 S., R. 31 E., Willamette meridian, being approximately station 955 of the survey for the railroad: also. from a point on

or near the north line of sec. 25, T. 19 S., R. 31 E., Willamette meridian, being station 1506 of said survey, to approximately the center of sec. 26 T. 17 S., R. 31 E., Willamette meridian, being station 2154 of said survey: also from a point in the SW. ¼ sec. 22, T. 20 S., R. 31 E., being station 1112 of said survey to a point in the SE. ¼ NE ¼ sec. 1, T. 20 S.. R. 31 E., being approximately station 1360 of said survey.

(b) The necessary excavation for the foundations of the purchaser's main sawmill and power plant, and 25 per cent of the excavation for the log pond at that mill, compliance or noncompliance with this requirement to be determined by the forest supervisor or other officer authorized by the district forester for the purpose, on the basis of the detailed plans of the purchaser for the construction of his main sawmill and appurtenances, which plans shall be made available to said supervisor or other authorized officer upon request.

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(4). On December 31, 1925, at least the following works shall have been done in addition to that required to have been finished on October 1, 1925;

(a) The construction of railroad grade, as specified in the requirements to be met on October 1, 1925, from the point previously mentioned near the center of sec. 26, T. 17 S. R. 31 E., Willamette meridian being station 2154 of the survey for the railroad, to a point near the south line of sec. 34, T. 16 S., R. 31 E., Willamette meridian, being station 2520 of said survey; also, the construction of railroad grade from Burns to the purchaser's main sawmill, with any construction or reconstruction of highways that may have been required or approved by the highway commission of the State of Oregon as a replacement of any highway injured or rendered less usable by the construction of the purchaser's railroad from Burns to said sawmill site: *Provided*, That the construction of railroad grade from Burns to the said sawmill site may be waived by the district forester if the purchaser shall exhibit to him an agreement providing for the use of an existing railroad for the transportation of logs from Burns to the sawmill site.

(b) The excavation for the millpond and installation of the foundations for the main sawmill and power plant.

(5) On April 1, 1926, the railroad grade from Burns to the point near the south line of sec. 34, T. 16 S. R. 31 E., Willamette meridian, being station 2520 of the railroad survey, including all cuts, fills, tunnels, bridges, trestles, or other structures, excavations, or movements of earth or rock necessary for the laying of ties and steel for a permanent standard-gauge railroad track suitable for use in hauling logs in trains, shall have been completed: *Provided*, That this requirement shall not be construed to require completion of the widening of cuts or fills or other minor work which, in the judgment of the forest supervisor, may be done most economically after permanent steel has been laid and can be used for transportation purposes.

ACTION RECOMMENDED

The district forester and I join in recommending that you approve the foregoing requirements as reasonable and that the district be instructed to prepare, have executed by Mr. Herrick, and approve a formal modification of contract which will embody them. We further join in recommending that unless these requirements are met in every particular, the contract with Mr. Herrick be canceled.

E. E. CARTER.
Assistant Forester.

Approved:

W. B. GREELEY,
Forester.

Put these requirements in form of stipulations attached to and made part of the modified contract.

BURNS, OREG., *February 12, 1925.*

Estimated cost to complete railroad from sawmill to location first camp, Herrick sale; estimated expenditures additional to those incurred before February 12, 1925

Changing 2 miles highway near mill site	$6,000
Grading 3 miles railroad, town to mill site	6,000

Grading 2 miles through Poison Creek Canyon, at $20,000	40,000
Grading 2 miles along Poison Creek bottom, at $2,500	5,000
Grading 4 miles along Poison Creek hillside, at $15,000	60,000
Bridge on Poison Creek	20,000
Tunnel	30,000
Grading 3 miles beyond tunnel, at $2,500	7,500
Grading 2 miles beyond tunnel, at $5,000	10,000
Grading 3 miles along hillside, at $18,000	54,000
Complete 16 miles through flay, at $2000	32,000
Grading 6 miles through canyon, at $5,000	30,000
Constructing 6 bridges in canyon, at $1,500	9,000
Constructing 4 miles logging spur, at $3,000	12,000
Constructing 1 mile sidings, at $2,000	2,000
Right-of -Way	8,000
Engineering, office, overhead, and miscellaneous expense	30,000
Drain pipes and culverts	20,000
Fencing 90 single miles, at $200	18,000
Equipment, tools, etc.	50,000
Total grade complete	449,500
55 miles of 70 pound steel and accessories, at $4,400—$242,000—10 per cent to be paid as initial cost	24,200
55 miles ties, at $3,000 per mile	165,000
55 miles track laying and surfacing, at $1,800	99,000
20 miles ballasting, at $1,500	30,000
Total	318,200

SUMMARY

Grading, right of way, drain pipes, culverts, etc.	449,500
Steel, ties, track laying, ballasting, etc.	318,200
Total cost complete	767,700

Note.—Tools and equipment listed under grading include steam shovel, dump cars, light steel, compressor, auto truck, locomotive, and track laying tools.

JAMES W. GIRARD.
FRANK J. KLOBUCHER.

Mr. DE NEFFE. Did Mr. Herrick think that two years was too short a time for the construction of this road?

Mr. GIRARD. Mr. Herrick did not say whether he thought two years was too short or not.

Mr. DE NEFFE. Did you think that two years was too short or not?

Mr. GIRARD. I believed that two years was too short; including the line from Crane to Burns.

Mr. DE NEFFE. Did you believe it when you put it in your appraisement?

Mr. GIRARD. I did not put it in the appraisal. My appraisal will show that that was not considered. We did not figure that the purchaser of the timber would have to build that line. There is no provision made for that in the appraisal, about the time limit.

Mr. DE NEFFE. Yes; but the prospectus speaks about a road from Crane to Burns and from Burns to Seneca. It does not say that the O. R. & N. is going to build it.

Mr. GIRARD. Doesn't it show clearly that the line from Crane to Burns was not considered by the Forest Service in making its appraisal? It does not say it in so many words.

Mr. DE NEFFE. It does say it in the contract, doesn't it? Section 38 says that the line will run from Crane to Seneca, doesn't it?

Mr. GIRARD. Yes.

Mr. DE NEFFE. Wasn't that contemplated?

Mr. GIRARD. That was not contemplated.

Mr. DE NEFFE. If it was not contemplated why was it put in the contract?

Mr. HALLOCK. May I clear that up, Senator?

Senator WALSH of Montana.. It has already been cleared up. He said that, figuring the time, they did not consider that part of it because they considered it was going to be built by the U. P.

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Mr. HALLOCK. I understood Mr. De Neffe to say it recited the main line from Crane. It does not; it says from the main line connection to Seneca.

Mr. DE NEFFE. The main line connection at that time was Crane. Where do you contend it would be?

Mr. HALLOCK. Wherever it was constructed by the U. P., I assume.

Mr. DE NEFFE. I do not see where you can read that into this prospectus at all, that the U. P. ever stated that it was going to build from Seneca to Burns.

Senator WALSH of Montana. Now, gentlemen, controversies arise about things concerning which there is no controversy. Everybody understands that the contract required Mr. Herrick to construct the railway from Crane to Seneca.

Mr. DE NEFFE. Yes.

Senator WALSH of Montana. They were not considering the question whether two years was enough or not, because Mr. Girard told us that he did not think it was necessary to construct a road from Crane to Burns because he figured that that would be built by the Union Pacific. Now, do not get into a controversy about things that admit of no controversy.

Mr. DE NEFFE. Yon said that a transcontinental railroad with a big outfit could have built from Burns to the timber in two years.

Mr. GIRARD. Yes, sir; and we could have built from Burns to the timber in two years if we had wanted to go

out and get contractors like that Utah Construction Co., with big outfits, and had been twilling to pay the price that we would have had to pay if they were building this railroad. While I realize that the people there were disappointed because we did not go any faster, I really think that that community has been benefitted as much or more by the program that we followed than if we had gotten those big contractors to come in and take the money out of the country. We gave the work to local people.

Mr. DE NEFFE. Yes; but the protests beginning soon after the contract was let did not indicate that they were satisfied, did they?

Mr. GIRARD. I do not know exactly what protests you have reference to.

Mr. DE NEFFE. Oh, there have been thousands of them.

Mr. GIRARD. I think the protest you have reference to was not supported by any higher-class people than Mr. Herrick's support.

Mr. DE NEFFE. Oh, you say that Mr. Herrick has the support of high-class people? Is that it, then?

Mr. GIRARD. I say that the most substantial business men of that community, while they are disappointed that the thing has not gone faster, have figured that our program has been a good one for the community.

Mr. DE NEFFE. Then would you say that Mr. Biggs, who has lived in that community, is not a high-class man? Would you dare say that, Mr. Girard?

Mr. GIRARD. I figure Mr. Biggs as a very high-class man; Yes, sir. And I figure that there are a lot of other just as high-class men on the other side.

Mr. DE NEFFE. Mr. Farre, and Wollenberg, and that element. You do not think they are high-class men?

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Mr. GIRARD. Certainly they are.

Mr. DE NEFFE. Now, you expected that you would have to get extensions, didn't you?

Mr. GIRARD. I expected I would.

Mr. DE NEFFE. That you would have to get extensions to build this railroad, didn't you?

Mr. GIRARD. I figured that if the conditions were such that it might be necessary to get extensions that I could get extensions, that Mr. Herrick could get an extension, or anybody else could get an extension. But I figured that because I was on the job I would have nothing to do whatever with extensions. I figured that I had no influence that I could use with the Forest Service. but I could use my energy.

Mr. DE NEFFE. And then you wrote to the district forester at Portland and asked him to recommend a good reliable contractor, didn't you?

Mr. GIRARD. I probably did.

Mr. DE NEFFE. And then he came back and said Porter Bros.?

Mr. GIRARD. Yes.

Mr. DE NEFFE. And to send him the plats and so forth, and you never sent them, did you?

Mr. GIRARD. I do not remember whether we sent them to Porter Bros.

Mr. DE NEFFE. Porter Bros. are one of the biggest railroad contractors in the West, aren't they?

Mr. GIRARD. I do not believe they are as big as the Utah Construction Co.

Mr. DE NEFFE. They built the Central Oregon and all that?

Mr. GIRARD. Yes.

Mr. DE NEFFE. And the reason you did not employ them was that you knew when they got through hitting the ball you would not have the money to pay them? Isn't that the reason you did not get them?

Mr. GIRARD. No, sir; I like to hit the ball just as fast as anybody in Burns.

Mr. DE NEFFE. If you had the money? Isn't that it?

Mr. GIRARD. Let me explain that. I would build the railroad if Mr. Herrick would furnish the money. The amount of money he could furnish would depend to some extent on the lumber market. When this timber was sold the average selling price of yellow pine was $35.50 per thousand f. o. b. cars at mill. It began to go down, and today it is $23. Mr. Herrick's plan was to build this railroad and develop this timber from the profits of his outer operations. I did not see fit to go out and borrow the money, and so it was up to me to carry this construction work along according to the amount of money that he furnished.

Mr. DE NEFFE. Did the Forest Service know that that was the way he was going to do it at the time the contract was made?

Mr. GIRARD. I do not know whether the Forest Service knew that or not.

11I. DL NEFFE. Mr. Flood testified yesterday that at the time the contract was signed Mr. Herrick had net assets of $1,200,000

Senator WALSH of Montana. Upward of $1,200,000.
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Mr. DE NEFFE. That would mean more, would it, Senator?

The CHAIRMAN. Certainly.

Mr. DE NEFFE. And that he was worth $8,000,000 at that time. Do I misquote him?

Mr. GIRARD. I think that in all probability he did have net assets of considerably more than that. He did have net assets, probably, in the form of lumber in the pile.

Senator KENDRICK. I think there is probably some confusion in your mind about the question you are asking him.

Mr. DE NEFFE. I do not want to confuse him.

Senator KENDRICK. To this effect: The figure of $1,200,000, as I understood it, was the net property interest of Air. Herrick at the time he entered into this contract-not liquidated assets, but the net property assets.

The CHAIRMAN. N o, Senator; between eight and nine million dollars.

Senator KENDRICK. I know, but he had given some other figures that he had at that time. That was my understanding of it.

Mr. DE NEFFE. Perhaps I got the wrong impression. I thought Mr. Flood said he had that much to take care of this development.

Mr. HALLOCK. Mr. Flood testified that he went down to Chicago and got $1,200,000 this last month. Perhaps that is what you are confused about.

Mr. DE NEFFE. No; he got several amounts there. I think it was in the testimony that that is what he had. But I will refer to the testimony.

Colonel GREELEY. The financial statement submitted by Mr. Herrick to the Forest Service will make that perfectly clear. He stated that the had assets of a certain amount—total assets.

Senator KENDRICK. What was the amount?

Colonel GREELEY. In excess of $1,250,000. He does not say what part of it was liquid and what part was fixed.

Mr. DE NEFFE. You think because there were no bids after the six months' advertisement was up the appraisement had been discredited? Why did you think it had been discredited?

Mr. GIRARD. Because it had been decided to readvertise for $2.

Mr. DE NEFFE. On the other hand, you said that you had three men in mind, and among them was Mr. Herrick. Now, you had thought of Mr. Herrick before in this connection, hadn't you, when you were cruising the timber in there?

Mr. GIRARD. No, sir; it never entered my mind when I was cruising the timber.

Mr. DE NEFFE. Do you remember whether Mr. Barnes was with you when you were cruising in there and you said to Mr. Barnes that you knew of a man who would be interested in this proposition, you were sure, but he did not have the money? Whom did you have in mind then?

Mr. GIRARD. I do not remember whether I told Mr. Barnes, but I knew of a man that was interested, and I did not know whether he had the amount or not I remember that.

Mr. DE NEFFE. That was Mr. Herrick, wasn't it?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. You are sure about that?

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Mr. GIRARD. I am sure it was not Mr. Herrick. If it had been a white-pine operation I would have thought of Mr. Herrick, because Mr. Herrick's activities up to that time had always been in the white-pine country. He had no yellow-pine operations except down South. If I told Mr. Barnes of any man, or if I had in mind a man who might be interested, it probably—in the yellow-pin country—it probably might have been Mr. Leuthold, of Deer Park Wash., a very large operator, but he did not have enough money to go ahead with the plan.

Mr. DE NEFFE. You said a week or ten days before this 30-day advertisement was up you were at Missoula and Mr. Herrick caller you on the long-distance phone?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. And you went to Coeur d'Alene then in order to meet him there?

Mr. GIRARD. Yes, sir. He said, "Come to Coeur d'Alene; I am interested."

Mr. DE NEFFE. Did he want you to hurry up?

Mr. GIRARD. Why, he did not tell me to come on the very next train or anything of that kind.

Mr. DE NEFFE. Did he tell you what he wanted to see you about?

Mr. GIRARD. Certainly; he was interested in this timber.

Mr. DE NEFFE. Over the telephone did he tell you that?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. Why didn't he go to Missoula?

Mr. GIRARD. I can not answer that.
Mr. DE NEFFE. You don't know?

Mr. GIRARD. I got all the maps together and put them all in one big map, and the estimates, and went to Coeur d'Alene.

Mr. DE NEFFE. You were chasing after Mr. Herrick, weren't you? You were going after him all the time instead of him coming to see you?

Mr. GIRARD. If you want to construe it in that line. I was requested by Mr. Herrick to go and see him, and I discussed that with the district forester at Missoula, and I went to see Mr. Herrick.

Mr. DE NEFFE. At the Government's expense?

Mr. GIRARD. At the Government's expense, absolutely.

Mr. DE NEFFE. And you said then in your discussion there that you thought it would have been all right if Herrick had offered you a job on this proposition?

Mr. GIRARD. I said that personally at this time I can not see that there would have been anything objectionable if he had said to me, "I am interested in that and I am going to buy it, and I want yon to handle it for me."

Mr. DE NEFFE. You did not think he might have thought that could be construed by you that that would deter you in trying to get other people to bid on this timber if he had offered you a job then?

Mr. GIRARD. I can not harmonize your line of reasoning at all. If I thought I had made Mr. Herrick think he was under some obligation to me I would have told Mr. Herrick to bid $2.10.

Senator WALSH of Montana. The question addressed to you is this, Mr. Girard, if at the time Mr. Herrick had asked you to come and

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work for him whether that would not have deterred you in seeking to get other bidders for the contract?

Mr. GIRARD. No; I can not see that it would. Not at all.

Mr. DE NEFFE. He did not offer you any money, or any job?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. But still you were deterred in finding any other bidders?

Mr. GIRARD. I had accomplished my purpose, and I figured I had gone far enough.

Mr. DE NEFFE. He decided to take your judgment then, didn't he?

Mr. GIRARD. Well, he said he had a man on the way down there to look it over, by the name of Douglas. Whether Douglas went or how much of the country he looked over I do not know. He told me that he had as much confidence in my judgment as he had in anyone else's.

Mr. DE NEFFE. How long did you take to look this timber over?

Mr. GIRARD. I believe that is in my testimony of yesterday, that I got down there some time around the middle of May, and this appraisal report was ready by July 3.

Mr. DE NEFFE. So it took about a month and a half, didn't, it?

Mr. GIRARD. About a month and a half.

Mr. DE NEFFE. How many men did you have?

Mr. GIRARD. I had one man.

Mr. DE NEFFE. Didn't you have about 11 men in there once?

Mr. GIRARD. I did not have those men at all. They were in the cruising party in charge of George Drake, of Portland, Oreg.

Mr. DE NEFFE. They were in there quite a while, weren't they?

Mr. GIRARD. I don't know how long those men were in there. I think those men were in there from some time in March, I believe.

Mr. DE NEFFE. They were there two or three months, weren't they?

Mr. GIRARD. The service records would show the exact time.

Mr. DE NEFFE. Would you say it would take three or four months to cruise 63,000 acres of timber with 11 men? Or wouldn't it take that, long?

Mr. GIRARD. I can figure that out for you, exactly how long it would take.

Mr. DE NEFFE. I do not want to know exactly.

Mr. GIRARD. I can not tell you offhand.

Mr. DE NEFFE. It could not be done in four months?

Mr. GIRARD. One man cruising in the manner they did there will cruise anywhere from two miles to four miles or six mules every day. I have cruised as much as eight miles in one day.

Mr. DE NEFFE. All right. Then when did Douglas come back with his report? Do you know?

Mr. GIRARD. I do not know when he left or when he returned?

Mr. DE NEFFE. How long did it take him to go down there?

Mr. GIRARD. You leave Spokane in the evening along about 10 o'clock and travel that night and the next day until about 12 o'clock, I believe it is, Mr. Hallock, when you get to Baker?

Mr. HALLOCK. Yes.

Mr. GIRARD. Probably—I don't remember whether we took the Sumpter Valley line—that night or the next morning.

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Mr. DE NEFFE. It would take a couple of days to get down there and a couple of days to come back?

Mr. GIRARD. Yes.

Mr. DE NEFFE. So he would have four days to look over the timber, assuming he was gone 10 days?

Mr. GIRARD. Yes; if it was 10 days. I didn't say whether he was there 10 days; I don't know whether he was there two hours or not.

Mr. DE NEFFE. Mr. Herrick submitted his bid on what he learned from you about the timber, didn't be?

Mr. GIRARD. Mr. Herrick submitted his bid largely as the result of what he knew about my work in that general territory for years.

Mr. DE NEFFE. He had confidence in you? Was that it?

Mr. GIRARD. Yes, sir; he had.

Mr. DE NEFFE. Was that all the information he had about this timber, the layout that you had given him?

Mr. GIRARD. No. Mr. Herrick had this prospectus.

Mr. DE NEFFE. Yes; and besides the prospectus—and that was your work, wasn't it?

Mr. GIRARD. So far as I know this prospectus and the information I gave him was all that he knew about it.

Mr. DE NEFFE. And he took your word for it absolutely, and nobody else's? Isn't that right?

Mr. GIRARD. He can answer that better than I can. I do not know whether there is anybody else or not.

Mr. DE NEFFE. You know what he said to you.

Mr. GIRARD. So far as I know, he took my word absolutely; Yes, sir.

Mr. DE NEFFE. And he said he would bid $2.80 right then?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. And he went down to Spokane immediately and arranged with Mr. Flood to put in his bid? Is that right?

Mr. GIRARD. I don't know about that, sir. I presume he did.

Mr. DE NEFFE. Would you say it would be customary for a man to enter into engagements to expend four and a half or five million dollars without looking over the timber or the layout of the railroad or the mills or any of that kind of thing? Is not that rather an unusual procedure?

Mr. GIRARD. I would say it is very unusual for a man to do that; Yes, sir. He did exactly the same thing with this other tract of timber which the Government had nothing to do with the larger[5] estate. I think Mr. Herrick will remember that he did that on my recommendation. He came up and talked to me about it. I happened to have charge of a party that cruised that particular timber.

Mr. DE NEFFE. Who are you working for then?

Mr. GIRARD. I was working for the Coeur d'Alene people—Carroll.

Mr. DE NEFFE. Was Mr. Herrick interested in the same company?

Mr. GIRARD. Not then. He owns it now, and he bought that tract of timber, which the Government had nothing to do with, on my recommendation.

Mr. DE NEFFE. When had you seen that timber?

Mr. GIRARD. Between May 1, 1913, and May 1, 1914.

Mr. DE NEFFE. Who hired you to cruise that?

Mr. GIRARD. The general manager of the Coeur d'Alene Lumber Co.

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[5]This was typed incorrectly. Mr. Girard is referring to the Largey Estate, I believe.

Mr. DE NEFFE. They were thinking of buying it?

Senator WALSH of Montana. No; they owned it.

Mr. DE NEFFE. You were working for the owners of the timber at that time?

Mr. GIRARD. Yes, Sir; I was privately employed at that time.
Mr. DE NEFFE. You said you thought that practically anything over $2 would buy it. Was that your belief?

Mr. GIRARD. That was my belief; Yes, sir.

Mr. DE NEFFE. But since Brooks-Scanlon had put in an offer of $2, or a little over $2 you thought that would take it?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. Then why did you tell Mr. Herrick to bid $2.80?

Mr. GIRARD. I did not tell Mr. Herrick to bid $2.80. You can not get that in there.

Mr. DE NEFFE. Did you tell him that Brooks-Scanlon had offered $2

Mr. GIRARD. I do not remember whether I did or not. I probably did.

Mr. DE NEFFE. And that the Brooks-Scanlon bid —

Mr. GIRARD. That there was only one offer made of $2.

Mr. DE NEFFE. And that Brooks-Scanlon had made that offer?

Mr. GIRARD. I don't remember whether I told him that Brooks-Scanlon lead made that offer.

Mr. DE NEFFE. And then you also told him, did you, that they had probably bid a little more than $2?

Mr. GIRARD. No, Sir; I did not communicate to him any such thing.

Mr. DE NEFFE. And didn't you say that the Shevlin-Hixon —

Mr. GIRARD. I did not know what anybody else had bid. I had an idea that a little over $2 would buy it, but I would not think for a minute of telling Mr. Herrick what anybody else bid. I was working for the Government, trying to get, the full value of that timber.

Mr. DE NEFFE. And you told him that the Shevlin-Hixon were going to bid on that property and bid pretty high?

Mr. GIRARD. No. That statement that was brought out here was absolutely untrue. There is not a word of truth in it.

Mr. DE NEFFE. What you did, Mr. Girard, was to get Herrick to bid up high so that he would be sure to get this property'? You wanted to see him get it?

Mr. GIRARD. I wanted to see anybody get it that was willing to pay the price, and I would just as soon see Herrick get it as anybody else, because of the things that I have enumerated.

Mr. DE NEFFE. And you told him that the Government would like to have $2.75 in order to make sure that Herrick would buy it, so that you would have a job —

Senator WALSH of Montana. Just a minute. I am going to object to traveling over that ground again. He has covered that.

Mr. DE NEFFE. Now, then, you said that between the first and second advertisements so much pressure had

been brought by the citizens to have it readvertised, to offer it at $2 instead of $2,75. There was some pressure brought, was there?

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Mr. GIRARD. I think there was some petition gotten up by Barnes which was signed by a large number of people.

Mr. DE NEFFE. You mean, after the six months was up? It was up February 15, 1923, wasn't it?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. The six months was up?

Mr. GIRARD. The six months was up.

Mr. DE NEFFE. And when it was decided, before the six month; advertisement started, to advertise it for $2.55, Colonel Greeley stated to Mr. Barnes and a number of people that, if they could not get any bids then after the six months was up then they would advertise it for $2? Don't you remember that?

Mr. GIRARD. I said that was what Mr. Barnes said in his testimony,

Mr. DE NEFFE. That was right, wasn't it? That was the way they came to fix the $2?

Mr. GIRARD. I believe so, as far as I know.

Mr. DE NEFFE. You said that you first learned at Missoula, through The Oregonian, that Mr. Herrick was the successful bidder. Did you take The Oregonian regularly up there?

Mr. GIRARD. I Said I did not remember whether it was The Oregonian or what paper it was. I saw the statement in some paper that he was the successful bidder, or had been the highest bidder.

Mr. DE NEFFE. You were watching it pretty close, weren't you?

Mr. GIRARD. It may have been in the Missoulian {a Missoula newspaper}.

All'. DE NEFFE. You were pretty anxious about the outcome of it?

Mr. GIRARD. I was anxious to see how the outcome was on the bid Yes, sir. I was interested to see how many bids there would be on that timber, who they were, and what price. I had no anxiety as far as any employment on my part was concerned though.

Mr. DE NEFFE. Were you surprised when you got the letter from Mr. Herrick offering you a job on that proposition?

Mr. GIRARD. Yes; I was.

Mr. DE NEFFE. You really were?

Mr. GIRARD. Yes, sir; I was absolutely surprised.

Mr. DE NEFFE. Do you know how Mr. Herrick came to consult Colonel Greeley about recommending some man?

Mr. GIRARD. No, sir; I do not.

Mr. DE NEFFE. Then you went down to Coeur d'Alene, didn't you, on the 1st of May—do I understand that you came to an agreement with Mr. Herrick about entering his employment before this contract which was introduced in evidence was finally signed on May 1st by him?

Senator WALSH of Montana. He has told us that he has told us that this was on the 1st of May and the contract did not bear date until June, and he was up at Burns in the meantime.

Mr. DE NEFFE. And that contract was—you went to Coeur d'Alene then and entered it on May 1, 1923?

Mr. GIRARD. It was signed on May 1; Yes, sir.

Mr. DE NEFFE. And you went down there to Coeur d'Alene to sign it? Is that it?

Mr. GIRARD. No; I don't remember whether that contract was signed.

Mr. DE NEFFE. That was what you said?

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Mr. GIRARD. No; I do not think I said —

Mr. DE NEFFE. I thought you did. I do not want to misquote you.

Mr. GIRARD. I said we had an agreement with reference to what the rates of pay should be prior to the time that the contract was drawn up

Mr. DE NEFFE. About how long before?

Mr. GIRARD. I do not remember the exact date.

Mr. DE NEFFE. When did you resign from the Forestry Service?
Mr. GIRARD. I resigned from the Forest Service—I do not remember that date.

Mr. DE NEFFE. When do you think it was?

Mr. GIRARD. 1 think my resignation would take effect along about early in May, because I would have a little leave of absence coming and that would extend it into May.

Mr. DE NEFFE. May 5, 1923? Is that right?

Mr. GIRARD. That probably was the date that the resignation took effect.

Mr. DE NEFFE. So at the time you signed this contract on May 1 you were still working for the Government? Isn't that right?

Mr. GIRARD. No; I could not say I was still working for the Government. I was still entitled to Government pay.

Mr. DE NEFFE. And you drew it, didn't you, up to May 5, 1923?

Mr. GIRARD. I think I did.

Mr. DE NEFFE. I would like to introduce in evidence here a letter showing the date of his resignation.

Mr. HALLOCK. I have no objection.

Mr. DE NEFFE. It is in a letter dated December 13, 1926, addressed to Blue Mountain Eagle, Canyon City, Oreg., signed by Fred Morrell, district forester, giving the history of Mr. Girard's service and showing that he resigned May 4—I was wrong one day—1923.

(The letter referred to is here printed in full, as follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, NORTHERN DISTRICT,
Missoula, Mont., December 13, 1926.

BLUE MOUNTAIN EAGLE.
Canyon City, Oreg.

GENTLEMEN: Reference is made to Mr. Haight's letter of December 10 regarding services of Messrs. Girard and Klobucher.

The following tabulation indicates the period of employment in the Forest Service and the various positions occupied during that time:

James W. Girard

Position:	Date appointed
Forest guard	Feb. 1, 1908
Forest examiner	Apr. 12, 1909
Forest ranger	June 1, 1910
Scaler (resigned Apr. 30, 1913; reinstated Apr. 1, 1914)	Nov. 1, 1912
Lumberman	Dec. 7, 1914
Logging engineer	Jan. 16, 1917
Resigned	May 4, 1923

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Frank Klobucher

Position:	Date appointed
Forest guard	July 21, 1911
Assistant forest ranger	July 1, 1912
Forest ranger	Aug. 11, 1916
Forest assistant	Sept. 29, 1916
Fire assistant	May 17, 1919
Resigned	July 18, 1923

Very truly yours,

FRED MORRELL,
District Forester.

Mr. DE NEFFE. You said that Mr. Herrick first offered you $6,000?

Mr. GIRARD. Yes.

Mr. DE NEFFE. You were getting how much then?

Mr. GIRARD. $3,840 I stated. I did not accept the $6,000.

Mr. DE NEFFE. Why not?

Mr. GIRARD. Because I figured my prospects were good for a substantial increase in the Forest Service.

Mr. DE NEFFE. What would have been your next raise? How much of a raise would you have had?

Mr. GIRARD. I could not say how much that would have been. The reclassification record will show that.

Mr. DE NEFFE. Had you been promised a raise?

Mr. GIRARD. No; I would not say that I had been definitely promised a raise. I was getting more money than any logging engineer in the Forest Service and had reason to suppose that if anybody got a promotion I would get it.

Mr. DE NEFFE. You were naturally hoping, just like anybody, that some day you would be promoted?

Mr. GIRARD. I do not know whether you are familiar with the reclassification which was lead at that time, which gave Forest Service employees a general raise of level of salaries.

Mr. DE NEFFE. And how much of a raise were you expecting?

Mr. GIRARD. I was expecting that I could get possibly as much as $5,000 a year.

Mr. DE NEFFE. But you had no definite promise. It was a hope —

Mr. GIRARD. No, sir.

Mr. DE NEFFE. And then you would leave a long time to wait before you would get any more, wouldn't you, in the ordinary course of events?

Mr. GIRARD. I could not say how long.

Mr. DE NEFFE. But still you were demanding $6,000 a year—you were refusing $6,000 at that tune?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. You thought you were in a position to demand $7,500 of Mr. Herrick. Why?

Mr. GIRARD. Why, the fact that I got $7,500, and the fact that after I agreed to go to work for him I was offered more than that is a pretty good indication.

Mr. DE NEFFE. Who offered you more than that?

Mr. GIRARD. I told you that Tom Baird, of the Baird-Harper Lumber Co. —

Mr. DE NEFFE. Where is their place?

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Mr. GIRARD. Warland, Mont. They are not operating at present.

Mr. DE NEFFE. He offered you how much?

Mr. GIRARD. He asked me how much I understood I was to get.

Mr. DE NEFFE. Where?

Mr. GIRARD. From Mr. Herrick.

Mr. DE NEFFE. And when was this that you talked with Mr. Baird?

Mr. GIRARD. I can not give you the date. I told you this was a Sunday following the day I made the agreement with Mr. Herrick on Saturday. I told Mr. Baird how much I was getting. He said, "We can beat that, and we can give you some stock in the company, too."

Mr. DE NEFFE. Mr. Herrick said that?

Mr. GIRARD. No. Baird.

Mr. DE NEFFE. You thought though that you were in a position to demand more from Mr. Herrick, didn't you?

Mr. GIRARD. More than $7,500?

Mr. DE NEFFE. Yes.

Mr. GIRARD. I figured that that was a good reasonable salary.

Mr. DE NEFFE. I did not get clearly just what the—the Baird-Harper Lumber Co., is it?

Mr. GIRARD. Yes, sir; Baird & Harper.

Mr. DE NEFFE. How much did they offer you?

Senator WALSH of Montana. Why, he told you. He has said that they said they could do better than that and give him some stock in the company.

Mr. DE NEFFE. I see.

Mr. GIRARD. As I remember it, Mr. Baird told me he was getting $8,500 —

Senator WALSH of Montana. I hope, gentlemen, you will endeavor to avoid repetition.

Mr. DE NEFFE. You thought Herrick's proposition then was better than the Baird people's, even though you would get stock and get more money? Did you think Mr. Herrick's proposition was better?

Mr. GIRARD. I told Mr. Baird I had agreed to go to work for Mr. Herrick. and I would keep my word regardless of whether he offered me $50,000 a year, that I would keep my promise. He says, "You have not signed a contract?" I said, "No; but my word is as good as a contract." The size of the operations and the things you have all opportunity to do and the kind of reputation you have a chance to establish for yourself are some of the things to be considered in taking a position. I figured that to go over there and build 80 miles of railroad.

Senator WALSH of Montana. Let us dismiss that subject.

Mr. DE NEFFE. You said you had nothing to do with the preparation of this contract?

Mr. GIRARD. No. sir; absolutely nothing to do with it.

Mr. DE NEFFE. The contract of June 15, 1923. Weren't you consulted at all as to the terms that went into it?

Mr. GIRARD. I might have been consulted about the terms. Mr. Hoffman might have discussed them with me when we were writing the appraisal.

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Mr. DE NEFFE. That was not signed until June 15, 1923. Why was there such a long time intervening?

Mr. GIRARD. I can not tell you that.

Mr. DE NEFFE. When did you discuss it with Fred Ames, for instance?

Mr. GIRARD. I presume the contract was not signed until the bond was put up. Probably that was the reason.

Mr. DE NEFFE. That was one.

Mr. GIRARD. It was on that day, as I understand it. I don't know.

Mr. DE NEFFE. There was a long time intervened, was there not, between the opening of the bids and the signing of the contract? Over two months?

Mr. GIRARD. Yes; that would be over two months.

Mr. DE NEFFE. Do you know what the cause of the delay was?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. Where was that contract drawn?

Mr. GIRARD. That contract was drawn, so far as I know, in the office—I don't know where it was drawn.

Mr. DE NEFFE. Who entered into the conferences that were had when that contract was drawn?

.Mr. GIRARD. I could not tell you who entered into those conferences.

Mr. DE NEFFE. That was a pretty important document, under which you were going to select all the employees. Weren't you interested in that contract?

Mr. GIRARD. I knew about the general form that the contract would take, because the appraisal report showed that they would leave 15 per cent of the volume of the timber and young trees, etc. I knew what the regulations were with reference to cutting stumps, utilization, etc. I was perfectly familiar with that, and I figured that it would just be the ordinary, regular Government timber sale contract.

Mr. DE NEFFE. You were consulted, were you not, in reference to that new clause that was put in paragraph 3 of the contract, which provided for taking care of the amount in excess of 890,000,000 feet? You were consulted, weren't you?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. You were not consulted about that?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. Now— there is more than 890,000,000 feet in there, isn't there?

Mr. GIRARD. There is an estimated amount of 890,000,000 feet according to the cruise they made; how much more and how much less I do not know. I would say that in my opinion the estimate will probably overcut.

Mr. DE NEFFE. About how much?

Mr. GIRARD. Practically all Forest Service estimates do overcut. It is the usual practice.

Mr. DE NEFFE. Wouldn't it run around a billion two-hundred million?

Mr. GIRARD. No: I would not say that..

Mr. DE NEFFE. Would it go pretty close to it?

Mr. GIRARD. I think possibly their estimate would overcut 10 or 15 per cent.

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Mr. DE NEFFE. That would be how much?

Mr. GIRARD. Ten per cent of 770,000,000 would be 77,000,000. It may overcut 25 per cent. I never made any check of that.

Mr. DE NEFFE. The chances are that there is a great deal more than 890,000,000 feet in that unit?

Mr. GIRARD. There may be more than 890,000,000 feet in that unit, and there may be less.

Mr. DE NEFFE. And for that reason that new paragraph was put in there, wasn't it?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. And that does not mean anything? It was not put in for a purpose?

Mr. GIRARD. What effect does the new paragraph have on that?

Mr. DE NEFFE. It would have this effect: If there was a billion two-hundred million in there, Mr. Herrick was only supposed to get around 890,000,000 —

Senator WALSH of Montana. Wait a moment. Mr. De Neffe is not on the witness stand. Let us hear what this witness has to say.

Mr. DE NEFFE. Then coming to the prospectus: Paragraph 3 of the prospectus required—after June 1, 1931, it required during every three-year period thereafter 1,000,000 feet to be cut—a minimum of 1,000,000 feet. Isn't that right?

Mr. GIRARD. Of 1,000,000?

Mr. DE NEFFE. Yes: a minimum of 1,000,000 feet had to be cut during every three-year period thereafter?

Mr. GIRARD. I do not remember anything of that kind.

Mr. DE NEFFE. You do not remember that?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. You do not say it was not in there, do you?

Mr. GIRARD. No; I do not say it was not in there. I think you mean a minimum of 100,000,000, don't you?

Mr. DE NEFFE. Yes, 100,000,000; 1 am glad you corrected me. Is that right?

Mr. GIRARD. That possibly is right.

Mr. DE NEFFE. Under the terms of such a contract Mr. Herrick would have to cut 100,000,000 feet during every three years after that, whether be wanted to or not, wouldn't he?

Mr. GIRARD. Under the terms of that?

Mr. DE NEFFE. Yes; under a provision of that kind.

Mr. GIRARD. He probably would.

Mr. DE NEFFE. He would not have any choice? He could not shut down if he wanted to?

Mr. GIRARD. No.

Mr. DE Neffe. Except maybe, the first two years of the three-year period, and then cut the 100,000,000 feet in the last year of the three-year period.

Mr. HALLOCK Pardon me. It seems to me this is more a matter of the witness's construction. I do not want to object to it; but we have had the views of the other side as to the construction of the written instrument.

Mr. DE NEFFE. I am asking for a different purpose.

Mr. HALLOCK. All right.

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Mr. DE NEFFE. You were going to make this a minimum. And you say that had nothing to do with the making of the contract? Is that right?

Mr. GIRARD. Nothing to do with the details of the making of that contract.
Mr. HALLOCK. Mr. De Neffe, won't you make that a little clearer?

Senator WALSH of Montana. There is no necessity for making it clearer. He was not there at all, he said, and had nothing to do with the arrangement of the contract. He participated in the making up of the contract that went into the prospectus. That is what he told us.

Mr. DE NEFFE. You said that you intended some time to make Mr. Herrick come through with a larger salary and you would not be backward about asking him for it, did you not?

Mr. GIRARD. I did not say I intended to make him come through. I said that if I made good in the lumbering operations the same as I had before I would probably be entitled to an increase, and if I did I would not be backward in asking for it.

Mr. DE NEFFE. You did not think you were in a position to make him come through, did you?

Mr. GIRARD. No, sir; I was not in a position to make him come through with anything.

Mr. DE NEFFE. Now, you have only paid for $200 of the $5,000 subscription in each of these companies?

Mr. GIRARD. Correct.

Me. DE NEFFE. That is the amount you have paid? $400 total?

Mr. GIRARD. No; I have just paid $200. That is all.

Mr. DE NEFFE. On the $400 subscription?

Mr. GIRARD. To the Fred Herrick Lumber Co.

Mr. DE NEFFE. Do you expect to pay up?

Mr. GIRARD. I expect to pay up; Yes, sir.

Mr. DE NEFFE. Did Mr. Herrick ever ask you for it?

Mr. GIRARD. Never. We have never discussed that.

Mr. DE NEFFE. Even though liens were being filed and the company was in straitened financial condition all the time, he never asked you to pay, either you or Klobucher?

Mr. GIRARD. What do you mean by liens being filed?

Mr. DE NEFFE. Did not Morris and Knutson file a lien?

Mr. GIRARD. Yes; but probably you do not understand why that was filed.

Mr. DE NEFFE. I won't go into that. Anyway, you had a lot of financial difficulties, didn't you?
Mr. GIRARD. There were lots of times that it was difficult for us to get money?

Mr. DE NEFFE. You do not deny that?

Mr. GIRARD. Absolutely not.

Mr. DE NEFFE. Because you started out very soon after the company was organized, didn't you, to authorize the borrowing of $100,000 from the Ladd and Tilton bank, in November, 1923?

Mr. GIRARD. I do not remember whether it was $100,000 or $50,000. It is shown here.

Mr. DE NEFFE. That was borrowed, was it?

Mr. GIRARD. I do not know whether it was borrowed or not. Mr. Herrick did get a loan from that bank.

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Mr. DE NEFFE. And later you got a loan from the bank at Burns?

Mr. GIRARD. He borrowed money from the bank at Burns lots of times.

Mr. DE NEFFE. And later on you passed a resolution authorizing you to borrow from any person, firm, or corporation?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. And you and Mr. Hallock very often went all over the country to borrow some money for that project so you could go ahead?

Mr. GIRARD. I would not say we scoured the country. We went to Baker once, and we went to Portland once.

Mr. DE NEFFE. You went to see Mr. Pullman at Baker to borrow $50,000, didn't you?

Mr. GIRARD. No.

Mr. DE NEFFE. How much did you want to borrow?

Mr. GIRARD. I do not remember the amount.

Senator Walsh of Montana. What is the difference? Presumably everybody that does this kind of work borrows money.

Mr. DE NEFFE. Now, after the bids were opened you say Mr. Herrick went down to Burns? That was in the latter part of April?

Mr. GIRARD. Just about the latter part of April; I think about the 29th or 30th.

Mr. DE NEFFE. You went down there too, didn't you.
Mr. GIRARD. Yes.

Mr. DE NEFFE. Where did you meet him?

Mr. GIRARD. I met him in St. Maries or Spokane; I am not sure which.

Mr. DE NEFFE. Did he pay you for making that trip, for your expenses, and salary? Did you get anything for your time?

Mr. GIRARD. I do not remember whether I did or not.

Mr. DE NEFFE. Are you sure about that?

Mr. GIRARD. I am sure I don't remember.

Mr. DE NEFFE. You do not deny it?

Mr. GIRARD. No, I do not. The vouchers are all here, and they will show whether I drew any money. In all probability I did; I drew money for that, and I drew money at the same time, from the Forest Service.

Mr. DE NEFFE. So you were drawing money from both sides?

Mr. GIRARD. Yes, I was taking my leave that I was entitled to, and I do not remember the exact date that I went on the payroll with Mr. Herrick. I think, though, it was May 1.

Mr. DE NEFFE. You met Mr. Barnes at Burns?

Mr. GIRARD. Mr. Barnes was at Burns.

Mr. DE NEFFE. And Mr. Herrick went with you to Prineville?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. And going to Prineville you went up and drove through this timber?

Mr. GIRARD. Yes sir.

Mr. DE NEFFE. And that was the first time that Mr. Herrick had ever seen that timber? Isn't that right?

Mr. GIRARD. So far as I know that is absolutely the first time that he had ever seen it, and the last time that he ever drove through that portion of it. He has gone through a portion of it two times since then to my knowledge.

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Mr. DE NEFFE. The contract had not been signed up then, had it?

Mr. GIRARD. It was not signed in June, no.

Mr. DE NEFFE. So did he go over the property right on line from Burns north and look over conditions there?

Mr. GIRARD. No, sir; he didn't pay any attention to that.

Mr. DE NEFFE. And he did not know whether it was easy construction or hard construction, did he?

Mr. GIRARD. He did not know anything except what the reports showed him.

Mr. DE NEFFE. And that was your report?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. And he did not get out of the automobile, did he, except when he stopped for lunch?

Mr. GIRARD. He did not, as I remember.

Mr. DE NEFFE. He looked through the timber and went on to Prineville?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. So he knew nothing about logging conditions at all, whether it was easy or hard? Is that right?

Mr. GIRARD. He knew nothing about it except what he had got from the prospectus and what I had told him.

Mr. DE NEFFE. Isn't it a fact that in logging chances, as you call it, if conditions are difficult a contractor might go broke on account of the logging conditions. Isn't that the fact?

Mr. GIRARD. Yes, they often go broke.

Mr. DE NEFFE. They go broke oftener than they make it?

Mr. GIRARD. It is an industry that they go broke in—logging and lumbering.

Mr. DE NEFFE. And in investing large sums of money in a project of that kind it is pretty important to know something about logging conditions?

Mr. GIRARD. Absolutely.

Mr. DE NEFFE. But Mr. Herrick did not know anything about the logging conditions of that timber?

Mr. GIRARD. I wouldn't say that at all. Mr. Herrick thought that I knew the logging conditions in that area.

Mr. DE NEFFE And he was trusting you absolutely?
Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. You say that Mr. Barnes offered 30 miles of right of way free?

Mr. GIRARD. I did not say that.

Mr. DE NEFFE. If I misquote you, I wish you would correct me. Just what was it then?

Mr. GIRARD. I said that Mr. Barnes had 30 miles of right of way which was included in this consideration of $55.000.

Mr. DE NEFFE. Oh, yes; I beg your pardon.

Mr. GIRARD. The mill site and the right of way both.

Mr. DE NEFFE. Did he turn over any right of way free—Mr. Barnes?

Mr. GIRARD. We did not use any of his location from Crane to Burns and for that reason he could not turn over any right of way free. He agreed though to turn over a right of way through all his lands, and he did not do that—between Burns and the mill site.

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Mr. DE NEFFE. Then did Mr. Barnes assist you people in getting rights of way from different people?

Mr. GIRARD. Mr. Barnes went out on two or three trips with Mr. Farre and told the people around there he was on our pay roll for three or four months.

Mr. DE NEFFE. And he did what he could, didn't he?

Mr. GIRARD. Mr. Barnes cooperated with us in good shape until he figured he had gotten about all he could out of the Herrick Lumber Co., and along in 1924, I guess it was, he started criticizing and throwing discredit on Mr. Herrick in that whole community.

Mr. DE NEFFE. The criticism was directed at the delay in the work, wasn't it?

Mr. GIRARD. It was not particularly the delay or Mr. Herrick's method. He made the statement all along that Mr. Herrick was not financially able to go through with that proposition, that he could not go through with it, that he did not intend to build a mill and could not build it and never lead intended to build a mill.

Mr. DE NEFFE. Well, have not subsequent events sort of demonstrated that he was not so very far off?

Mr. GIRARD. I would not say so, when he has a million and a quarter dollars there in a railroad.

Mr. DE NEFFE. Haven't you —

Mr. HALLOCK. Just a minute. Let him finish.

Mr. DE NEFFE. Go ahead.

Mr. GIRARD. We leave a high-class railroad there. I do not think that would demonstrate that he was right.

Mr. DE NEFFE. Then you say there was some controversy over the bid that Mr. Barnes—that he had some string to the bid?

Mr. GIRARD. Yes.

Mr. DE NEFFE. Was not the string conditional upon the mill being built and the railroad —

Senator WALSH of Montana. We have ruled that out.

Mr. DE NEFFE. Yes; that is trying a lawsuit; that is right. You were the one that selected Mr. Klobucher as an engineer?

Mr. GIRARD. Yes. Sir.

Mr. DE NEFFE. Is he a licensed Oregon engineer?

.Mr. GIRARD. I could not tell you.

Mr. DE NEFFE. He had been with you out there, hadn't he? Up there in Missoula?

Mr. GIRARD. He and I worked together on appraisals.

Mr. DE NEFFE. Yes. Your relations with Mr. Herrick were always very friendly, weren't they, before this purchase of timber?

Senator WALSH of Montana. He told us that.

Mr. DE NEFFE. Did Mr. Herrick hesitate about bidding $2.80 when you took it up with him?

Mr. GIRARD. I would not say that he hesitated, and I would not say that he bid right off the bat. We went over these maps and estimates, and I don't remember just how long we discussed it. As I remember it now, why, he made up his mind in about 30 minutes what he was going to do.

Mr. DE NEFFE. He made up his mind on a four and a half million dollar proposition in 30 minutes?

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Mr. GIRARD. Yes, sir; and I tried to convince him that he could not do that without having a thorough examination made of it.

Mr. DE NEFFE. But he had such confidence in you —
Mr. HALLOCK. I think you interrupted him.

Mr. DE NEFFE. Go ahead and finish.

Mr. GIRARD. I believe that was all.

Mr. DE NEFFE. Did he hesitate on account of lack of finances? Didn't t he say something about that?

Mr. GIRARD. That was not mentioned.

Mr. DE NEFFE. That was not mentioned at all?

Mr. GIRARD. No. sir.

Mr. DE NEFFE. You urged him to make the bid, though, didn't you, Mr. Girard?

Mr. GIRARD. I did. I produced all the arguments as I said, that I could think of to convince him that it was worth $2.75.

Mr. DE NEFFE. Did not somebody else urge him? Did not somebody else consult with him about it?

Mr. GIRARD. I couldn't say what the forest supervisor told him when he gave him this prospectus.

Mr. DE NEFFE. And when you left him that time he had made up his mind to put in his bid?

Mr. GIRARD. He sent it up; Yes, sir.

Mr. DE NEFFE. And you were very friendly and on good terms with Mr. Fred Ames of the Portland office of the Forest Service, weren't you?

Mr. GIRARD. Yes—of the forestry office.

Mr. DE NEFFE. And Colonel Greeley, too?

Mr. GIRARD. Yes, sir. All the lumbermen in that whole region, as far as that is concerned.

Mr. DE NEFFE. Mr. Herrick did not hesitate about going into this on account of the short time to build the railroad, did he?

Mr. GIRARD. He never discussed that—not at that time.

Mr. DE NEFFE. When did he discuss it?

Mr. GIRARD. Why, he has discussed it at various times when these extensions came up, and has contended that the 60,000,000 feet to be cut by June 1, 1924, was the real essence of the contract, and if he did that he would feel that he had complied with the contract.

Mr. DE NEFFE. And you feel that that is the essence of the contract too, do you not?

Mr. GIRARD. I never quite agreed with him on that particular point.

Mr. DE NEFFE. You and Mr. Klobucher both believe that that is the essence of the contract, don't you?

Mr. GIRARD. No, sir; I do not say that. I would say that, strictly from a legal point of view, probably that is the essence of the contract and that is all that you could be required and forced to do.

Mr. DE NEFFE. You would not have to build any railroad at all—is that it—until—would you have to build a railroad?

Mr. GIRARD. I thought he would have to have a railroad built so that he could remove this amount of timber in that length. And I thought that according to the wording of the contract, regardless of any legal interpretation that could be put upon it, that there was a moral obligation there regardless of what we could be forced to do legally.

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Mr. DE NEFFE. And because he interpreted the contract that way he decided that he would let the people protest all they wanted to? Is that one of the reasons, do you think?

Mr. GIRARD. That is probably his main reason. I want to make it clear that it depends on what you mean when you say the people.

Mr. DE NEFFE. The people of those two counties.

Mr. GIRARD. I would say that is not correct.

Mr. DE NEFFE. Then, as I understand you, the people who protest are not the people? The people who are with Herrick are the people; is that it?

Mr. GIRARD. No, Sir, I do not say that at all. I said that there were a lot of good people in that country who were disappointed that the program had not gone faster, but they realize that in a project of that kind you can not disregard the economic conditions surrounding the business in which you are engaged.

Mr. DE NEFFE. You people have cut some timber in there, haven't you, on private and Government land?

Mr. GIRARD. We cut some ties; Yes, sir.

Mr. DE NEFFE. What kind of timber was it? What was the quality of the timber?

Mr. GIRARD. We cut some Douglas fir and yellow pine into hewed ties and cut some larger stuff in sawmills.

Mr. DE NEFFE. Did you cut any western yellow pine?
Mr. GIRARD. That is what I said.

Mr. DE NEFFE. How much did you cut?

Mr. GIRARD. Probable ten or twelve thousand ties cut from our own lands. The Forest Service won't let us cut the small stuff for ties on their lands.

Mr. DE NEFFE. And you cut some on private land which Mr. Herrick acquired in there?

Mr. GIRARD. On land which we bought from Mr. Barnes.

Mr. DE NEFFE. The cutting had to begin, under the contract and prospectus, April 1, 1925, there?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. And on the Government timber by October 1, 1925?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. Now, then, you figured—did you cut any of the Government timber?

Mr. GIRARD. Yes; we cut some fir ties and some western larch ties on the Government land.

Mr. DE NEFFE. Any western yellow pine?

Mr. GIRARD. No.

Mr. DE NEFFE. Didn't you consider that, having cut that for construction purposes prior to—you cut that prior to April 1, 1925—October 1, 1925, didn't you?

Mr. GIRARD. No; we did not cut any of this area until—we did cut, I think, the ties on the Government area about October.

Mr. DE NEFFE. Of what year?

Mr. GIRARD. 1925. We cut some pine ties in 1926.

Mr. DE NEFFE. Did you consider that that was a compliance with the contract—that that was what the contract meant by cutting?

Mr. GIRARD. Removing timber?

Mr. DE NEFFE. Yes.

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Mr. GIRARD. No. I figured that that would comply with it as far as the legal requirement was concerned, but I never figured that that complied with it.

Mr. DE NEFFE. You figured that it never constituted compliance?

Mr. GIRARD. I never took that as constituting compliance. No, Sir; I never did.

Mr. DE NEFFE. I refer to the minute book of the Fred Herrick Lumber Go., page 62, showing the minutes of the board of directors meeting of that company held on January 3, 1927, at 2:30 o'clock p. m., in Burns, Oreg., there being present Directors James Girard and Frank J. Klobucher. You remember that meeting, don't you?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. And the matter came up as to whether you people were in default? Isn't that right?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. And after reciting that the contract was entered into, and certain provisions of the contract which required that cutting of the private timbers should be started prior to April 1, 1925, and of the Government timber prior to October 1 1925, I find this preamble:

(Mr. De Neffe proceeded to read the resolutions referred to, which are here printed in full, as follows:)

> Whereas on the 15th day of June, 1923, Fred Herrick of St. Maries, Idaho, entered into a contract in writing with the Forest Service, United States Department of Agriculture under which the said Herrick agreed to purchase and pay for certain timber therein more particularly referred to, and to do and perform other acts and things: and
>
> Whereas under the terms of said contract the only direct obligations assume by Mr. Herrick in addition to the general provisions of said contract, dealing with the method to be employed in conducting the logging operations. etc., were:
>
> (a) To begin the cutting and removal of timber from the tract included in the agreement or from adjacent private lands within the same operating unit not later than April 1, 1925; and
>
> (b) To begin the cutting and removal of timber under the agreement not later than October 1, 1925; and
>
> (c) To cut prior to June 1, 1925, at least 60,000,000 feet of timber, board measure, under said contract; and
>
> (d) To construct a common-carrier railroad for freight and passengers in accordance with the laws of the State of Oregon, from main line connecting at Crane, Oreg., to Seneca, Oreg.; and
>
> Whereas the said Fred Herrick was not required under said contract to perform any act, to expend any money, or to build or complete any structure within any particular period of time or involving any particular sum of money except as above set forth, and except as under said contract the obligations to pay for the timber so cut and removed would front time to time come into existence after such cutting; and
>
> Whereas the said Fred Herrick did commence the cutting and removal of timber in a substantial quantity for construction purposes in connection with the said common-carrier railroad mentioned in said contract prior to April 1, 1925, and did also commence the cutting and removal of timber in substantial quantity for construction purposes from the unit covered by said contract prior to October 1, 1925, and did also spend a substantial suit of money in the construction of said railroad and other properties and facilities not expressly required by said contract but which evidenced the entire good faith of the said Fred Herrick thereunder at the times and under the circumstances which disclosed a bona fide effort and purpose upon the part of the said Herrick to fully perform not only the obligations assumed by him under said contract but also to invest in said venture substantial additional sums of money not required by said contract; and

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> Whereas notwithstanding the rights of the said Herrick under said contract and the obligations assumed by him thereunder and over the protest and objection of said Herrick and at a time when the rights of the said Herrick under said contract had not been jeopardized, forfeited, lost, or affected by any default or want of performance on the part of the said Herrick, and at a time when the said Herrick was fully performing all of the covenants and conditions by him assumed under said contract, and without any consideration punning to said Herrick therefor, he, the said Herrick, was required by the said Forest Service to, and over the said objection and remonstrance, and for the purpose of preserving his rights under said contract, which the said Forest Service did threaten to place in jeopardy, did subscribe to additional covenants and stipulations and theretofore included in said contract, as the covenants were originally entered into and as the same at said time existed; and
>
> Whereas from time to time thereafter the said Forest Service by threatening to cancel the contract of the said Herrick and by imposing additional penalties and burdens upon him and by declaring a forfeiture of substantial sums of money theretofore placed by the said Herrick behind his obligations as evidenced by

said contract and by threatening to impose further penalties and burdens and declare further forfeitures, did lead the said Herrick to believe that unless he would subscribe to additional covenants and obligations from time top time as imposed and required by said Forest Service, that the rights of said Herrick under said contract would be forfeited and that he would be required to pay in the form of penalties, additional substantial sums of money; and

Whereas the said Herrick believing that it was necessary for him to assume said additional burdens, obligations, and covenants as so imposed by said Forest Service, in order to protect his rights under said contract, and involuntarily and under his protest did subscribe to said additional covenants and obligations, as a result of which the said contract with said numerous additional stipulations, covenant and obligations purports to require of said Herrick the performance of work and the payment of moneys vastly greater and different than as provided in said original contract ; and

Whereas in order that this company may be properly financed, it is necessary that this company acquire all of the right, title, and interest of the said Herrick in and to said contract; and

Whereas the said Herrick is prepared to assign said contract rights to this company, and is also prepared to assign to this company all of his right, title and interest in and to certain Liberty bonds which he was required by said Forest Service to place in the hands of the United States district forester at Portland, Oreg., to insure the faithful performance of said contract; and

Whereas the said Forest Service has indicated its readiness to accept said assignment, but in connection therewith has demanded that the said Herrick and this company execute certain documents rind papers, purporting to bind this company to all of the terms and provisions of said contract, together with said additional stipulation, covenants, and obligations; and

Whereas in order to properly finance its activities and operations, and to properly carry out its work, it is necessary that this company secure an assignment of the right, title, and interest of the said Herrick under said contract and in order to do so must, over the protest and involuntarily, and for the purpose of preserving the rights of said Herrick and of this company under said contract, and of preventing a declaration of forfeiture thereunder by the said Forest Service, and the imposition by said Forest Service of further penalties and burdens, cause to be executed by the said Herrick and by the officers of this company the aforesaid papers and documents submitted by said Forest Service, copies of which appear in this record next following these minutes, which said documents and papers the said Herrick, acting in his individual capacity and also as president of this company, did execute on the 24th day of December, 1926; Now, therefore, be it

Resolved, That the execution by Fred Herrick, as president of the Fred Herrick Lumber Co., on December 21, 1926, of certain papers, namely, acceptance of transfer of timber sale agreement, bond accompanying said acceptance of transfer of timber sale agreement, and power of attorney and agreement, is hereby ratified and confirmed by the board of directors on behalf of the company.

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There being no further business to come before the meeting, the same was adjourned.

JAMES W. GIRARD,
Vice President.
FRANK J. KLOBUCHER,
Secretary.

A true record.

(Following the reading of the fifth paragraph of the resolutions by Mr. De Neffe, the following occurred :)

Mr. DE NEFFE. Wouldn't you say that that constituted a claim — that is, signed by you and Mr. Klobucher; you as vice president and Mr. Klobucher as secretary? Wouldn't you say that that constituted your claim that Herrick had never been in default and that he had complied with the contract by cutting those few ties?

Mr. GIRARD. I stated, I think, as clearly as I could, that from the legal point of view that is true.

Mr. HALLOCK. Mr. De Neffe, would you mind reading the whole of the resolution, since it is partly in the record?

Mr. DE NEFFE. That was the only point I wanted to bring out.

Mr. HALLOCK. You only have half of the document in.

Mr. MCGOWAN. Is that in line with your proof or evidence of collusion between the Forest Service and Mr. Herrick?

Mr. DE NEFFE. It is a circumstance, Mr. McGowan. You know, collusion must be proved by many little links and fragments and circumstances.

(Mr. De Neffe resumed the reading of the resolution.)

Senator WALSH of Montana. We have not time to read all of that.

Mr. HALLOCK. All right then I won't insist on it.

Mr. DE NEFFE. You consider then, do you, Mr. Girard, from the wording of this that when the Forest Service required you to sign some new stipulation they were imposing a burden on you when they were granting extensions of time.

Mr. GIRARD. I said that, we were not legally in default at the time that these things took place, and according to the original contract they never could have put into this contract these stipulations if Mr. Herrick had wanted to stand pat on it.

Mr. DE NEFFE. And that was the reason Mr. Herrick took the attitude of "the people be damned; I am going to build it just as I please"?

Mr. GIRARD. No, sir. He has not taken that attitude at all. I think he has gone right through in the very best faith. I do not see that there is any question involved there whatever. It is just a matter of his method, whether he was justified in taking the amount of time that he has taken to build that railroad, whether or not the condition of the lumber market justified that kind of construction program.

Senator WALSH of Montana. Mr. Girard, I wish you would tell us anything you care to about the discrepancy between paragraph 3 of the contract and the corresponding provision in the prospectus.

Mr. GIRARD. Well, Sir, I can not tell you. I have no knowledge of that, Senator.

Senator WALSH of Montana. Can't you at least, as a man familiar with the lumber business, tell us what essential difference there is as a practical proposition between the two?

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Mr. GIRARD. There is no essential difference whatever, regardless of how much the contract will overcut, because the appraisal report as in all appraisal reports of large chances, provides that at the end of each three-year period the Forest Service will reappraise the stumpage involved in that contract. I think the estimates on overcuts, 25 to 30 per cent —

Senator WALSH of Montana. That is not the thing that addresses itself to my mind at all.

Mr. GIRARD. I just wanted to explain, Senator, why Mr. Herrick under that contract would have no better opportunity to make money than he would under any other contract.

Senator WALSH of Montana. The prospectus reads:

> Unless such amounts are changed in writing by the district forester, at least 80,000,000 feet board measure, and not more than 110,000,000 feet board measure, shall be cut prior to April 1, 1928; at least 120,000,000 feet board measure, and not more than 220,000,000 feet board measure, shall be cut prior to April 1, 1931; and not less than 100,000,000 feet board measure, and not more than 175,000,000 feet board measure, shall be cut during each three year period thereafter.

That is, not more than 175,000,000 feet board measure shall be cut during each three-year period thereafter. Now, the contract reads:

> Unless such amounts are changed in writing by the district forester, at least 60,000,000 feet board measure, and not more than 150,000,000 feet board measure, shall be cut prior to June 1, 1928.

That is, the 110,000,000 feet in the prospectus is changed to 150,000,000 feet in the contract.

Mr. GIRARD. Your question is, What effect that would have?

Senator WALSH of Montana. Yes.

Mr. GIRARD. That would give a man a larger cut on the Government timber.

Senator WALSH of Montana. Yes. So that if the market were favorable he could go on and cut 150,000,000 feet instead of 110,000,000 feet?

Mr. GIRARD. Yes, sir.

Senator WALSH of Montana. Would not that be to his advantage?

Mr. GIRARD. That is possible, yes.

Senator WALSH of Montana. That is to say, the contract in that respect is more favorable than the prospectus?
Mr. GIRARD. I would say that if all prospective bidders and the trade in general knew of that change —

Senator WALSH of Montana. Never mind about that. Whether they did or whether they did not. The question I am asking now is whether the contract as it is written is not more favorable to the contractor than as it appeared in the prospectus.

Mr. GIRARD. Yes. sir; I would rather have it in that form.

Senator WALSH of Montana. The contract provides:

> At least 120,000,000 feet board measure, and not more than 300,000,000 feet board measure, shall be cut prior to June 1, 1931.

So the contract reads, while the prospectus reads:

> At least 120,000,000 feet board measure, and not more than 220,000,000 feet board measure, shall be cut prior to April 1, 1931.

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The contract gives him the liberty to cut 80,000,000 feet more. That is, it is increased from 220,000,000 to 300,000,000.

Mr. GIRARD. Yes.

Mr. DE NEFFE. There is nothing in the contract as drawn which requires Mr. Herrick after June 1, 1931, to cut any definite amour during every three-year period thereafter, is there?

Mr. GIRARD. I could not say whether there is or not. I do not believe there is.

Mr. DE NEFFE. But in the former there was, was there not?

Mr. GIRARD. I believe so.

Mr. DE NEFFE. So that under paragraph 3 as it is in the contract by cutting the maximum amount, which was greatly increased, that would give him enough to answer the purpose of the minimum amount for from six to nine years that he would not have to cut any more? Is that right—if the market was high?

Mr. GIRARD. What would be the object of that?

Mr. DE NEFFE. If the market is high it is a good thing to cut all you can?

Mr. GIRARD. No. The proper thing to do in a lumbering operation is to go ahead with some kind of a definite

plan and figure on cutting pretty fairly close to that plan if you possibly can.

Mr. DE NEFFE. But if the market is away down low it certainly would not pay to keep running?

Mr. GIRARD. The fact of the matter is they do not close these operations down for three or four years and run them intermittently, and particularly in a case like that where you have over $3,000,000 invested.

Senator WALSH of Montana. There seems to be an entirely new paragraph put in here:

> Provided, That whenever the district forester is satisfied that the cut from this sale area will exceed 890,000,000 feet board measure, log scale he shall increase the maximum amounts which may be cut prior to each of the above-named dates which have not previously passed, by such amounts as will permit the purchaser to cut thereafter an average annual amount sufficient to complete the cutting of the remaining timber covered by this sale.

So that even these figures, 150,000,000 in the one case and 300,000,000 in the other case, might be increased by the forester?

Mr. GERARD. Yes, sir; in direct proportion to the amount of the estimated overcut.

Mr. DE NEFFE. I am glad the Senator called my attention to that. That makes it mandatory on the forester for the benefit of Mr. Herrick. It does not say he may —

Senator WALSH of Montana. That is argument.

Mr. DE NEFFE. Yes. I had not noticed that point before.

Mr. GIRARD. I would not consider that particular part of the contract as being of any advantage whatever so far as the volume of timber is concerned.

Senator WALSH of Montana.. I want to call your attention to apparent further conditions here. After 1931 the prospectus prescribes that not less than 100,000,000 feet and not more than 175,000,000 shall be cut in each three-year period. Under the contract as drawn it continues after 1931 giving the maximum and minimum, and then provides that at least 420,000,000 feet board measure, and not more than 750,000,000 feet board measure, shall

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be cut prior to June, 1940; and at least 520,000,000 feet board measure shall be cut prior to June 1, 1943. That seems to be a limitation against the contractor, does it not?

Mr. GIRARD. Yes, sir; I wanted to bring that out, that the latter part of the contract has provisions which are as much against the contractor as the others are for him.

Mr. DE NEFFE. He can cut enough in any one of those three-year periods by cutting the maximum amount allowed, can he, Mr. Girard? So that he could lay off for quite a period of time? Is not that it?

Mr. GIRARD. He possibly could, according to that contract.

Mr. DE NEFFE. Yes; because he is not compelled to cut any specified amount in any specified three-year period. Isn't that it?

Mr. GIRARD. He could probably cut under that contract, so that he could lay off for two or three years. But he can not do it. He can; but he can not.

Senator WALSH of Montana. That is, you mean to say that the contract permits him to do so, but business considerations would forbid?

Mr. GIRARD. Yes; Sir.

Mr. DE NEFFE. Isn't it a fact that the more a man can cut when the market is high the more money he will make?

Mr. GIRARD. The more he can cut and get to market when the market is high. The thing to do is to have a fairly uniform market and pile your lumber up in your yard, and have a planing-mill capacity greater than your sawmill capacity and take advantage of the market when it is good.

Mr. DE NEFFE. There certainly would be a market for lumber if the price was away up high. That is why it is high, because there is a big demand.

Mr. GIRARD. Yes; but it takes anyway from 225 to 275 days to air season lumber so you can ship it. It depends on what time of the year you cut it. You can not anticipate with any degree of accuracy when this increase is going to be or when it is going to drop.

Mr. DE NEFFE. Under this contract, which allows him to cut a maximum of 150,000,000 by June 1, 1298, and a maximum of 300,000,000 by June 1, 1931, suppose the market is good during those periods. During that time he would cut a total of 150,000,000 plus 300,000,000, which would be 450,000,000 feet of timber cut prior to June 1, 1931, wouldn't it?

Mr. GIRARD. Yes.

Mr. DE NEFFE. Now, then, under this contract he would not have to cut any more until 1940, would he? Because the minimum amount which the contract says he must cut by 1940 is only 450,000,000 feet and he has already cut 450,000,000. So there is a six-year period there that he would not have to cut anything. Isn't that right?

Mr. GIRARD. According to your interpretation of the contract, I presume it is right.

Mr. MCGOWAN. Mr. De Neffe, may I ask you a question?

Mr. DL NEFFE. Yes, sir.

Mr. MCGOWAN. Are you critical of the contract clause because of the clause itself or because under the clause as drawn the successful bidder gets some undue advantage?

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Senator WALSH of Montana. He is simply trying to get an interpretation of the contract. He is trying to get what the contract means, what would be permissible under the contract.

Mr. MCGOWAN. Senator, without taking up too much of your time if he concedes and we for the Government concede that this clause went to the trade, there would be no material —

Senator WALSH of Montana. Why, you concede it. We do not know anything about that; the committee is entirely ignorant about the matter. You have stated that a number of times, and I assume that in due course you will put the evidence in.

Mr. MCGOWAN. Very Well.

Mr. DE NEFFE. You do not deny that he could lay off for six years and the mill would be idle, the people would have no pay roll, and the people up in Grant County would not have any operations there?

Mr. GIRARD. I said that according to the contract he could probably lay off, but according to good business he absolutely could not. He would probably be of more benefit to the community if he did want to lay off for a while. And if it was feasible to lay off for a little while when the market was poor then he would be forced to cut a certain definite amount each year. You can not make any timber contract absolutely ironclad; you have got to leave some flexibility. As a business proposition people do not do that. He can not do it, and there is nothing to indicate to my mind that he will do it. If you object to that clause write the kind of clause you think will protect the people.

Mr. DE NEFFE. I do not want to write any clause.

Senator WALSH of Montana. Let us not argue these matters now.

Mr. DE NEFFE. Before Mr. Herrick put in his bid did you discuss the matter of this advertisement for sale of

this timber with Mr. Ames in the Portland office?

Mr. GIRARD. No; I do not remember of ever having discussed it with Mr. Ames.

Mr. DE NEFFE. Never talked it, over with him at all?

Mr. GIRARD. I might have, but I have no recollection of it.

Mr. DE NEFFE. When was the first tune you ever talked it over with Mr. Ames?

Mr. GIRARD. About the advertisement?

Mr. DE NEFFE. Yes.

Mr. GIRARD. I do not remember the date, if I did talk it over with him.

Mr. DE NEFFE. Didn't you make any of your reports to the Portland office? It had jurisdiction over that, didn't it?

Mr. GIRARD. I made the appraisal report.

Mr. DE NEFFE. And then didn't you see Mr. Ames down there.

Mr. GIRARD. Certainly, I saw Mr. Ames a lot of times. But where the appraisal report was completed I returned to Missoula, Mont., and had nothing to do, as I remember, with the prospectus or the form of the advertisement.

Mr. DE NEFFE. And then after the bids were opened, did you talk with Mr. Ames soon after that?

Mr. GIRARD. I leave no recollection of seeing Mr. Ames along about that time.

Mr. DE NEFFE. Did Mr. Ames ask you anything about Mr. Herrick's past performance in operations of this kind?

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Mr. GIRARD. When?

Mr. DE NEFFE. Any tame after the bids were opened.

Mr. GIRARD. He has asked questions about Mr. Herrick since I have been down there in that operation, certainly.

Mr. DE NEFFE. I mean, before, the contract was signed did he talk with you about Mr. Herrick?

Mr. GIRARD. He probably did, but I don't remember Whether he did or not.

Mr. DE NEFFE. Did he ask you anything about Mr. Herrick's financial condition?

Mr. GIRARD. No; I do not remember of Mr. Ames asking about his financial condition.

Mr. DE NEFFE. Or his ability as an operator.

The CHAIRMAN. Mr. De Neffe, will you suspend now. The committee will recess until 10 o'clock tomorrow morning.

Senator WALSH of Montana. It is probably a matter of no consequence to you gentlemen whether I stay here or not, but tomorrow is the last day I can devote to this. I have tried to admonish you to hurry the thing along. I think we ought to have got through with all this in very much less time than it has taken.

(Whereupon, at 1 o'clock p. m., the committee recessed to meet to-morrow, Friday, February 18, 1921, at 10

o'clock a. m.)

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HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREGON

FRIDAY, FEBRUARY 18, 1927

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON PUBLIC LANDS AND SURVEYS,
Washington, D.C.

The subcommittee met at 10 o'clock a. m. pursuant to the recess on Friday, in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (chairman), Cameron, Kendrick, and Walsh of Montana.

Present also: Colonel Greeley, Chief of the Forest Service, and D. F. McGowan, attorney representing United States Forest Service; Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher; Frederick M. De Neffe, attorney representing Grant County, Oreg.

The CHAIRMAN. The subcommittee will come to order. Call the next witness.

Mr. HALLOCK. Mr. Chairman, we have a telegram from the president of the Exchange National Bank, of Spokane, as follows:

SPOKANE, WASH., *February 17, 1927.*

BLAINE HALLOCK,
Washington Hotel, Washington D. C.

Twenty-five thousand dollar item pertaining to Herrick bidding check forwarded by air mail last night.

C. E. MCBROOM.
President Exchange National Bank.

That is to advise the subcommittee that Mr. Flood has arranged to have that check sent to us, and I have no doubt it will be here either today or to-morrow.

May I make this further statement: We are in the midst of our case, but in view of Senator Walsh's statement that in all likelihood he would not be able to stay with the subcommittee after to-day, it occurs to me, if agreeable to the members of the subcommittee, and if Mr. De Neffe has no objection, that we might interrupt the more orderly presentation of our case and permit Colonel Greeley to take the stand this morning and also permit Mr. Herrick to take the stand, thus giving the subcommittee the benefit of the two most important witnesses, as we view it, while Senator Walsh can be with us.

Mr. DE NEFFE. We have no objection.

The CHAIRMAN. Very well, that may be done.

Mr. DE NEFFE. Mr. Chairman, I should like at this time to make a demand on the Forest Service for the production of a number of

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letters. There is a letter dated October 6, 1924, from Fred Ames, at Portland. Oreg., to James W. Guard, at Burns, Oreg. Might I have that letter, Mr. McGowan?

Mr. MCGOWAN. Mr. De Neffe, as you know, our files have been open to you ever since we have been here. Certainly you can have it; you can have anything in our files.

Mr. DE NEFFE. But I understood that I was not supposed to take any letters home with me. Did you understand that I might take letters out of the file?

Mr. MCGOWAN. Surely, you can take out anything you want here. All we want you to do is to keep them in order to the end that none might be mislaid.

Mr. DE NEFFE. The letter I refer to would be in the district file. But I looked through that file this morning and could not find it. I thought maybe you had it out preparatory to expecting to use it. It was in there the other day, and I made a copy of it, but should like to have the original.

Mr. HALLOCK. For convenience sake at this time you might use the copy.

Mr. DE NEFFE. I thought perhaps Mr. McGowan had taken it out of the file for the purpose of the trial this morning.

Mr. MCGOWAN. It does not seem to be in its place. We will look it up and furnish it to you.

Mr. DE NEFFE. Now, another letter dated October 26, 1924, from Fred Ames to James W. Guard, at Burns, Oreg. That is, from Fred Ames, of Portland, Oreg.

Then another letter dated December 1, 1924, written by the Fred Herrick Lumber Co., by James W. Girard, at Burns, Oreg., to Fred Ames, at Portland, Oreg.

Mr. HALLOCK. I wondered if you had not made copies of them; and if so, you might just use them.

Mr. DE NEFFE. I simply made a copy of one of them and took the substance of the other. I should like to have these letters.

Mr. HALLOCK. If there are letters on your list that we should furnish, just give me the list and let me get them.

Mr. MCGOWAN. I told you, Mr. De Neffe, that I would give you copies of everything we have. It is a little embarrassing to delay matters now when the committee is ready to go ahead.

Mr. DE NEFFE. That letter, Mr. McGowan, was in the district files, because I have seen it a couple of times.

Mr. HALLOCK. And the next one we were supposed to have?

Mr. DE NEFFE. The first one that you have, Mr. Hallock, would be October 6, 1924, from Ames to Girard, and the next one of October 26, 1924, from Ames to Girard. Is not the other letter in the district file, Mr. McGowan?

Mr. MCGOWAN. It certainly was in there.. But if you have misplaced it, it is my misfortune. However, we will get It for you.

Mr. DE NEFFE. I did not misplace it. Then a memorandum from the Forester dated July 14, 1924.

Mr. MCGOWAN. If you will give me a whole list of what you want I will have them looked up and furnish them to you.

Mr. DE NEFFE. I want the record to show our request. Then the letter dated January 19, 1925, from F. F. Carter, who is the assistant district, forester. Is he, Colonel Greeley?

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Colonel GREELEY. He is the assistant forester here in Washington.

Mr. DE NEFFE. That letter is to the district forester at Portland, Oreg. Then a letter dated September 30, 1924, from Fred Herrick —

Senator WALSH of Montana (interposing). Could not you just give them the list, so as to expedite matters?

Mr. DE NEFFE. Here is a copy of a list of what we ask for. If you will get these letters I will be obliged.

The CHAIRMAN. Well, you may call Colonel Greeley.

Mr. MCGOWAN. May I make a further statement before Colonel Greeley takes the stand? Mr. De Neffe asked for some information in connection with a check deposited by Mr. Flood in connection with the Herrick bid. We wired to our fiscal agent at Portland, Oreg., in connection with this matter, and while I will not read the telegram, he wires back that the money was received by him in due course and deposited by him in the bank at Portland.

WASHINGTON, D.C., *February 17, 1927.*

COUSINS,
Forest Service, Portland Oreg.:

Your receipts abstract April 6, 1923, certificate 583 first item. "Fred Herrick 25,000." Can you give date deposit received by you and form of remittance; also date you forwarded remittance to bank? Wire positive statement that no refund of this amount has ever been made if that is fact. Rush reply.

LOVING.

PORTLAND, OREG., *February 1 7, 1927.*

FOREST SERVICE, *Washington, D. C.*:

Loving's wire 17th, 25,000 deposit, mailed registered by E. E. Flood at Portland post office April 4, 1923, registry No. 26530, addressed to fiscal agent; received April 5 by me; mailed to Federal reserve bank April 5 by me; received by bank 8.10 a. m. April 6, as shown by receipt stamp, and credit given April 6 by bank. Can not recall in what form remittance made. No refund of this deposit of 25,000 has been made.

COUSINS.

FEDERAL RESERVE BANK OF SAN FRANCISCO,
Portland, Oreg., April 6, 1923.

I certify that A. H. Cousins, fiscal agent, has this day deposited to the credit of the Treasurer of the United States $26,498.63 on account of miscellaneous receipts, forest reserve fund, for which I have signed duplicate receipts.

E. M. CROUCH. *Cashier.*

(On the reverse side of the above appears the following :)

I certify that this is a copy of the original certificate of deposit on file in the Treasury Department.

A. M. SMITH,
Acting Chief of Division of Bookkeeping and Warrants.

FEBRUARY 17, 1927.

Mr. MCGOWAN. Here is also a tabulation of the fiscal agent's receipts, showing that the Herrick bid money of $25,000 was received, and in his telegram he states that there was no refund of this $25,000. I offer this abstract of receipts for the record.

(The abstract of receipts by A. H. Cousins, fiscal agent, Forest Service, Portland, Oreg., is here made a part of the record, as follows:)

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Abstract of moneys received by A. H. Cousins, fiscal agent, Forest Service, on account of miscellaneous receipts

Name and address	Transaction designation	Amount
Timber sales:		
Fred Herrick	Malheur	$25,000.00
C.C. Canine	Rainier	1.25
Grazing, cattle, and horses		
Ernest Lange	Chelan	7.56
McDaniel & Eastman	do	51.56
Frank Reynaud	do	14.28
W.A. McKibben	Colville	6.75
Jesse Rickel	do	14.70
E. Van Dusen	do	11.76
Fred Dorn	Crater	1.68
George Hoffman	do	4.32
Earl Gabby	Deschutes	12.60
Clarence Metzker	Fremont	14.40
H.W. Witham	do	12.60
Amos Lundy	do	36.00
David Vineyard	Siskiyou	14.40
C.B. Parker	Fremont	79.20
George Peyerl	do	14.40
S.B. Carter	Malheur	61.20
Do	do	14.40
Joe Axworthy	do	6.30
S.M. McLean	Rainier	19.14
John S. Ferrell	do	77.22
R.P. George	Siskiyou	18.60
Thos. E. Peacock	do	11.80
J.D. Hogue	Siskiyou-Klamath	8.80
David Barclay	Umatilla	31.20
James Horak	do	23.94
W.H. Morrow	do	21.60
S.P. Morrison	do	11.25
H.S. Brown	do	10.14

E.M. Lyon	do	3.90
S.E. Blankenship	do	42.90
McBride Bros.	do	6.24
Arthur March	do	23.40
T.F. Autrey	do	3.60
Eugene Hafer	do	29.03
Harry Hafer	do	22.79
Arthur Knight	do	15.01
Charles H. Neal	do	2.93
E.S. Wolfe	Wallowa	10.56
L.A. Morris	do	16.80
J.H. Maxwell	do	36.00
Clarence Spangler	do	79.20
Alvin McFetridge	do	196.80
C. Spangler	do	33.75
Stumbaugh & Reeves	do	5.40
A.H. Drewett	Whitman	11.54
Lester A. Drewett	do	11.54
Elms & White	do	21.45
Fred A. Fedler	do	50.30
Theodor Miller	do	59.40
Roy A. Hunt	do	9.90
Sheep and goats:		
C.B. Parker & Son	Fremont	150.60
C.W. Brown	Siuslaw	5.00
Special uses:		
A.M. Pringle	Deschutes	8.00
Do	do	8.00
E.B. Brewer	Fremont	6.65
C.W. Paulus	Umatilla	15.00
TOTAL		26,496.63

I certify that I have received duplicate certificate of deposit No. 583, dated April 6, 1923, from the Federal Reserve Bank of San Francisco (Portland, Ore., branch), depositing the above, in my name, to the credit of the Treasurer of the United States on account of miscellaneous receipts, forest reserve fund.

A. H. COUSINS, *Fiscal Agent.*

The CHAIRMAN. Colonel Greeley will now take the stand. Hold up your right hind. You do solemnly swear that. the evidence you are about to give in the hearing now being held by this subcommittee of the Committee on Public Lands and Surveys of the United

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States Senate will be the truth, the whole truth, and nothing but the truth, so help you God?

Colonel GREELEY. I do.

The CHAIRMAN. Just have a seat there.

TESTIMONY OF COL. W. B. GREELEY, CHIEF FORESTER,
UNITED STATES FOREST SERVICE, DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.

(Direct examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Colonel Greeley, what is your name?

Colonel GREELEY. W. B. Greeley.

Mr. MCGOWAN. What is your position?

Colonel GREELEY. Chief of the United States Forest Service.

Mr. MCGOWAN. Have you been in charge of the National Forest Service work governing the Fred Herrick timber sale?

Colonel GREELEY. I have.

Mr. MCGOWAN. Following the passage of the joint resolution by the Senate did you enter into communication with the members of the Oregon Legislature in connection with this matter?

Colonel GREELEY. Yes.

Mr. MCGOWAN. I hand you a telegram and ash you if you sent such a wire.

Colonel GREELEY. I sent this telegram to four members of the Oregon Legislature, for the purpose of bringing out their real viewpoint as to what should be done with the Herrick contract.

Mr. MCGOWAN. If there is no objection, may I read it?

Mr. DE NEFFE. I have no objection.

Mr. MCGOWAN. The telegram is as follows:

[Telegram]

FEBRUARY 5, 1927.

HENRY L. CORBETT.
WILLIAM G. HARE,
FRED. T. MEINDL,
JOHN H. CARKIN,
Oregon Legislature, Salem, Oreg. —

Mr. HALLOCK. Do you want those men identified, their positions with the legislature in order to know what they are there?

Mr. MCGOWAN. Yes.

Mr. HALLOCK. Mr. Henry L. Corbett is the president of the senate; Mr. John H. Carkin is the chairman of the house; Mr. Meindl is the chairman of the resolutions committee of the house; and Mr. Hare is the chairman of the resolutions committee of the senate.

Mr. MCGOWAN. I thank you. Now, the telegram is as follow:

> Subcommittee Public Land Surveys, Senator Stanfield, chairman, will begin investigation Herrick timber-sale contract February 11. Forest Service asking for complete inquiry desiring to retain confidence people of Oregon. No proposal ever submitted to me to modify common-carrier provision in Herrick contract, and no such modification would be approved. Purpose of Forest Service in handling all phases this sale, has been to give Harney and Grant Counties a common-carrier railroad and bring about earliest possible manufacture of Government timber. May I ask if memorial passed by Oregon Legislature should be construed as expression of lack of confidence in integrity of Forest Service? Would you be willing to appear before Senate committee

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> and relate facts surrounding introduction and passage of this memorial? Would you please furnish me names and addresses of persons who furnished information upon which memorial was passed. County Judge Williams, Mayor Jamieson, and President Hibbard of Commercial Club, all of Burns, have forwarded to Oregon congressional delegation expression of confidence in course taken by Forest Service and disagreement with action of Oregon Legislature, stating no time allowed for presentation all phases of case. This document appears in Congressional Record February 4. Would appreciate reply by wire.
>
> W. B. GREELEY, *Forester.*

Mr. MCGOWAN. Colonel Greeley. Did you receive any telegram in response to that wire?

Colonel GREELEY. Yes: I received this one that you have just handed me.

Mr. MCGOWAN. And this telegram in reply is as follows:

> SALEM, OREG., *FEBRUARY 9, 1927.*
>
> W. B. GREELEY,
> *Chief Forester, Forest Service,*
> *Washington, D. C.*
>
> Answering February 5 memorial passed Oregon Legislature not in my judgment expression lack of confidence in integrity Forest Service. Question relative to past officials now with Herrick. We can not appear before Senate committee as legislature here in session. Chairman Oregon State Senate committee on resolutions will wire names and addresses requested by you. Legislature's earnest desire to safeguard common-carrier provisions in Herrick contract and get Herrick to do business without any more delay.
>
> HENRY L. CORBETT,
> *President Oregon State Senate.*
> JOHN H. CARKIN,
> *Speaker of House of Representatives.*

Mr. MCGOWAN. Colonel Greeley, when did you first come in touch with this timber that was later covered by the Herrick sale.

Colonel GREELEY. It was early in the spring of 1922.

Mr. MCGOWAN. Now, you might go along in your own way and just relate the developments. I think probably you do not need any examination from me on that.

Colonel GREELEY. I should like to say first to the members of the committee that every important decision in

connection with this contract was made by me personally, and that I personally assumed full responsibility for every act of the Forest Service in connection with this contract.

Early in 1922 I was called into conference by several members of the Oregon delegation in Congress, in connection with a visit to Washington by Mr. Barnes, and was urged to take all possible steps to expedite the cruising and appraisal of this timber and the placing of it on the market.

I took up the matter at that time with my associates in the Forest Service. We had known for many years that there was a very large body of some 6,000,000,000 or 7,000,000,000 feet of national-forest timber in central Oregon. We knew that the Government lands contained the major portion of the timber resources of that region and that lumbering development in all probability could not be established unless it was based upon a large contract for the cutting of national-forest stumpage. We knew that the region lacked transportation facilities, and that the bringing of transportation facilities in all probability rested upon the establishment of a large lumber manufacturing operation.

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We were in sympathy with the desire of the local people to bring these developments to that section of the State, and we also felt it entirely desirable for the purposes of the National Forest to begin utilization of this large body of matured timber on a basis that would make such utilization perpetual. So the various steps were initiated as developed in the testimony: Appraisal of the timber, the first advertisement, and the resulting second advertisement after no bids were brought out by the first, advertisement.

Now, I want to say something very definite in regard to the common-carrier provisions of the Herrick contract. From the outset of our consideration of this matter the need for requiring the building of a common-carrier railroad was evident. The national forest in this locality contained a very large quantity of timber in excess of that offered for sale. In order to procure the later development and utilization of this national-forest timber, it was necessary to have a common-carrier railroad available for its transportation. In addition to that was the very great local benefit that would accrue from the construction of a common-carrier railroad.

Senator KENDRICK. Colonel Greeley, did you have in mind the necessity of providing transportation service for the timber on the privately owned lands?

Colonel GREELEY. That, of course, was involved, as a common-carrier railroad would enable the privately owned timber to be utilized along with the Government timber in the natural and logical development of lumbering operations. But from the Government standpoint alone it was essential that our big volume of stumpage in that region should not be dependent upon a private railroad for access to the market. So that the common -carrier feature of the sale from the start was in my judgment one of its most essential features.

In the summer of 1922 I met in Portland, Oreg., with Mr. Barnes and several other people from Burns and its vicinity; representatives of the Portland Chamber of Commerce, and representatives of other Oregon organizations. I told them at that time that the Forest Service was committed to the common-carrier feature of this contract; and my viewpoint on that matter has never changed.

When bids failed to materialize from the first advertisement and an offer in tentative form was received from the Brooks-Scanlon Lumber Co., I arranged for Mr. Carter and Mr. Ames to go to Minneapolis and discuss that matter in detail; and I instructed Mr. Carter to the effect that the common-carrier clause in this contract was a point that should not be conceded under any circumstance. My position in that matter has remained unchanged to the present time. I have received no applications or requests from Mr. Herrick, or from anyone representing him, to change the common-carrier clause of that contract. And I am free to say to the subcommittee that no such change would be considered by me for a moment.

I do not believe that clause 38 of the contract has been affected in any way by the terminology of the modifications that have been made in reference to the construction requirements. If there is any doubt about that I will be perfectly glad to clear it up in a subsequent modification of the contract. To my own mind there is no doubt about it, and I want to add this: That at no time, in all this

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controversy, have I ever received from Mr. Barnes, or the people in Burns, any request to know what my position was regarding the common-carrier feature of the contract. There never has been any letter or any request from them to find out what the attitude of the head of the Forest Service was as to that feature of the contract. So that I was completely at a loss to understand how the Oregon Legislature, or anybody else, got the impression that the Forest Service was disposed to abandon that clause.

I want to add this as to the question of the Seneca terminal: That —

Senator WALSH of Montana (interposing). Before you pass from that feature of it, Colonel Greeley, let me ask:

I thought that some apprehension might have been excited by the interview purporting to have been given by you in which you referred to the road from Burns to Seneca "a logging railroad "?

Colonel GREELEY. If there was any misapprehension resulting from the use of the words "logging railroad " it was entirely unintentional on my part. But that was not an interview given out —

Senator WALSH of Montana (interposing). I may have an entirely erroneous idea of it, but I have always regarded a logging railroad as a kind of private means of transportation used exclusively for the purpose of hauling logs in a logging operation.

Colonel GREELEY. A logging railroad might be a private railroad and it might be a common carrier. It is just a question of the definition of the terms. That was not an interview which was given out by me, but it was the publication of a letter which I wrote to Senator McNary in response to his request, as to what form of modification was proposed, and I used the term "logging railroad" to describe the tap line running north from Burns into the timber.

Senator WALSH of Montana. Well, how does that road differ in any essential respect whatever from the road between Burns and Crane?

Colonel GREELEY. Only to the extent that the road from Burns to Crane will be operated as a part of the Union Pacific system and will carry general traffic.

Senator WALSH of Montana. Why will not the other road carry general traffic?

Colonel GREELEY. The road from Burns to Seneca will carry primarily logs. Of course it will carry other things as well, but logs will be the main item of traffic. However, all I can say is that there was no intention on my part in the use of the term "logging railroad" to imply that it was not to be a common carrier. And there has never been any change or any intent to change the common carrier requirement of the contract.

The question of the location of the terminal at Seneca does not involve the contract itself. It has not been involved in any modification of the contract. That is simply a matter of interpretation of what is the intent of the contract. Then, again, there has never been any complaint or any protest submitted to me on that point. And I again am at a loss to understand the feeling of the local people that the Forest Service is disposed to handle that matter so as not to provide them with the transportation facilities that were intended.

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I am ready to act on that proposition at any time that action is necessary. The district forester, Mr. Granger, has told me of his conferences with the county court of Harney County and his desire to obtain from them a definite expression of just what form of connection with the public highway is desired and necessary in order to provide loading facilities and ready access to the people of that community. And all that I have to add on that point is that it was one of our fundamental purposes to provide common carrier transportation for that region, and we will carry out that purpose, and we will see that the terminus is located wherever necessary to accomplish that purpose.

Now I should like to take up the readvertising of the timber in the winter of 1923. In response to the desires expressed by the Oregon delegation, and by many people in Oregon, we had under taken to place this timber upon the market. We had advertised it for a period of six months, using every channel of publicity available in the effort to enlist interest. As a result of that six months' advertising we had received no bids. From a local standpoint I felt that that established sufficiently the fact that the timber apparently was not salable at the price that had been placed upon it. In such an appraisal, particularly an appraisal covering such a large acreage of land and such extensive investments for operating purposes, it necessarily involves many questions that must be settled by judgement; they can not be settled by positive facts. You must draw upon the judgment of the appraiser. I went over that appraisal carefully and discussed it fully with my associates. There were certain elements in the appraisal that were open to doubt.

On July 25, 1922, shortly before the first advertisement was started, I received a letter signed by a committee of people in Burns, Mr. I. S. Geer, Mr. William Farre, and Mr. E. W. Barnes, which took up the appraisal of the timber that had previously been furnished them in considerable detail, and pointed out half a dozen or more respects in which they regarded that appraisal as too high. The same viewpoint was expressed to me by the Oregon people with whom I conferred in Portland during the summer of the same year.

I will not go into the details of the reasons why I thought the appraisal was too high, beyond mentioning one or two of the possibly more significant features: The appraisal was based on the assumption that the railroad into Burns would be constructed by the Union Pacific system without the necessity of an investment for that purpose by the operator. It further was based on the assumption that the regional freight rate available to eastern Oregon points

would be available to a lumber mill at Burns. Both of those questions were problematical, open to doubt, as I viewed the matter then, but that the situation might materialize in those, ways, and it might not.

Further, the indicated investment in the manufacturing plant, as reported by the appraisers, appeared to me to be very low. The investment in the mill and mill equipment, as reported by the appraisers, was, I think, $518,000, whereas a number of local people, including the gentlemen who wrote me from Burns on July 25, made the claim that it would require at least $800,000. I felt that quite likely the appraisers had underestimated the necessary cost of the type of mill required at Burns in order to efficiently manufacture this timber.

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There were a number of questions that the Oregon people, in this letter, took exception to, among them the appraisers' estimate of the cost of logging—and it was a low estimate; another matter open to doubt.

I simply want to state the fact that I went over the appraisal to the best of my judgment and with the desire to carry out the purposes of the Forest Service in initiating this sale, the beneficial use of the national forest timber, and representing the interests of the Government, the development of the local region, and as representing the interests of the community, I felt that it was incumbent upon me to resolve certain of these doubtful features in favor of a lower price on the timber. At any rate, that is what I did, and, as I have stated, the responsibility for that action is entirely my own.

When the offer was received from the Brooks-Scanlon Lumber Co., to pay $2 for the timber upon readvertising, I asked Mr. Carter to go to Minneapolis and discuss the matter in detail, in company with Mr. Ames, and that if the offer of the Brooks-Scanlon people was consistent with our purposes and aims in handling the timber in other respects, that we would reappraise the timber at $2 and readvertise it at that price, giving anyone interested an opportunity to submit a higher bid if they were pleased to do so.

The timber was therefore reappraised. by me and its readvertisement by the Portland office was ordered. In connection with the readvertising there were certain changes in the prospectus, aside from the matter of price. The Brooks-Scanlon Lumber Co., which, as far as we knew at that time, was the only concern ready to submit a bid on the timber, had urged from the outset of their negotiations a much more liberal provision in regard to the rates at which the timber could be cut. Their initial offer was based upon a revision of the sample contract that would permit them to cut as much as 80,000,000 board-feet each year from the national-forest lands.

I might say that we had limited our maximum cut to 50,000,000 board feet each year, because that represented our best estimate of the growing capacity of the whole territory included in this plan of management; and the enterprise as we had laid it out was based upon cutting no more than the forest would concurrently reproduce by growth so as to make the supply of raw material perpetual.

We declined to modify that requirement, but in response to the offer of the Brooks-Scanlon Lumber Co. we did agree to change the wording of the clause as it appeared in the prospectus, so that the right to cut at least 50,000,000 board-feet a year should be operative from the start of cutting operations. As the clause in the prospectus was worded it was assumed an operator would cut considerable timber during the earlier years from private lands which formed a part of the same logging unit, and, as that clause was stated in the prospectus, it was contemplated that for a period, I think of six years or thereabouts, the cut on Government timber would be less than 50,000,000 feet a year, and from then on during the remaining life of the contract the cut of Government timber would exceed 50,000,000 feet a year, so that in the end, by 1945 when all the cutting was to be completed, the two operations would have come out to the same point. The Brooks-Scanlon Lumber Co. did not know at what rate they would operate on the private timber, and they asked for the

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right to cut 50,000,000 board-feet a year from Government lands, beginning at the very start of the operation, and that right we accorded and we rewrote the sample contract accordingly. That is the basis of the change in clause No. 3. The proviso added to clause No. 3, which stated that in the event more timber is found on Government land than the 890,000,000 feet estimated, the district forester shall revise the cutting limits and permit this additional timber to be taken out within the lifetime of the contract, was simply a statement of policy or an administrative interpretation of what our course would be in the event of that contention.

I want the matter clear that the proposal in the prospectus, and the proposal in the readvertisement, was not for any fixed quantity of timber. It was for all of the timber designated for cutting on certain prescribed parcels of land. We gave our estimate of what that timber would amount to as 890,000,000 feet, but what we actually offered for sale in the first advertisement and in the second advertisement, and what we have agreed to sell in the Herrick contract, is all the timber standing on that land and marked for cutting in accordance with the forestry system employed by the Forest Service, whether it prove to be 890,000,000 feet, or less than that amount, or more than that amount. And under our contract, under the contract that would have conformed precisely with the terms of the first prospectus, should there have proved to be timber in excess of 890,000,000 feet, we would have been obligated to permit the contractor to remove it during the period allowed for cutting.

So when the Brooks-Scanlon Lumber Co. raised that question, and said they wanted a specific statement in the contract as to what the course of the Forest Service would be, if there should prove to be excess timber over the estimated amount, we wrote it in, and we wrote it in the form of that proviso.

We could have handled the matter otherwise under the authority given in that contract to have these cutting limits changed by the district forester. You have got to have a flexibility in these matters, because all timber estimates are not exact, and usually if the estimate is conservatively made there will be some overrun.

Senator KENDRICK. Right there let me ask: Was there any obligation in the contract, that would have compelled the department to furnish as much as the 890,000,000 feet?

Colonel GREELEY. No, sir. The contract is very clear that we are selling all the timber designated for cutting on that 67,000 acres, more or less; 890,000,000 feet is given as our estimate; that is our uniform system of selling timber to sell all the timber that is found to stand on a designated area.

So that I do not regard the proviso attached to clause 3 as changing in any way the intent of the original prospectus. It was a statement of administrative policy to be followed in event that this contingency should arise of finding more timber than that which had been estimated.

But, in any event, let me make this clear: That following my decision to reappraise the timber at a minimum rate of $2 per thousand feet for the yellow pine, and to accept these modifications in the sample contract that had previously been provided, in order

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to make sure of getting a bid under conditions that we thought to be proper, the timber was readvertised, and the new conditions of sale in certain particulars were a part of that readvertisement. To the extent of those things the old prospectus was abandoned. These new conditions of sale were involved in a sample contract in every case of any consequence.

Before timber is advertised we draft a sample contract setting forth completely the terms and requirements. That sample contract is furnished to anyone who is interested; and the form of the advertisement in this case, the second advertisement as well as the first, stated explicitly that anyone intending to bid, or interested in bidding, should obtain from the district forester at Portland the terms of sale in their complete form, so that he might know exactly on what basis his bid was being submitted.

Senator WALSH of Montana. Have you that advertisement?

Colonel GREELEY. Yes, sir. The district forester in Portland was instructed in connection with that section of the advertisement to give the widest possible publicity to the terms of sale as revamped, and I am satisfied from my perusal of the records that that was done. Mr. Ames or Mr. Granger can testify about just what steps were taken to do that. The advertisement to which I refer is the one dated March 5, 1923. It is very similar to the one dated August 5, 1922, except for the change of expression, and I should like to call attention to the final paragraph on that page:

> Before bids are submitted full information concerning the character of the timber, conditions of sale, deposits, and submission of bids should be obtained from the district forester at Portland, Oreg., or the forest supervisor at John Day, Oreg.

Mr. MCGOWAN. Colonel Greeley, would it not be well to call the attention of the subcommittee to that provision for cutting 50,000,000 feet?

Colonel GREELEY. At the end of the paragraph the sentence goes on to provide:

> The contract will permit the cutting of Government timber at an average rate of 50,000,000 feet log scale annually.

That is a statement which was not included in the first advertisement.

Senator WALSH of Montana. As I understand you, Colonel Greeley, under the first advertisement if a party desired to bid he could communicate with the forester at Portland, who would send him a copy of the prospectus. And if he wanted to bid under the second advertisement the forester would, on application, send him a copy of the prospectus with the modifications proposed.

Colonel GREELEY. Yes, sir.

Senator KENDRICK. There has been testimony here that indicated some difficulty in the matter of an

examination of this contract after it was written. Do you know anything about any refusal to have the contract, or a copy of the contract, examined after it was entered into?

Colonel GREELEY. I can not testify as to that.

Senator KENDRICK. Was a copy of the contract kept in the western office?

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Senator WHEELER. Oh, Yes. The original contract was out there, and very complete records.

Senator WALSH. Is there any policy of your office to refuse to anyone a copy of such a contract?

Colonel GREELEY. It is the general policy of our office to furnish records where they are required for a public purpose. Aside from that, under the administrative regulations of the department, as I recall them, an examination of records is permitted, and I have been advised by Mr. Granger that full opportunity to examine any records in this case was granted or allowed.

Senator WALSH of Montana. That appears so far from the testimony, but it also appears that the county court, or the judge of the county court, sent a messenger there asking for a copy of this contract, and that it was refused. Was there any reason for refusing those people an opportunity to take a copy of the contract?

Colonel GREELEY. I think that the various officers were within their rights in declining to furnish copies of contracts of this nature, unless there is an indication of a legitimate public purpose in obtaining such copies. You must appreciate that these contracts deal with this relationship and obligation of individual citizens or companies toward the Government and a certain measure of protection of the interests of such citizens or companies in their relations to the Government is in my judgment required.

Now, possibly in this case a copy of the contract should have been furnished to the county court, but it really seems to me that in inviting those gentlemen to examine the files to any extent they desired the district forester did all that was required of him.

Senator WALSH of Montana. Yes; but I should naturally think, Colonel Greeley, that they might, and very properly, desire to study it with care, and to examine it with their counsel, so that they could keep the Forestry Service advised as to whether its terms were being observed.

Colonel GREELEY. I recognize that viewpoint.

Senator WALSH of Montana. It seems to me that that gave occasion for irritation where bone need to have existed.

Colonel GREELEY. I should now like to take up the next point —

Mr. MCGOWAN (interposing). Might I make a suggestion there in connection with Senator Walsh's observations: Senator, there was a copy of this contract on file in the local supervisor's office at John Day, Oreg., and if there had been a desire for an examination of the contract for an extended time by anybody who wanted to look at it, and with counsel, an opportunity there would have been given.

Senator WALSH of Montana. Where is John Day with reference to Burns?

Mr. MCGOWAN. John Day is in Grant County, is it not, Mr. Granger?

Mr. GRANGER. John Day is in Grant County about 80 miles from Burns, but the county court making the request was located in John Day, which was the county court of Grant County.

Mr. HALLOCK. Might I just make a little correction there, because that is not quite the situation: The county court of Grant County sits at Canyon City, which is a distance, perhaps, of 3 miles

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from John Day. There is that distance from the sitting place of the county court and the

place where the forest supervisor was.

Senator WALSH of Montana. All right; you may proceed.

Colonel GREELEY. Now, if I may, I should like to take up the modifications of the Herrick contract: The Forest Service has outstanding several hundred contracts for large quantities of Government timber. We have frequently found it necessary to made modifications of the original terms of those contracts. It has frequently been found that difficulties or delays have been incurred in the prosecution of construction operations, or of lumbering operations difficulties or delays over which the operator had no control, or at least for which he is not responsible. In solve cases the Forest Service has modified contracts in respect of the required amount of timber to be cut, because of serious depression in the lumber market and because to force the operator to cut the required quantity of timber under the circumstances would be to force him to operate at a positive loss.

It has been our general policy, just so far as we could ascertain the true facts, to prevent speculation or the speculative holding of Government contracts, and not to make modifications where it was apparent that an operator was not acting in good faith, where it seemed not to be his intention to prosecute a contract with due diligence and he was holding it for some speculative purpose. But where we have felt that an operator was acting in good faith, and that it was reasonable to give him a longer period of time to comply with certain requirements, we have made such modifications, and we have made a good many of them. We have felt that that was sound policy from the public standpoint, because the public, as the owners of these big natural resources, must depend upon the lumber companies and the paper companies to convert that natural resource to beneficial uses; and hence that the public, as the owners of the stumpage, must recognize the practical conditions which our operators encounter and must deal with those conditions fairly and reasonably. That has been our general policy, and I want to bring out the fact that the three modifications which have been blade iii this contract —

Mr. MCGOWAN. (interposing). Before you get into that, Colonel Greeley, will you explain a little more the three major considerations that you always have to keep in mind in connection with these contracts, about the interests that you have to look after.

Colonel GREELEY. Well; in all these cases where modifications of contracts are requested, you might say that the considerations which influence the Forest Service are:

1. The interests of the Government, which require a reasonable prosecution of the plan for converting the timber into lumber, with the consequent receipts that accrue to the Treasury of the United States, and to the State and county; that it is timber which, in many cases, would otherwise deteriorate. So the interests of the Government are one factor.

2. Next, the interests of the community represented might be said to be the second factor that we must consider. In the case before you the interests of the local communities are rather exceptional because of the fact that this contract represents the bringing to, them of a common-carrier railroad. There are many other in-

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stances, however, where the local community interests represent a factor which must be considered.

3. The third factor that might be considered is the equitable treatment of the operator, who has in the usual case made a substantial development, who is developing a business enterprise dependent upon the contract, and who is entitled to equitable consideration for the investment that he has made and the degree of diligence that he has shown.

We try as far as we can to approach all these questions, in all timber sales, with these general considerations in mind.

Now, I should like to make clear the point that none of the modifications made in Mr. Herrick's contract have changed the date when the quantity of timber which he has purchased must be cut, which is 1945.

There has been no change in the requirement that a substantial quantity of timber, namely 60,000,000 board feet, shall be cut by June 1, 1928.

The modifications have all dealt with the construction work preliminary to the beginning of operations. And the net effect of the three modifications that I have approved has been to postpone the beginning of actual manufacture under this contract approximately two years.

The second general feature of it is that we have felt that the situation making it necessary for Mr. Herrick to request these modifications was partly due to reasons beyond his control, and partly due to his own negligence in meeting the requirements set forth by the Government.

It is my judgment after considering all the factors to date, that the period of two years set up when this contract was entered into, for the completion of the railroad, sawmill plant, etc., was too short a time for an enterprise of that magnitude; that it should be considered that all the engineering plans had to be made, all the rights of way acquired, all negotiations with the Union Pacific Railroad affecting the transportation from Burns outward had to be completed, together with the actual construction of between 80 and 90 miles of railroad, and the construction of a large sawmill plant involving the necessary planning of all that; considering also the fact that all rights of way had to be acquired, and that that involved some litigation; that there was considerable delay in securing a permit to construct the railroad across a reclamation project under the control of the Government itself; and that there was sine delay in securing the necessary authority from the Interstate Commerce Commission, I want to say that reviewing broadly the whole situation in the light of events to date, I think that two years was too short, a time to expect all these things to be completed, and the manufacturing of timber to be begun. I do think that three years would have been sufficient and ample time, and that to the extent that the delays have extended these preliminary features of the enterprise to cover a fourth year, I regard as due primarily to the negligence ,of the contractor, to his unwillingness or inability to so handle his financial affairs that the money should be available for the prosecution of the work.

It has been apparent to me in going over the reports made by our people who have examined the work on the ground from time to

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time, that at various stages during these past three years the work was not being pushed to the extent that it was possible to push it, to the extent that the physical conditions permitted it to be pushed; and it was for that reason primarily that in connection with one of the modifications the requirement that. the $50,000 be forfeited as liquidated damages to the Government was enforced. That was the penalty for failure of performance.

I am trying hard simply to give you my general impression as between the differing elements entering into this situation. There were some elements that I regard as beyond Mr. Herrick's control, necessitating delays that were not anticipated at the time the contract was entered into. There were other elements that I regard primarily due to his own acts or his own attitude toward the furnishing of funds necessary to prosecute this work.

Senator KENDRICK. I want to ask whether or not the limited demand for lumber, or the very greatly reduced price of lumber might have had any influence upon the ability of the contractor to provide funds for the promotion of this enterprise.

Colonel GREELEY. I have no doubt that the depressed condition of the lumber market did restrict the funds that the contractor had available under the plan of financing which he chose to follow.

Senator KENDRICK. It has been testified here that he planned and expected to finance this enterprise from earnings derived from the operation of his other enterprises, and my question was to determine whether or not the general conditions of the lumber industry were such as to prevent him from earning any money and, further whether or not there was a surplus of production on the market and difficulty in finding a sale for lumber when it was produced.

Colonel GREELEY. It is true, Senator Kendrick, that since 1923 the market for the class of pine lumber produced or expected to be produced from this timber has been depressed. There has been a material decline in the prices obtained for such lumber, as shown by the records available to the Forest Service. And I presume it is true that the profits obtained by a concern manufacturing that class of lumber have been greatly curtailed during 1924, 1925, and 1926, as compared with what they were during the four or five years preceding 1924. I believe it to be true, based on general information, that many concerns operating in the Northwest during these last three years have obtained no profit whatever, or have operated at an actual loss —

Senator KENDRICK (interposing). I asked the question not to suggest that I thought that conditions existing in the general trade and business was sufficient warrant for a failure to comply with the contract. However, to indicate that it might have proved very difficult if not impossible for the contractor to carry out the exact terms of his contract, or to fulfill his contract as written with the Government.

Colonel GREELEY. If we were to assume, or if we had had an agreement that had been written in the contract, or agreed otherwise, by which Mr. Herrick was to construct this railroad and mill out of profits obtained in his other operations, from the current production and sale of lumber, he would have ample ground, and doubtless could show good reason why the requirements of his contract have not been met. But there was no such agreement with the Government and no such understanding.

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Senator WALSH of Montana. And you would not make any such agreement with anybody?

Colonel GREELEY. No, sir; not under any conditions would I make such an agreement.

Senator WALSH of Montana. Is it not quite absurd for anyone to finance a two or three million dollar proposition out of the earnings of other businesses aggregating in value some $8,000,000?

Colonel GREELEY. That is my own impression of it. Let me emphasize that further, that when this timber was awarded to Mr. Herrick he was informed that the contract would be entered into with him in accordance with the terms of the sample contract upon which the stumpage was advertised, provided he made a showing of financial ability to carry out the enterprise. That is our uniform procedure.

.Senator WALSH of Montana. It is evident that another application will have to be made, as you suggest, for a further modification or extension of the contract. So let me ask you this question: Is it your purpose to require Mr. Herrick to show you how he is going to finance this thing as a condition to a further extension?

Colonel GREELEY. It is, absolutely.

Senator WALSH of Montana. He has got to have the money available.

Colonel GREELEY. I have informed Mr. Herrick's representatives that no further extension of the contract will be made unless there is a very definite showing of assets in the form of cash directly available for putting into this operation in sufficient quantity to build it.

Senator KENDRICK. In connection with Senator Walsh's statement that it would be absurd for a contractor to plan, as I understood him, to carry out a contract of this kind on the basis of the earnings from his other businesses. I might say that however absurd it may be, it is the basis on which 95 per cent of the business of the country is conducted.

Colonel GREELEY. Let me make my point clear right there, Senator Kendrick: I did not say that it would be absurd for him, but that it would be absurd for the Forest Service to make a contract predicated on the basis mentioned.

Senator KENDRICK. Quite so.

Colonel GREELEY. Or, the basis that the construction work under that contract shall be done only to the extent that profits are corning in from some other operation. At all events, that was not our intent in this sale and it was not the basis of the contract. The contract assumed that Mr. Herrick was adequately financed to go ahead and build this work, regardless of the condition of the lumber market.

Senator KENDRICK. But it would be absurd for Mr. Herrick to anticipate earnings in these other businesses to be used in financing the new enterprise.

Colonel GREELEY. Possibly not, from his standpoint. I can only say that from my standpoint we did not award the timber to Mr. Herrick or enter into the contract with him with any such understanding. We expected him, and we had reason to expect, from the character of the financial statement he submitted, to be in a position to go ahead and furnish the funds to build this construction work as rapidly as the physical conditions and possibility of litigation or

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other difficulties would permit. And it was because Mr. Herrick, in my judgment, has not done that, in part, that I felt the $50,000 of liquidated damages should be collected, as damages due to the Federal Government for failures of performance. And that action was taken, as you know, last spring.

Senator KENDRICK. And without reservation?

Colonel GREELEY. Yes; and without reservation. That money is now in the Federal Treasury, and as far as I have anything to say about it, it will stay there.

Senator WALSH of Montana. My experience in business has not been quite as extensive as has that of my colleague here (Senator Kendrick), but I should naturally think that a man engaged in an enterprise of this kind would make arrangements to borrow something on his other securities in order to carry out such an enterprise, provided the profits of his other businesses did not furnish adequate funds, and that he would make that arrangement before he entered upon the contract.

Senator KENDRICK. Certainly so. But the Senator from Montana (Senator Walsh) has, I believe, failed to take into account the adverse conditions that apply when a man's business is not earning money, in so far as it affects his credit.

Mr. HALLOCK. Might I have just one question at that juncture. Colonel Greeley —

Senator KENDRICK (continuing). Let me illustrate my point for just a moment: I want to make it clear that my question suggested, not the wisdom of the Forestry Department in accepting any such theory in writing their contract, but it was the possibility of adverse conditions in his business preventing a man from receiving the funds from his business that he was legitimately entitled to receive, and therefore affecting his credit. My statement was, in effect, that it is in anticipation of just such earnings that 95 per cent of the business of the country is conducted. And anyone who has had to do with business—and I do not subscribe to the modesty of my friend, the Senator from Montana (Senator Walsh) in saying that he had not had as much experience as I have had, because I am sure he has had ample experience in business, and he knows that the moment that business ceases to return an income why the credit of that business is adversely affected accordingly.

Mr. HALLOCK. Would you gentlemen object to just one question right there. I do not want to interrupt Colonel Greeley, and doubtless he would like to make his statement with more continuity than is possible with interruptions, but if he will permit me I should like to get this question answered: It is your understanding that Mr. Herrick has been able to put well in excess of a million dollars in that venture with his present program of financing.

Colonel GREELEY. I have a report from my logging engineer which shows that up to September 15, 1926, he estimates that Mr. Herrick's investment is $925,000. I have no doubt that a considerable additional sum has been invested since that date.

Mr. HALLOCK. Here is the only point I want to get an expression from you on: If, for the sake of the question, you will assume that Mr. Herrick's annual cut is approximately 150,000,000 feet and if we can assume that Mr. Herrick has taken a shrink in the market

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of from $7 to $10 a thousand on that annual cut, and if as a result of that calculation it appears that his revenues have been reduced in excess of a million dollars a year for the past two years, and if in addition to that, as the testimony indicates, he was converting some of his properties from time to time and raising funds in that way, would it seem to you that a financial program such as it appears he has entertained, up to this juncture at least, is subject to any very severe criticism?

Mr. DE NEFFE. Is not that question based upon the assumption that the contract was entered into upon the basis that he would be able to carry this out from his other operations, if they were successful?

Senator WALSH of Montana. It seems to me it is based upon the assumption of a number of facts that have not been testified to.

Mr. DE NEFFE. Colonel Greeley testified here that the contract was not made on that basis at all.

Senator WALSH. I think Colonel Greeley better go on with his statement.

Colonel GREELEY. From time to time during the period when these modifications have been requested and considered, recommendations have been received from local people to the effect that the Herrick contract should be canceled. I want to say in brief that the Forest Service has not acted on those recommendations. We have been just as much disappointed as the local people have in the delay in the completion of the railroad and the mill and the beginning of actual lumber manufacture but we have had to recognize, not only the equities to which Mr. Herrick was entitled by virtue of the substantial investment he has made, and, as indicated, our official report says that $925,000 was invested up to September 15 last. We had to recognize the equities due Mr. Herrick because of the

substantial investment he has made, and because of the conditions that he anticipated in entering into this contract.

Furthermore we have had to recognize certain very practical conditions. The Forest Service could have canceled the contract on April 1, 1925, when there was the first definite failure to meet one of the conditions stated in the original document, namely failure to begin cutting on any timber. We could have canceled the contract on one or two subsequent dates when there was a failure to meet the specific obligations that Mr. Herrick had assumed. Following such cancellation of the contract we could presumably have readvertised the timber, and very likely have found another bidder. I have had two letters or telegrams from Mr. Barnes offering either to buy the timber or to find a buyer for it, and I assume we could find another purchaser. But the Forest Service has no control whatsoever over the improvements which Mr. Herrick has built over the railroads or the railroad right of way, over the mill site and the property on it; we have no control over the investment he has made to date, which is on land very largely outside the national forest and land which he owns and which is his property. Now, if we sold the timber to some other party, before a wheel could be turned it would be necessary for the new buyer either to acquire Mr. Herrick's improvements, which would depend entirely upon Mr. Herrick's willingness to sell them, or to duplicate Mr. Herrick's improvements with an entirely new layout of mill site and logging railroad.

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Senator WALSH of Montana. Or to condemn it, I suppose.

Colonel GREELEY. Or to condemn it if the right to condemn obtained, and as to that I do not know. In any event, we anticipated that a cancellation of the contract and a resale of the timber because of the situation of these improvements would simply involve an indefinite delay. We could not forecast what would happen. There is the further possibility that if we canceled the Herrick contract Mr. Herrick would find some way to bring the matter before the Federal courts for adjudication. I think specifically if we canceled the Herrick contract and resold the timber, that Mr. Herrick would be able to enjoin the Secretary of Agriculture, or enjoin me, from selling that timber, and so bring the merits of his contract, and his investments thereunder, before the Federal courts for adjudication.

Now, whatever the outcome of that might be, the immediate result would be an indefinite delay, and after having all these contingencies repeatedly, I could not see where any benefit would be gained in attaining the objects of the Government, and the services desired by the local people by canceling this contract and then trying to find another purchaser, with all the delays and difficulties that might be involved. I honestly thought that such a course would result in a much slower completion of the improvements and prosecution of cutting than if we modified the contract so as to enable Mr. Herrick to carry on. At least, in a word, that is the reason why this course has been taken and why these modifications, together with the payment of the liquidated damages, has been the course followed by the Forest Service rather than a cancellation of the contract.

Mr. MCGOWAN. Colonel Greeley, in that respect, the stumpage price, I assume, had to be given consideration also?

Colonel GREELEY. Well, to some extent. We felt that we had secured full value for that, timber, a good price for it. We were not sure that we would get the same price if the timber were readvertised. It is possible that we might., but that was another element of doubt and uncertainty, as to what would follow if the contract were canceled and an effort made to resell the timber.

Now, I want to say just a word on this charge of collusion: It is nothing new to the Forest Service to have competent men from our organization employed by lumber companies. That has happened over and over again. It is nothing new for the Forest Service to find former employees, employees formerly in our service, sitting across the table and representing a purchaser of national forest timber. I could cite you half a dozen cases within the last year where that has happened, where lumber companies have hired men from the Forest Service into their organizations and either at the time or subsequently have become purchasers of Government timber, and these ex-forest officers are now in their employ and representing their interests. That has become almost a monthly occurrence.

Now, I want to say that except for the letters which have been read into this record, I had no conferences and no correspondence with either Mr. Herrick or Mr. Girard for a period antedating the advertisement by several months, and a period of several months after the contract was made. I want to say further that I had no understanding of any character, either express or implied, with

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either Mr. Herrick or Mr. Girard, that any concession of any nature would be given to Mr. Herrick or to Mr. Guard aside from such concessions as might properly be given in pursuance of the policy of the Forest Service. No question of that sort was ever raised.

Now, in the course of these modifications I have necessarily consulted Mr. Girard from time to time, and Mr.

Herrick, just as it is a part of my daily work to consult with representatives of permittees and contractors on the national forest in their different lines of activities.

But at no time have I had from Mr. Girard or Mr. Herrick any information that the course which I should take in connection with this sale should be other than that that I felt the interest of the Government required. If there has been any effort to bring influence to bear upon me by virtue of the fact that Mr. Girard was formerly in the employ of the Forest Service, I am wholly unable to detect it. As far as my own action is concerned, I have based the decisions at these various times entirely upon the merits of the situation as I have outlined it and upon the three main points. The interests of the Government, the interests of the local communities, and the equity due the contractor. I have made these decisions from time to time in the light of those considerations and the facts as presented by our people in Oregon to the best of my judgment. Mistakes may have been made, but there was no collusion, and no attempt to influence any course by Mr. Herrick or anyone in his employ from the standpoint of obligations due to employees of the Forest Service or obligations due to friendship.

There is just one other point I want to bring out. This investigation is occurring at a time when, under the language and dates of the last modification of Mr. Herrick's contract, it is necessary for the Forest Service to take some action by way of cancellation or extension. I have indicated to Mr. Herrick that if adequate assurances are given that a sufficient sum of money to complete the construction work and furnish adequate working capital for carrying on the operation are furnished in a definite form and furnished in such a way that there is going to be no possibility of diverting this money to some other purpose than the operations of this contract, I will be willing to make a further modification of it. Because I believe that that is the most effective way to get the results that we want and that the people of Grant and Harney Counties want.

I am somewhat embarrassed in this matter because of the fact of this investigation coming on just at the time when those considerations must be taken up and action must be had. For the information of the committee I want to say that the only course I can see for me is to go ahead and act as I would, had this investigation not taken place, and that is what I propose to do. That completes my statement and I am ready to answer any questions that I can.

The CHAIRMAN. What further modifications do you contemplate, Colonel Greeley?

Colonel GREELEY. It will be necessary to materially extend the time for the completion of the sawmill. The last modification required its completion by March 1, but with that it is obviously

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impossible to comply. It will require some extension of the present time for the beginning of cutting, although that would not necessarily be very great. It would be possible, as I conceive the situation, for Mr. Herrick to begin cutting and logging of the timber during the coming summer. It would be possible for him to have his mill ready for manufacturing the stumpage by early fall. It probably would be difficult for Mr. Herrick at this time to cut the full amount of 60,000,000 feet that he has been required to cut by June 1, 1928, but whether he is going to make any application for a modification of that provision or not I do not know. I presume it would be physically possible for him still to comply with that requirement, but it would be difficult and it may be necessary to somewhat revise that volume.

Senator KENDRICK. Under the terms of your contract as it was proposed in the last 30 days advertisement, would it be possible for him to absorb a part of this first year's cutting in the second or third year's cutting?

Colonel GREELEY. It would be possible; Yes, sir. But the requirement to cut 60,000,000 feet by June 1, 1928, was an absolutely fixed requirement to guarantee reasonable diligence in the initial operations under the contract. Now, I do not conceive that it will necessitate extending the life of the contract. I think it will be entirely feasible for Mr. Herrick to cut the full amount of timber by 1945.

Mr. HALLOCK. Mr. Chairman and gentlemen, I would like to make this suggestion if it might be entertained. While Senator Walsh was absent it was decided that we would arrange to let Colonel Greeley testify, and, if possible, have him followed by Mr. Herrick so that the Senator might have an opportunity to hear both gentlemen. I appreciate that if Mr. De Neffe desires to cross-examine Colonel Greeley at this time it is highly unlikely that Mr. Herrick will have an opportunity to testify before Senator Walsh has to leave. If he agrees, we think it might be well to take up the testimony of Mr. Herrick.

Mr. DE. NEFFE. I would prefer to cross-examine Colonel Greeley now.

Mr. HALLOCK. I am just a little fearful, Mr. De Neffe, that the Senator from Montana will not have an opportunity to hear Mr. Herrick, in view of the fact that he has indicated heretofore that lie will not be able to stay.

Senator WALSH of Montana. I think I should like to adopt the course suggested by Mr. Hallock. I should like to hear what Mr. Herrick has to say. As I indicated yesterday, I shall not be able to stay with you any longer.

Mr. DE NEFFE. Of course, I will do whatever the Senator wishes, but I did want to bring out some things on my cross-examination of Colonel Greeley.

Senator WALSH of Montana. Well, you will have a chance to do that.

Mr. HALLOCK. I do not believe Mr. Herrick's statement will be very long.

Mr. MCGOWAN. May I make just one offer before Colonel Greeley goes off the stand? When Mr. Barnes was on the stand I offered for identification a letter from Mr. Barnes to you of March 30, 1924,

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and asked you if you received that letter, from Mr. Barnes. It is marked for identification "Barnes No. 1," isn't it?

Colonel GREELEY. Yes.

Mr. MCGOWAN. This is his letter and your reply—or is it Mr. Sherman's reply?

Colonel GREELEY. This is my reply.

Mr. MCGOWAN. We offer that in evidence. Then I will ask you to look at these telegrams.

Colonel GREELEY. Yes; I received this telegram of April 23, 1926, from Mr. Barnes.

Mr. MCGOWAN. And there is another telegram there from Mr. Barnes in connection with his offer.

Colonel GREELEY. Yes; a telegram of May 1, 1926, in connection with his offer. The reply of May 1, signed by Mr. Sherman, states that the Forest Service can not undertake negotiations with Mr. Barnes as long as the Herrick contract is in effect.

Mr. MCGOWAN. We offer these telegrams in evidence.

Mr. DE NEFFE. No objection.

(The documents submitted by Mr. McGowan are here printed in full, as follows:)

BURNS, OREG., *March 30, 1924*.

COL. W. B. GREELEY,
United States Forestry Department,
Washington, D. C.

DEAR COLONEL GREELEY: I am writing to you in regard to the timber in the Malheur Forest which was sold to Fred Herrick and the work on the railroad which is being built from Crane through Burns to Seneca to remove said timber.

As you know, I am representing the people of Grant and Harney Counties in this development, and I thought it well at this time to inform you how the work has been going on. It will soon be a year since Mr. Herrick was awarded this timber and the work has not been expedited as it should have been. Last year Mr. Herrick completed about 30 miles of grading from Crane to Burns and about 10 miles beyond Burns—a total of 40 miles. This work was practically all completed last year. There has been considerable fencing done on the right of way and several bridges built on the section north of Burns. Since the first of the year weather conditions have been such that work could have been carried on practically without interruption on the grade north of Burns, but there has been very little done, and as nearly as I can find out they do not expect to do any grading for the next three months, and Mr. Herrick intimated to me that he did not think he would do any work on the mill this summer. He also told me that he could get from the Government all the extensions of time he wanted to complete the work.

Mr. Herrick has but a little over one year in which to complete the railroad and mill, and if he doesn't speed up this work from now on it will be impossible to comply with his contract within the time set and he will be seeking an extension. In view of the fact that he could get through on time if he would prosecute

this work as he should. I am notifying you at this tune that the people here will object to the granting of any extension. If Mr. Herrick would work at this thing as he should from now on and still needed some time in which to complete the work, there would be no objection to a reasonable extension being granted him. He plans to commence laying steel from Crane on May 1 and reaching here with the track about the 1st of July, then continue on with the track to the end of his present completed grade. This is good enough as far as it goes, but is not getting us what we want. The mill should be started and the railroad work go ahead in a workmanlike manner and be completed on time, as he has plenty of time to do this if he will get to work. There is no excuse for this work being held back as it has been, and we want it to go ahead. If the Brooks-Scanlon Co. had been awarded this timber a year ago the road would have been nearly into the timber and the mill would have been half completed by this time. On the other hand, Mr. Herrick has

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not done the work as fast as he should, and has, in fact, delayed it a great deal for no reason other than possibly financial reasons.

Now Colonel Greeley, we ask you to notify Mr. Herrick to expedite this work. If he does not see his way clear to do this, I have other people who are financially able and willing to go ahead at once and complete the work on time.

They will assume Mr. Herrick's contract with the Government and will repay him for what he has expended on the work to date, which will get him out even, but they will pay him no bonus.

Personally I have given Mr. Herrick all the assistance I possibly could. I have arranged to give him a mill site which cost me $10,570. The people of Burns have donated a terminal site at a cost of over $9,000. I would like to see Mr. Herrick finish this work, but if it is going to be delayed we can not stand for it. The early completion means everything to this country. We have looked forward to this for along time. We need it and must have it.

I have given the Portland office the same information in regard to this matter as I am giving you in this letter.

In reply, address me here at Burns. Oreg.

Yours truly,

E. W. BARNES.

APRIL 9, 1924.

MR. E. W. BARNES, *Burns, Oreg*.

DEAR MR. BARNES: Your letter of March 30 is received. I am very glad to get your report of the progress which Mr. Herrick is making in the building of his mill and railroad, and I will, of course, confer with the district forester, Portland, Oreg., in order to determine whether or not any action at this time is necessary on the part of the Forest Service. There is, of course, no reason why local people should not take up the matter with Mr. Herrick independent of any action by this office if they are dissatisfied with the progress which is being made.

Very sincerely yours,

W. B. GREELEY, *Forester.*

PORTLAND, OREG., *April 23, 1926*.

COL. W. B. GREELEY,
Chief Forester of United States, Washington., D. C.:

As the majority of the people of Grant and Harney Counties have come to the conclusion that Fred Herrick is in default and has been for some time on his contract with the United States Government on the Bear valley unit and as they have asked for cancellation of said contract I hereby make the Forest Department the following offer: I will pay the Government the two dollars eighty cents per thousand for pine and same for other species as Herrick's offer and will put up the required bond and will immediately go to work and complete the project on whatever date we agree upon not less than 14 months. Subject to an audit of Herrick's books and will pay him, dollar for dollar for what work he has done. If Herrick will not agree to this I will build the road new {sic} north from Burns. The offer I am making you will mean no loss to the Government, no loss to Herrick, and no lost time to the people of the two counties and will mean the

speedy completion of the operation. Will appreciate an early reply.

E. W. BARNES.

APRIL 23, 1926.

MR. E. W. BARNES.
Canyon City, Oreg.

DEAR MR. BARNES: Your wire of April 23 is received. I can not consider, at this time, offers for the timber covered by the contract of Mr. Fred Herrick, since that contract is still in effect. If it should be canceled I would be glad to have you renew your offer with a statement of the persons or companies who would finance the undertaking. The Forest

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Service can not consider offers without a full disclosure of the principals or financial resources behind them.

Very sincerely yours,

W. B. GREELEY, *Forester.*

PORTLAND, OREG., *May 1, 1926.*

COL. W. B. GREELEY,
Chief Forester, United States, Washington, D. C.:

Your letter 23d received in which you state you can not consider my offer before Herrick contract canceled. I did not expect acceptance of my offer until Herrick contract canceled. My offer was made you in good faith and I am prepared in every way to carry out the terms of same promptly. On receipt of a wire from you that you will cancel the Herrick contract providing I make satisfactory financial showing to you I will immediately come to Washington and make a financial showing that can not be questioned by any one.

E. W. BARNES.

MAY 1, 1926.

MR. E. W. BARNES.
Canyon. City, Oreg.

DEAR MR. BARNES: Your wire of April 30 is received. As Colonel Greeley wrote you on April 23, the Forest Service can not undertake negotiations for a resale of the timber covered by the Fred Herrick contract so long as that contract is in effect. If conditions should change so that we were in a position to consider offers for this timber, it would be unnecessary for you to come to Washington, since the district forester at Portland would conduct any negotiations for a resale of the timber and your offer and statement of financial responsibility should be submitted to him.

Very Sincerely yours,

E. A. Sherman, *Acting Forester.*

Mr. DE NEFFE. May I ask, while Mr. Herrick is being examined, that the Forest Service also produce the memorandum of Dr. D. F. Brooks, dated March 1, 1925?

Mr. MCGOWAN. Yes: We have that right here, Mr. De Neffe.

Mr. DE NEFFE. And another one, Mr. McGowan, of March 7, 1923, a letter of Fred Ames to forest supervisor at John Day.

TESTIMONY OF FRED HERRICK, TIMBER OPERATOR, ST. MARIES, IDAHO, AND SPOKANE, WASH.

(The witness was duly sworn by the chairman.)

(Direct examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Your name is Fred Herrick?

Mr. HERRICK. Yes, sir.

Mr. HALLOCK. What is your age, Mr. Herrick?

Mr. HERRICK. Seventy-three.

Mr. HALLOCK. Where do you live?

Mr. HERRICK. St. Maries, Idaho—I live in Spokane, but my residence is St. Maries. Idaho.

Mr. HALLOCK. Do you have a home in each city?

Mr. HERRICK. Yes.

Mr. HALLOCK. What is your business?

Mr. HERRICK. Lumbering.

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Mr. HALLOCK. Now, without too much detail, I wish you would be good enough to give the committee an idea of the character and extent of your lumbering activities?

Mr. HERRICK. Well, it is quite extensive. I have 6 mills that are large mills—5 mills that are large mills, and 1 that is reasonably large. And I have 2 or 3 other small operations.

Mr. HALLOCK. Your approximate annual cut is about how much, Mr. Herrick?

Mr. HERRICK. Well, when the conditions are normal and good my cut is about 1,000,000 feet a day.

Mr. HALLOCK. That is in —

Mr. HERRICK. In all the plants. That would be close to 300,000,000 —

Mr. HALLOCK. Annually?

Mr. HERRICK. Yes.

Mr. HALLOCK. Now, Mr. Herrick, I wonder if you would not prefer, and perhaps the committee be glad to have you do so, to go ahead in your own way and make any statement you care to make, either by way of historical recital of this transaction or any other feature of it that you want to emphasize.

Mr. HERRICK. Well, I can do that.

My first attention to the Malheur Forest was called by Mr. McHarg, the supervisor of the Coeur d'Alene office. I was in Coeur d'Alene that day and I met him on the street and he says, "Mr. Herrick, I have a proposition in Oregon that I would like to submit to you, and I will give you a prospectus of it." And he gave me the prospectus of this Malheur Forest. I took it home with me and read it over, and it was very interesting.

When he gave me this prospectus, why, I says, "What do you know about it?" "Well," he said, "all I know about it is that this prospectus was put in a—that is, that Jim Girard was one of the parties that put this proposition on."

I took this prospectus home and read it over, and it looked very good to me, and I called up Mr. Girard and asked him if he could come over and give me some data on this.

Prior to this—I will explain my reasons—one of my reasons for wanting to get some data from Mr. Girard in this matter. I had known him a number of years, and prior to this time I had bought from the Largey estate their property of $1,200,000, and I knew that Mr. Girard had mapped and estimated this for the Largey estate for sale, and I knew it was a product of Mr. Girard's work. This Largey estate—some of the lands ran within a mile and a half of where I have lived for 15 years, and it was intermixed with my timber. And before I made this bid—when I was considering this I says to Mr. Girard, "Will the white pine hold out to what your estimate shows?" I had the estimate and knew that he had made that, that the Largey people—Mr. McDonald—of Butte, were putting it on the market, and knew that he was presenting the figure—positive that he was presenting the figures that Mr. Girard had made. And I said, "Jim, will the estimate of the white pine hold out?" The estimate on the white pine was 120,000,000; 380,000,000 feet of mixed timber, 240,000,000 feet of poles, and twenty-six or twenty-eight thousand acres of land.

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Mr. DE NEFFE. Pardon me. Is that the Largey estate?

Mr. HERRICK. The Largey estate.

Mr. DE NEFFE. Not Bear Valley?

Mr. HERRICK. Not the Bear Valley; no.

Now, the value of white pine at that time was $10 a thousand and, if his estimate would hold out and there was 120,000,000 feet, there was $1,200,000 in white pine without any reference to the 380,000,000 feet of mixed timber and 240,000,000 of poles and twenty-six or twenty-eight thousand acres of land.

Now, that had placed me in confidence with what Mr. Girard had done, and so I called him over—asked him if he could come over. He came to Coeur d'Alene, and he went over these figures. I don't think I was over 30 minutes talking with him about it. He talked it over that it had been advertised and no bids had been made. He was considerably interested, or seemed to be, that his judgment would be sustained. He was a little touchy upon those things, that whenever he passes a comment upon anything he likes to feel that his judgment is good on those matters.

So prior to that time Mr. Girard came over I had sent my head inspector and estimator to Burns to look this over as to the general location of the land, as to the general logging, and as to the conditions of getting up to the pine according to the prospectus.

As to the estimate, there was not any question about the estimate, because the Forestry Department has always been honest in their estimates. There is no incentive for them to swell an estimate and no incentive to them to put out a prospectus that is not according to the facts of the case. So I did not question the amount of timber. I did not question the amount of timber at all. It included so many acres of timber—so much more or less. But I did want to have my own man see as to the quality of the timber and to the question of logging it.

Mr. HALLOCK. Pardon me. Do you mean Mr. Douglas'?

Mr. HERRICK. Mr. Douglas.

In my operations I have never looked at a lot of my properties personally. Mr. Douglas came back—I met Jim between the time Mr. Douglas went there and the time that he got back. Mr. Douglas came back and more than verified what Jim had told me about the Malheur Forest. So I says to Jim—why, I says, "Jim, I am going to go your price 5 cents better." And we dropped it, there and left it there.

And I knew that in bidding on Government or State timber that the least lumbermen in that at the time of the bid, why, the better it was for your prospects of bidding, and that was my reason for not going to Portland to make the bid. So I made the bid and went down to one of my managers and says, "Mr. Flood, I would like to have you go to Portland and make, the bid on that timber. You go over there and make your bid and here is the $25,000 to get the certified check. Just go and get the bid and keep this to yourself." And Mr. Flood went over and made the bid, and the next day I was notified by him that my bid was the higher bid.

Senator KENDRICK. Was the original publication and prospectus never called to your attention?

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Mr. HERRICK. Why, the original prospectus was called to my attention and then there was a supplementary—I don't know what you would call it. It was in the trade journals or some of the papers—I think in some of the lumber

papers. But I had knowledge that there had been some supplementary arrangement made in the amounts of cutting which in my opinion materially did not alter the case at all, because the deal was of such magnitude.

Senator KENDRICK. You were not attracted to it in the first place?

Mr. HERRICK. In the first place? When I first saw the prospectus—the modification?

Senator KENDRICK. No. I mean to ask you whether when the timber was first offered for sale and the prospectus went out and, as I recall, this was published for six months —

Mr. HERRICK. My attention was not called to that, no. My attention had not been called to this until after the second advertisement, when Mr. McHarg says, "there is something over in Oregon that would just fit you, Mr. Herrick," and he says, "I will give you the prospectus," and I said "Let me have the prospectus," and I took the prospectus home. I had no knowledge—that is, I had no knowledge or gave any attention to the first sale. I didn't know anything about it, it was so much out of my territory.

Mr. HALLOCK. Now, Mr. Herrick, having learned that you were the successful bidder, I wish you would state the circumstances under which you employed Mr. Girard, if you will, and then go ahead and tell us about meeting Mr. Barnes and those transactions.

Mr. HERRICK. I first wrote Mr. Greeley a letter that I saw that I was the successful bidder and I was going to take one of his best men away from him. Now, prior to this time that I took over the Largey estate, I had made a proposition to Jim to hire him at that time, but we differed upon wages and some other man came down there and I gave him the management.

Mr. HALLOCK. I want to make this clear, Mr. Herrick. Was anything said or intimated by you to Mr. Girard with reference to the likelihood of your employing him if you were the successful bidder?

Mr. HERRICK. No, sir; I hadn't thought about it at all at that time. I don't think we were together 30 minutes. But after running over the prospectus and, thinking about the prospectus and the amount that it needed to handle it I looked at it that this was a reforestation proposition and it was one of the biggest In the United States,. and it met my views, and that Jim Girard was a practical man because he was right up in the carrying out of just such a proposition as that, and I knew that he was capable and could do the business.

Mr. HALLOCK. Now, I think the committee might be interested to have you tell them under what circumstances you met Mr. Barnes and dealt with him in the matter of his private stumpage and matters of that character.

Mr. HERRICK. Well, I knew Mr. Barnes before I ever met him. Shortly after that I went over—I knew Mr. Barnes in this way, from Mr. Douglas, that Mr. Barnes at one time had been a compass man for him back in Minnesota or somewhere, and I knew of Mr. Barnes from what Mr. Flood had told me about his bribing him. But I never was —

Mr. DE NEFFE. About what?

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Mr. HERRICK. About his bribing him—offering him $25,000 to throw me down.

Senator KENDRICK. You do not think that was necessarily a bribe, do you?

Mr. HERRICK. Why, it certainly was. What else could it be?

Senator KENDRICK. I do not want to argue it, but Senator Walsh has pointed out that that would be more or less consistent, for him to say that if you would accept this as your part of the profits let him have the contract

Mr. HERRICK. He didn't ask him in that way. He says, "Young man, I will give you $25,000 to take down your bid and take your check and go home. I will give you $25,000 in cash."

Senator KENDRICK. No doubt he assumed that Mr. Flood was acting for you in presenting the bid, and that he might act for you in accepting that offer.

Mr. HERRICK. I will say that later on Mr. Barnes verified that same statement to me as to what he had tried to put over with Mr. Flood.

Mr. HALLOCK. How was that, Mr. Herrick?

Mr. HERRICK. He did that in the Portland Hotel the day that I had gotten my contract. I showed him the coupons off the Liberty bonds and showed him the contract, and he read it, and he says, "Mr. Herrick, will you take $50,000?" I says, "No, sir." "Well," he says, "Herrick, you have got one good loyal man, and that is Mr. Flood." He says, "I offered him $25,000 in cash to throw you down, and he wouldn't do it."

Mr. HALLOCK. Now, Mr. Herrick, apropos of that matter: If Mr. Flood had had the authority to accept this $25,000, or had undertaken to make any such deal, the result of which would have been to eliminate your bid and your $2.80 price, what would have been the situation with respect to the price which the Government would have had under the next bid?

Mr. HERRICK. Well, the timber would have been awarded to the $2 bid.

Mr. HALLOCK. Yes. Now, did Mr. Barnes at any time tell you of any arrangement he had with the Brooks-Scanlon Lumber Co. relative to the sale of his private stumpage to them?

Mr. HERRICK. Yes, sir. He said that he was to get $2 for his stumpage, and that Doctor Brooks wanted this contract and that he was trying to buy it for Doctor Brooks—trying to buy me off for Doctor Brooks.

Mr. HALLOCK. Now, Mr. Herrick , I wonder if you will tell us something of your plan and program for financing this venture after you found you were the successful bidder?

Mr. HERRICK. Well, after I had gotten a contract I made plans—in 1923 the lumber business was good—that by the running of the mill at, full capacity and the conversion of a little piece of property here and a little piece of property there that the financing would come along naturally. I had always been adverse to touching the pen along the dotted line on a mortgaged property, and I felt that I could handle that in good shape, and that my income would be coming in to that extent. And I started in in {sic} good faith on that line of financing.

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Now, maybe I was a little wrong in taking thought that I could meet that big development in that way, but I was conceited enough to think that I could. The lumber business began to get worse and worse and the conversion of a $10 tree into a $5 tree didn't look good to me. There were not buyers for timber, there were not buyers for lumber, and I curtailed the operations of my mills.

Now, just about that time I had bought another proposition for $1,850,000, and I expected to clean up half a million dollars in the first three years on that. There was an old gentleman that had a property—he is 82 years old now, and he got tired of trying to handle it, and I paid him $150,000 in cash, and he turned the whole matter over to me.

Now, if the prices of white pine had stayed where they were in 1923, in the first three years' operation of that one proposition I would have cleaned more than half a million dollars. Now, I figured that all those things, the big southern plant—the market has not been as good there. I have $2,000,000 worth of lumber in the pile now, and if I had gone out and forced that upon the market, as large an operator as I am, it would have hurt the market all over the United States.

Mr. HALLOCK. Mr. Herrick, will you tell us, please, how much curtailment in your annual revenues over the past two years the decline in the lumber market has created?

Mr. HERRICK. In the handling of lumber and the conversion of odds and ends into money it has been more than a million and a half below my expectations in good faith.

Mr. HALLOCK. What are the facts as to whether or not at the time you signed this contract you had a timber sales contract covering your holdings in Mississippi which you were expecting to liquidate in an amount of some five or six hundred thousand dollars?

Mr. HERRICK. Oh, I sold a piece of property in Mississippi about 11 years ago, I think, for something over $2,000,000, that I gave them 15 years to pay for it. From 1920, 1921, and 1922 they kept suggesting that they were going to pay up that contract and take it up, and they still owe me $600,000. They have kept up their contract, with

my leniency, so that the contract is all right, but I had expected that the money would come in.

Mr. HALLOCK. Now, Mr. Herrick, when you found, if indeed you did find, that the. financial program as yow have indicated it to us was not going to finance your construction there, what did you do?

Mr. HERRICK. Why, I conceived the idea that I would go out and issue a bond and get some money.

Mr. HALLOCK. Just when did you arrive at that conclusion?

Mr. HERRICK. That, I think, was in October last year. I was talking of the properties that I would embrace in a loan. The first man that we went to in Portland suggested that we should get a little more of a substantial showing in the way of financing that railroad before we included it in a bond. You could not include the Government contract in, a bond; that was unbondable. So we rushed along the work, and we have gotten the railroad along where the grade is 96-2/5 miles. The ties are on 88 miles of it—88-2/5 miles. The steel is upon the ground—-that is, on the ties and on the ground unloaded from the cars for the 96-2/5 miles. Today the

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rail can't be over 2 miles that is not laid. And the grading is done; the grading is done into the timber for operations in the first unit of timber.

Mr. HALLOCK. What arrangement did you make then, following your desire to work out a bond issue?

Mr. HERRICK. From this on I have worked up and made arrangements with the Continental to issue a $2,500,000 bond to push the project along, and other projects that were lagging.

Mr. HALLOCK. Does that couple with it the financing plan the money you have raised on this Oregon venture?

Mr. HERRICK. Yes; and I have sufficient funds for the operating of that, under the plan I started, putting the lumber in a pile and putting it onto the market.

Mr. HALLOCK. Mr. Herrick, you were credited in the record here with having made certain statements, generally to the effect that you would not operate that as a common-carrier railroad; that you would never haul logs for anybody but Fred Herrick; that you knew Colonel Greeley very well and could get all the extensions you wanted from Colonel Greeley, and different statements of that character, which I am not going to undertake to find in the record in each instance. I wish you would just tell the committee what the facts are with respect to whether or not you ever made any such statements to anybody.

Mr. HERRICK. Absolutely not—only I said to Mr. Barnes that I would never draw him, nor a log for him, on account of his activities against me.

Mr. HALLOCK. How about your arrangements for carrying passengers and mail?

Mr. HERRICK (producing a number of papers). I have made arrangements here—I have gotten a little literature, and prospectuses, and the first train started on that railroad-passenger train—is to be a gasoline car to run from Burns to Seneca, transfer the passengers into a big auto car and take them from there to Prairie City and make a round trip a day. And I have the assurance from the Union Pacific railroad that when Fred Herrick starts his gas car they will put on an additional gas car service from Burns to Ontario.

Mr. HALLOCK. For the sake of the record, what is this bundle of papers?

Mr. HERRICK. Oh, this is stuff that Mr. Silcox—they were buying for the Milwaukee Railroad cars to be used in different places on their branch lines, and I asked him to give me the data. Mr. Silcox is the chief engineer of that system. He is the man that is in charge of all their mechanical work.

Mr. HALLOCK. Let me interrupt you just there. In brief, do the papers consist of trade journals, catalogues and photographs and blue-print plates and specifications and correspondence and matter of that kind bearing upon gas equipment for passengers and mail?

Mr. HERRICK. Yes. It was evident to me that 90 per cent of the business on that railroad would be log trains, and it was not good judgment to undertake to handle passengers on log trains or mixed trains, but to use a gas car

that would give the people a suitable service.

Senator WALSH of Montana.. Did you expect to haul passengers with the gas car?

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Mr. HERRICK. Yes.

Senator WALSH of Montana. And the logs with steam locomotives?

Mr. HERRICK. The logs and any other freight. And then I had gone that far with Mr. Girard that if the time came that they wanted to move any cattle that we would have them load their cattle in the evening and then run a special train, a special locomotive, to get those cattle down to Burns to hitch onto the 7 o'clock mixed train of the Union Pacific that runs to Ontario. They handle those cattle in a mixed train with freight and passengers.

Mr. HALLOCK. Mr. Herrick, why was it you told Mr. Burns that you would not haul him nor his logs unless you had to?

Mr. HERRICK. Oh, his activities against me.

Senator KENDRICK. Yon expect to run a common-carrier railroad, do you?

Mr. HERRICK. Yes, sir; absolutely. I have no desire —

Senator KENDRICK. Could you refuse to render him that service?

Mr. HERRICK. I knew that I couldn't, but I told him that I would like to.

Mr. HALLOCK. Mr. Herrick, just why do you entertain that attitude toward Mr. Barnes?

Mr. HERRICK. Why, the activity that he has taken against me—the position. He has vilified me, and he has vilified my mother's name repeatedly, and he does it to everybody.

Mr. HALLOCK. Take the witness.

Senator WALSH of Montana. Perhaps Mr. De Neffe would prefer to cross-examine Mr. Greeley at this time.

Mr. DE NEFFE. Yes.

The CHAIRMAN. Very well. You will be excused, Mr. Herrick. Colonel Greeley, will you take the stand again for cross-examination?

Mr. DE NEFFE. Mr. McGowan, I do not believe the papers I asked for are all here.

Mr. MCGOWAN. Which ones do you want?

Mr. DE NEFFE. The ones I would like to have now—and I asked for them the first thing this morning—are, the one of October 6, 1924, from Fred Ames at Portland to James W. Guard at Burns, Oreg.; and letter of October 26, 1924, from Fred Ames at Portland to James Girard; and a letter dated December 1, 1924, from Fred Herrick Lumber Co. by James Girard to Fred Ames. Those are the ones that I wanted.

Mr. MCGOWAN. Mr. Ames, did you make a search of your files?

Mr. AMES. Yes, sir. They are not in these files.

Mr. MCGOWAN. Then they have been misplaced and I will have to comply with your request after lunch or some time later, because we can not locate them. You had the files last.

Mr. DE NEFFE. I had them there with a couple of your men sitting over me and watching me every minute.

Mr. MCGOWAN. You took all these references from the file.

Mr. DE NEFFE. Yes; I wrote them down in my notes, and every night I had your men look through my memoranda there to see that none of your records were mixed with mine.

Mr. MCGOWAN. We will be glad to comply with your request, but it is a little embarrassing at this moment to give me a long list of letters that apparently are out of place now:

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Mr. DE NEFFE. I asked for them at 10 o'clock and at a quarter after 11, and nobody made a move. Your men here were not making any search, and I do not think it is entirely unreasonable that they be searched for.

Mr. MCGOWAN. I do not think the committee will be interested in any colloquy between us on this point, but the fact is that for three full afternoons you have had opportunity to make a full examination of the files, and now this morning you come with a rather summary request, and I can not look for these papers, although I will be glad to give them to you.

Mr. HALLOCK. Mr. Chairman, it is not likely that the Senator from Montana will have any opportunity to further interrogate Mr. Herrick, and I wonder if he might care at this time to ask any questions of Mr. Herrick?

Senator WALSH of Montana. No; I do not care to ask him anything.

TESTIMONY OF COL. W. B. GREELEY, CHIEF FORESTER, UNITED STATES FOREST SERVICE, DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.-Resumed

(Cross-examination by Mr. Frederick M. De Neffe, representing Grant County, Oreg.)

Mr. DE NEFFE. Colonel Greeley, you heard the testimony of Mr. Flood the other day, didn't you, that at the time the contract with Mr. Herrick was signed Mr. Herrick had $1,200,000 cash assets?

Colonel GREELEY. Yes.

Mr. DE NEFFE. Did he have those assets, do you think? Did he satisfy you that he had them?

Colonel GREELEY. To the best of my knowledge he had them.

Mr. DE NEFFE. What information did he give you which satisfied you that he had those assets?

Colonel GREELEY. I should say that I did not see at the time the financial statement which Mr. Herrick submitted to the district forester at Portland.

Mr. DE NEFFE. Have you that statement now?

Colonel GREELEY. It is here.

Mr. MCGOWAN. Here is the financial statement.

Colonel GREELEY. The gist of this statement is that —

Mr. DE NEFFE. Could I look at it, please?

Colonel GREELEY. Certainly.

Mr. MCGOWAN. With your permission, Mr. De Neffe, we might offer that now, with the supplementary memoranda attached to it.

Mr. DE NEFFE. Yes.

(The statement referred to is here printed in full, as follows:)

STATEMENT IN REGARD TO EVIDENCE OF FINANCIAL STANDING SUBMITTED BY FILED HERRICK AND INVESTIGATION THEREOF

The prospectus stating the terms of sale stipulates that prior to award the successful bidder should show net assets in hand of $850,000. Mr. Herrick submitted a statement of $1,260,000, stating at the same time that this did not purport to be a complete statement of assets but only sufficient to cover the

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requirements and be satisfactory to the Forest Service. At the suggestion of the Forester's office the statement was submitted to the district forester at Missoula, Mont., where Mr. Herrick was well known and had done business with the Forest Service for some years, with the request that he undertake such investigation as seemed to him necessary to establish Mr. Herrick's financial standing. The acting district forester replied that a detailed investigation was unnecessary, that it was known that Mr. Herrick had the controlling interest in the three Idaho lumber companies mentioned in the financial statement, also that he had large timber holdings not shown in his statement.

The following wire was then sent to the First National Bank of Mobile, Ala., and the Exchange National Bank of Coeur d'Alene, Idaho:

PORTLAND, OREG., *April 21, 1923.*

Fred Herrick St. Maries, Idaho, high bidder for Government timber. Eastern Oregon contract involves construction 80 miles railroad—investment three to four million—before on producing basis. Please wire confidential statement financial ability Mister Herrick undertake and carry out this contract.

AMES.

The following replies were received:

COEUR D'ALENE, IDAHO, *April 28, 1923.*

FRED AMES,
Forest Service, Portland, Oreg.:

Fred Herrick, St. Maries, Idaho, considered worth in excess of $5,000,000; financial ability to carry out contract good.

A. CRANE,
President First Exchange National Bank.

MOBILE, ALA., *April 23, 1923.*

FRED AMES,
Forest Service, Portland, Oreg.:

Your wire party referred to heavily interest in Scotch Lumber Co. here, which is one of largest, most profitable, and best managed mills in this section; also principal owner Milwaukee Lumber Co., St. Maries, Idaho, and Coeur d'Alene Mill Co., Coeur d'Alene, Idaho, both of which we understand are first class. We have no reason to doubt at all ability to handle contract referred to your wire. This expression without liability on our part.

FIRST NATIONAL BANK.

This evidence was considered satisfactory and the formal award was made.

FRED AMES,
Assistant District Forester.

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE.

FINANCIAL STATEMENT

Financial statement of Fred Herrick, of St. Maries, Idaho (if corporation, "A corporation organized and existing under the laws of the State of _____, having an office and principal place of business at "), (If copartnership, _____ and _____, partners, doing business under the firm name and style of _____".)

ASSETS

1. Property.
(a.) Lands and stumpage (not filled in).

I am owner of one-half the stock of the Scotch Lumber Co., of Fulton, Ala.; three-fourths of the stock of the Milwaukee Lumber Co., St. Maries, Idaho; all of the stock of the Coeur d'Alene Mill Co., Harrison, Idaho; three-fourths of the stock of the Interior Lumber Co., Jackson, Miss.

The following statement of assets is a conservative valuation of my interest in a portion of the assets of these companies:

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(b) Buildings and structures:	value
4 sawmills	400,000
4 planing mills	100,000
14 dry kilns	100,000
Other buildings & structures	50,000
Total	650,000
(c) Equipment:	
50 trucks	50,000
50 miles railroad steel	50,000
10 locomotives and other rolling stock	50,000
4 other engines used in logging	10,000
Total	160,000

(d) Merchandise and forest products (not filled in)
2. Cash 250,000
3. Capital stock subscribed but not paid in.
4. Notes receivable —
    (a) Secured, $ —
    (b) Unsecured, $ —
5. Accounts receivable--
    (a) Past due, $ —
    (b) Due, $ —
    (c) Not due, $50,000.
6. Sinking fund, $ —
7. Other assets (list by items below).

Total assets
1,560,000

LIABILITIES

1. Capital stock:	
(a) Paid in, $-----.	
(b) Subscribed, $--.	
2. Bonds	None.
3. Mortgages	None.
4. Notes payable	200,000
5. Accounts payable	100,000
6. Surplus	None.
7. Other liabilities (list by items below).	
Total liabilities	300,000

Names, titles, and addresses of corporate officers and directors, with number of shares of stock owned by each. (Not filled in.)

Capital stock. (Not filled in.)

Timberland and stumpage owned. (Not filled in.)

MISCELLANEOUS

1. Give basis of this financial statement, whether inventory or estimate. Estimate by whom made and date: Fred Herrick, April 11, 1923.
2. Are you the indorser of outstanding paper of any person? No. If so, to what amount? $---.
3. Have your books been audited by a certified public accountant? No.

When?_____. By whom? _____.

JURAT

(To be executed by corporations or partnerships.) (Not filled in.)

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JURAT

(To be executed by individuals.)

I swear (or affirm) that to the best of my knowledge and belief the foregoing financial statement is true and correct in each and every particular.

FRED HERRICK.

Sworn to and subscribed before me this 11th day of April, 1923.

F. D. STRAUSE.

My commission expires September 4, 1926.

REFERENCES

(At least three should be given, preferably banks.)

Exchange National Bank, Spokane, Wash.
Exchange National Bank, Coeur d'Alene, Idaho,
First National Bank, Mobile, Ala.

Mr. DE NEFFE. This exhibit contains, first of all, a letter from Mr. Ames, dated February 10, 1927, does it not?

Mr. MCGOWAN. That is Mr. Ames's accompanying memorandum. The financial statement is the printed form underneath.

Mr. DE NEFFE. This does not purport to be a complete statement of his assets, I notice. Is that right?

Colonel GREELEY. It purports to be a statement of his assets sufficient to meet the requirements in connection with the award of the contract.

Mr. DE NEFFE. Can you find any place in this statement where it shows that he has got $1,200,000 in cash?

Mr. GREELEY. The statement did not require the amount in cash. The financial requirements of the Forest Service have never specified cash; they call for assets of all sorts.

Mr. DE NEFFE. Net assets, weren't they?

Colonel GREELEY. Net assets. The statement here shows total assets of $1,560,000 and liabilities of $300,000.

Mr. DE NEFFE. What is the total assets?

Colonel GREELEY. $1,550,000, total liabilities $300,000, leaving net assets $1,260,000.

Mr. DE NEFFE. And that satisfied you that he was qualified financially

Colonel GREELEY. I did not pass upon that at the time. That was the function of the district forester. But I would have been satisfied with that had I taken it up personally.

Mr. DE NEFFE. Without making any investigation?

Colonel GREELEY. You will notice there are copies of several telegrams—as a matter of fact the Forestry Service, through our general acquaintance with Mr. Herrick, knew that he had large assets in other lumber operations.

Mr. DE NEFFE. But had you kept track of it from year to year?

Colonel GREELEY. Not specifically; no.

Mr. DE NEFFE. To know of his liabilities and assets from year to year? He might have been very much involved and you not know about it? Is that the fact?

Colonel GREELEY. That is possible.

Mr. DE NEFFE. Then you just accepted his statement here without making inquiry?

Colonel GREELEY. You will find there the result of inquiries that were made.

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Mr. DE NEFFE. Who made them?

Colonel GREELEY. The district forester at Portland.

Mr. DE NEFFE. Mr. Ames?

Colonel GREELEY. Mr. Ames or Mr. Granger.

Mr. DE NEFFE. Didn't you make any yourself?

Mr. MCGOWAN. Mr. De Neffe, just for the benefit of Senator Walsh, would you mind calling attention to the memorandum that is attached to that statement signed by Mr. Herrick, showing that the Forest Service had made an

investigation through the banks as to his financial ability? I merely want to call it to Senator Walsh's attention.

Mr. DE NEFFE. I would like to examine the witness in my own way or the way you would like, but I want to develop certain things, and then if there is any explanation that you want to make it is all right. I would appreciate it if I could go right ahead.

Then you made no investigation at all before you signed this contract with Mr. Herrick?

Colonel GREELEY. No personal investigation. That is the job of the district forester.

Mr. DE NEFFE. And this is the largest sale of this kind that has ever been made by the Forestry Service, isn't it?

Colonel GREELEY. I don't know that it is the largest; it is one of the large ones.

Mr. DE NEFFE. And a very important sale, is it not?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And the question of the man's financial ability was very important?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And you did not personally make any investigation?

Colonel GREELEY. We make about 13,000 timber sales every year. I can not personally check up on the financial responsibility of every purchaser.

Mr. DE NEFFE. Would you think Mr. Flood was right when he said that Mr. Herrick had $1,200,000 in cash available at the time this contract was signed?

Senator WALSH of Montana. I do not remember that he made any such statement.

Mr. DE NEFFE. Yes, he did, Senator.

Senator WALSH of Montana. Well, we know what the fact is, nevertheless. That was not my recollection at all. You were speaking about his net assets.

Mr. DE NEFFE (reading from transcript)

The CHAIRMAN. That he was worth between eight and nine million dollars, but that he had cash assets of $1,200,000. Is that it?

Senator WALSH of Montana. That is not cash, you see.

Colonel GREELEY. That statement applies, as I recall it, to the present time?

Mr. DE NEFFE. No; 1923.

Colonel GREELEY. I may be mistaken.

Senator WALSH of Montana. Let us not quibble about that.

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Mr. DE NEFFE. Now, the contract was really signed April 27 1923, wasn't it, but it was not delivered until June 15, 1923? Is that right?

Colonel GREELEY. I can not recall. The record will bring that out.

Mr. DE NEFFE. You were in Portland at the time it was signed? Isn't that right?

Colonel GREELEY. I am not sure.

Mr. DE NEFFE. Was it not anticipated at that time that some extensions would be necessary?

Colonel GREELEY. Not as far as anything was said to me about it.

Mr. DE NEFFE. Didn't you and Mr. Girard and Mr. Herrick and Mr. Ames talk about the matter of the likelihood that there would have to be extensions? .

Colonel GREELEY. I do not recall any such conversation.

Mr. DE NEFFE. And was it not understood that he could get them if he wanted them?

Colonel GREELEY. Not at all.

Mr. DE NEFFE. Absolutely not?

Colonel GREELEY. Not as far as any conversation that I participated in.

Mr. DE NEFFE. Soon after the contract was signed the work began to lag, did it not? And protests came in even as early as the fall of 1923? There were protests, were there not, from the citizens?

Colonel GREELEY. I do not recall just when the protests began to come in. It is true that they did begin to come in with no great lapse of time. My attention was first called to the matter definitely in the fall of 1924.

Mr. DE NEFFE. And then they came in the spring of 1924 and I believe in the summer of 1924 and the fall of 1924? They were coming in strong then, were they not?

Colonel GREELEY. There have been numerous protests at various times.

Mr. DE NEFFE. And then Mr. Herrick wrote a letter or two, did he not, about it stating that he would have to apply for an extension?

Colonel GREELEY Yes.

Mr. DE NEFFE. On page 25 of Exhibit 9, which is the document in your hand, containing the contract and modifications and other matter, I refer you to a letter under date of October 23, 1924, in which he said —

Mr. HALLOCK. Was that September or October, Mr. De Neffe?

Mr. DE NEFFE. October. In which he said that he would have to have an extension? Is not that right?

Colonel GREELEY. I would like to bring out the fact that on September l7, 1924, Mr. Herrick was written by the Acting Forester calling his attention to the necessity of vigorous prosecution of work under the contract. The letter to which you refer, from Mr. Herrick, was in response to that letter, or series of letters, from the Forest Service. I received this letter through the district forester from Mr. Herrick under date of October 3, setting forth the reasons why he asked for an extension of time.

Mr. DE NEFFE. October 3, 1924? Wasn't that it?

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Mr. DE NEFFE. And he had written before that asking for an extension, had he not, or stating that he would have to —

Colonel GREELEY. There is a letter from Mr. Herrick dated September 30, which says. "I am going to ask you for one year's extension of time."

Mr. DE NEFFE. Yes; that, is right. That appears on page 24 and that he was having a hard time. "It is a big proposition to work out getting the cash by your right hand out of your lefthand pocket." He uses those expressions, doesn't he?

Colonel GREELEY. That is in this letter; Yes, sir.

Mr. DE NEFFE. All right. Now, in that letter of October 3, 1924, he tells you how much he has spent, doesn't he, the total, on the last page?

Mr. HALLOCK. Pardon me. Have you any objection to that letter going into the record?

Mr. DE NEFFE. It is in.

Mr. MCGOWAN. It is in with the copy of the contract that I furnished to the committee.

Mr. DE NEFFE. And then he tells you how much he has spent, doesn't he, Colonel Greeley?

Colonel GREELEY. Let me point out the point that this letter was addressed to the district forester at Portland. I got it subsequently. The last page gives a list of the investments.

Mr. DE NEFFE. You say you got a copy of this letter?

Colonel GREELEY. I can not recall.

Mr. DE NEFFE. In the usual course of procedure when would get it?

Colonel GREELEY. It would not come to my attention until some specific action was necessary in connection with the sale which required this letter from the district forester as a part of the report upon which my decision was to be based.

Mr. DE NEFFE. Some time along in the early part of 1925 you proceeded to send Mr. Carter out, didn't you, to check it up?

Colonel GREELEY. Yes, sir.

Mr. DE NEFFE. Along in January, the latter part of January, and you had received this Herrick letter before that hadn't you—October 3, 1924?

Colonel GREELEY. That may very well be. Of course I can not recall the specific date when I first saw it.

Mr. DE NEFFE. Of course you keep in touch with what is going on, don't you?

Colonel GREELEY. I attempt to.

Mr. DE NEFFE. Were you surprised when Mr. Herrick came along here in the fall of 1924 and asked for an extension?

Colonel GREELEY. I was surprised to the extent that I had had no previous warning or expectation that such a request would be made.

Mr. DE NEFFE. And then the protests kept coming in strong all the time, and you finally decided to send Mr. Carter out, didn't you?

Colonel GREELEY. Yes; partly at the request of one or more members of the Oregon delegation who had also received many protests.

Mr. DE NEFFE. You had taken it up with Senator C. L. McNary, hadn't you?

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Colonel GREELEY. Yes.

Mr. DE NEFFE. And he took it up with you because he had been receiving telegrams and protests?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And then you wrote him a letter February 16, 1925, didn't you.

Colonel GREELEY. If you have the letter there, I presume I did [examining letter]. Yes; that is my letter.

(The letter referred to was marked by the reporter "Greeley, No. 2.")

Mr. MCGOWAN. Is that one of our letters, Mr. De Neffe?

Mr. DE NEFFE. No; it is not one of yours. This is from the office of Senator McNary.

(The letter referred to was read by Mr. De Neffe and is here printed in full, as follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE
Washington, February 16, 1925.

HON. C. L. MCNARY
United States Senate.

DEAR MR. MCNARY: I am in receipt of your letter of February 7 inclosing letters from E. W. Barnes and E. W. Lothrop dealing with the proposed modification of the Herrick timber-sale contract.

As you know, Mr. Carter is now in the west investigating this project. I have entire confidence in his capacity and impartiality. To send two additional men from the Washington office would be unwarranted and unjustifiable expenditure of public funds.

Mr. Barnes's suggestions regarding the requirements which should be stipulated in dealing with Mr. Herrick will be called to Mr. Carter's attention and given due consideration.

I sincerely hope it will be possible for Mr. Herrick to rush his construction work and begin operations at an early date. Such a consummation would be most satisfactory to the Forest Service. At the same time I must take into consideration that he has certain rights under his contract, as a whole, and that these must be given fair consideration by the Government. The solicitor for of the Department of Agriculture would not sustain this office in an attempt to cancel the contract upon the first technical violation of its terms. For such a violation our only recourse would be action for damages if we were able to prove actual damages to the Government. With the expenditure as made approximating three-quarters of a million dollars, substantial failure to comply with the general terms would have to be shown before we would be justified in the action of cancellation.

I hold no brief for Mr. Herrick. I will regret should it be found necessary to extend his contract a single day, yet I think it would he better to do this and get the road built than to arbitrarily precipitate action which might result in the entire project being tied up in litigation for years to come. My entire concern is to deal fairly with our contractor and secure the early development of the region.

Very sincerely yours.

W. B. GREELEY, *Forester.*

Mr. DE NEFFE. Where did you get those figures, that $750,000 had been spent before that time?

Colonel GREELEY. I can not recall specifically, but I presume that they were reported from our Portland office.

Mr. DE NEFFE. Didn't you get them from Mr. Herrick's letter of October 3, 1924?

Colonel GREELEY. I do not know.

Mr. DE NEFFE. He claimed he spent about $780,000 —

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Mr. HALLOCK. No; he claimed there has been that much, including the line from Crane to Burns. It does not say he spent it.

Mr. DE NEFFE. He say there has been spent —

Mr. HALLOCK. Yes.

Mr. DE NEFFE. Who spent it then?

Mr. HALLOCK. I am only questioning your statement that Herrick claims, to have spent it. He gives a list at the end of his letter of expenditures on the whole project to date.

Mr. DE NEFFE. He does not claim credit for the sale of ties to the U. P., does he?

Mr. HALLOCK. He does not claim any credit; he just states what the facts are.

Mr. DE NEFFE. What did you understand Mr. Herrick meant in that tabulation totaling $781,000? Didn't you understand that he had spent that on this project?

Colonel GREELEY. Yes; that was my impression.

Mr. DE NEFFE. So you must have got this approximate figure of $750,000 from Mr. Herrick's figures there, didn't you?

Colonel GREELEY. I do not know whether I got it from Mr. Herrick's statement or reports made through the district forester at Portland.

Mr. DE NEFFE. Can you show where the district forester ever reported that Mr. Herrick up to February 16, 1925, ever suggested that he had made that amount of expenditure, or anywhere near it?

Colonel GREELEY. I do not know if there is such a report or not.

Mr. DE NEFFE. Will you try to find one?

Colonel GREELEY. Yes.

Mr. DE NEFFE. After getting Mr. Herrick's letter did you make any investigation as to how much he had actually spent?

Colonel GREELEY. All of the investigation's of Mr. Herrick's work were made under the district forester at Portland, by logging engineers under his employ.

Mr. DE NEFFE. And then they sent you copies, is that it?

Colonel GREELEY. From time to time we got reports from them specifically when requests were received for a modification of the contract.

Mr. DE NEFFE. Well, this proposition was getting awfully hot there in the fall of 1924, and didn't you immediately try to get some information as to what the status was, when the citizens were wiring you and their delegation here?

Colonel GREELEY. I do not recall just. What steps I took at. that time to get information, but I thought the most effective way to deal with the situation was to have Mr. Carter, who is the chief of the timber sale work for the whole Forestry Service, go out there and meet these people in Burns and hear everything they had to say.

Mr. DE NEFFE. Yes, you did that —

Colonel GREELEY (continuing). And then arrive at his own conclusion as to what he had done. That was the course that I took.

Mr. DE NEFFE. So you were willing to make this statement to Senator McNary that he had spent three-quarters of a million dollars in this. Is that the fact, Colonel?

Colonel GREELEY. I made no personal investigation.

Mr. DE NEFFE. But you did not call for any report from your Portland office, did you?

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Colonel GREELEY. I do not remember whether I called for a report at that time or not.

Mr. DE NEFFE. In Mr. Herrick's letter of October 3, 1924, he states that the cost of the construction of the line from Crane to Burns that he had spent $436,000 —

Mr. HALLOCK. He did not say that, Mr. De Neffe.

Mr. DE NEFFE. Maybe my eyesight is poor.

Mr. HALLOCK. Where does he say he spent that money? [Mr. De Neffe, indicated.]

Mr. HALLOCK (reading)

> The amount of money which has been spent on the railroad construction, timber acquisition general overhead and other obligations is approximately as follows up to October 1, 1924. I feel sure that you will consider that my request is reasonable and should be granted.

And then he tabulates the expenditures to date on the whole project.

Mr. DE NEFFE. Yes. Was he to get credit for any timber he bought in there, any private timber? Was that to be credited on the money that he should spend on the construction, Colonel?

Colonel GREELEY. No.

Mr. DE NEFFE. He puts in an item of $103,000 there. That would be $681,000 that he claims he spent on the project?

Mr. MCGOWAN. Mr. De Neffe, I do not care to enter into this very extensively, but I do not see any statement in that tabulation where the Fred Herrick Lumber Co. has an item of $103,000 for the purchase of timber.

Mr. DE NEFFE. Mr. Hallock said it was timber.

Mr. HALLOCK. No; I did not.

Mr. DE NEFFE. What did you say?

Mr. HALLOCK. I simply read the letter.

Senator WALSH of Montana. What does this all mean?

Mr. DE NEFFE. I was coming to it, Senator.

Mr. HALLOCK. The declaration is the amount of money which has been spent in the railroad construction, timber acquisition, general overhead, etc., so much, and he itemizes it. Now, the timber acquisition there may not have been and probably was not contemplated in the consideration of the contract, but he tells us that he spent that much money in that country; that is, that there has been that much spent—not that he spent it—but there has been so much money spent on the project.

Mr. DE NEFFE. You said you did not consider that there had been a substantial check applied on the general terms of the contract. Was that based on the belief that he had spent $750,000 in there?

Colonel GREELEY. No; it was based on the general character of his work up to this time, including all of the information I had received about it. That was the general expression of my judgment of the situation at that date. How much weight I gave to Mr. Herrick's letter, which I may or may not have seen at the time that letter to Senator McNary was written, I can not say.

(Mr. De Neffe read the last paragraph of the letter of February 16, 1925, from W. B. Greeley to Senator McNary.)

Mr. DE NEFFE. You were concerned principally over him? Was that it?

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Colonel GREELEY. The two clauses I coupled together in that sentence.

Mr. DE NEFFE. I know, but you were expressing some concern over the contract?

Colonel GREELEY. I made a complete statement this morning of the considerations that governed my action. I named three.

Mr. DE NEFFE. Yes; I understand that.

Colonel GREELEY. And those three considerations were the considerations that governed my action at every stage in this enterprise.

Mr. DE NEFFE. Then you sent Mr. Carter down there, didn't you?

Colonel GREELEY. Yes, sir.

Mr. DE NEFFE. And he met with people at Burns?

Colonel GREELEY. Yes, sir.

Mr. DE NEFFE. And he rendered to you a very full and complete report, didn't he, dated February 20, 1925? I think that report is in the record. Mr. Carter is a very able man, isn't he?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And as you expressed it here, you had confidence in his competence and impartiality. He met with the people of Burns on February 15, 1925, and there were present District Forester Granger, Assistant District Forester Ames, Logging Engineer Hoffman, Supervisor Reed, and Mr. Carter, representing the Forest Service, and Mr. Girard and Mr. Klobucher, representing Mr. Herrick, and about 25 citizens of Burns were invited to state any pertinent facts bearing on the case. Then he reported to you in the following language:

> Practically speaking, the summer of 1924—an unusually favorable summer for construction work in this region—was wasted.

Do you remember reading that paragraph?

Colonel GREELEY. Yes; I remember that something to that effect was in Mr. Carter's report.

Mr. DE NEFFE. Before that he had said that the cost of the railroad from Crane to Burns was about $170,000, hadn't he? Isn't that what the report said?

Colonel GREELEY. I do not remember all the details of the report, Mr. De Neffe. If it is in there, why, it is there.

Mr. HALLOCK. Mr. De Neffe, aren't you confusing Mr. Herrick's investments in that line with the Union Pacific?

Mr. DE NEFFE. Not. at all. Mr. Carter was reporting the investment that Mr. Herrick had made.

Mr. HALLOCK. Yes, and that was his investment in the line $170,000?

Mr. DE NEFFE. Yes, $170,000.

Mr. HALLOCK. I think so.

Mr. DE NEFFE. You probably have the original that was in Colonel Greeley's file. I do not want to be quoting figures here and having him admit them without seeing that they are correct. That is a copy, is it not—on the first page, Colonel, under No. 1, the Crane-Burns Railroad. Do you find that?

Colonel GREELEY. Yes, sir.

Mr. DE NEFFE (reading):

> The railroad from Crane to Burns was completed at a total cost to Mr. Herrick of about $170,000.

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And then he goes on to itemize it. Now then, in Mr. Herrick's letter dated October 3, 1924, he stated that he had spent on that Crane-to-Burns road $436,000 —

Mr. HALLOCK. No, it does not. He does not claim he spent it. I do not like the form of the question.

Senator WALSH of Montana. The question is not in accordance with the letter of Mr. Herrick.

Mr. DE NEFFE. He itemizes here the amount that has been spent.

Senator WALSH of Montana. Yes, but he says "there has been spent."

The CHAIRMAN. He does not say that he spent it; he says it has been spent—that is, the combined expenditures.

Mr. DE NEFFE. I do not know what the impression would be from that.

Senator WALSH of Montana. Oh, the impression is another thing, but you are purporting to quote the letter, and you have not quoted it correctly.

Mr. DE NEFFE. I did not mean to misquote.

Senator WALSH of Montana. You did not mean to; of course we understand that.

Mr. DE NEFFE. Let me ask you ths, then, Colonel: Did you check that tip to see whether $170,000 had been spent on the Crane-to-Burns road.?

Colonel GREELEY. I did not.

Mr. DE NEFFE. And then on page 2 he says—Mr. Carter reports that the company's records show a total expenditure of $109,000. That is under the heading of Burns-Seneca Railroad—charged to this logging railroad. He says that amount had been spent to January 13, 1925. That would make a total, then, that Mr. Herrick had spent in there up to that time, February 20, 1925, of $279,000. Isn't that right, Colonel Greeley?

Colonel GREELEY. I do not know whether those are all the items which should be included or not.

Mr. Du NEFFE. Well, then, were all the items that Mr. Carter put in—you would consider this a true report, would you not? You have no reason to question it?

Colonel GREELEY. No.

Mr. DE NEFFE. Then after stating on page 2, "Practically speaking, the summer of 1924, an unusually favorable summer for construction work in this region, was wasted," he says:

> No real work has been done on any except the parts of the line easiest to grade and easiest of access. The work has been done on the parts of the line which will be slow and heavy construction, or where the fills should settle over at least part of a winter before steel is laid.

Then he describes the mill, telling about how he had paid $92,214.26 for the timber that he had bought from Mr. Barnes.

Then on page 3 he says, under paragraph 4:

INTERESTS OF THE TOWN BURNS

> For years the State board of health has been demanding the installation of a water and sewage system

in Burns. The town, in view of the growth anticipated from the presence of the sawmill, has voted to issue $280,000 of bonds

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for these improvements. These bonds are practically unsaleable until there is concrete evidence that the mill will be located at or near Burns. Credits for other improvement needed if the town is to have a larger population, such as schools, a hotel, more residences, enlarged telephone service, etc., can not be had until outside investors are convinced that the mill will be built as planned. Even Mr. Herrick's announcement of intent does not weigh heavily in this balance, in view of the lack of accomplishment on the ground.

The Forest Service has at no time required that the mill be built at any particular place. The site held by Mr. Herrick under conditional deed appears to be the most logical site in the region, and the location of the railroad is evidence of intent to use it. The interest of the Forest Service is primarily that a mill be ready to operate by the date by which logging is required to begin, and future requirements will be drawn up on that basis.

FINANCIAL ABILITY AND CUSTOMS OF MR. HERRICK

Mr. Herrick apparently never pays out anything until he can no longer delay. The experience of district 1 is distinctly to this effect. The work done on the Malheur project to date, he has delayed all payment to contractors and even to his own employees as long as possible. The Herrick Lumber Co. has had no substantial bank balance at any time. Cheeks to employees have been protested for lack of funds by the bank. Delaying actual disbursements appears to be a firmly fixed habit with him.

And I want to call this to the attention of Mr. Hallock, because he said there had never been any checks protested. And then he goes on and says:

At the same time, he is reputed to be wealthy. Two years ago a Dun-Bradstreet report rated him as worth between $15,000;000 and $30,000,000, with almost complete ownership of his Idaho Lumber Co. unencumbered. He had heavy stocks of lumber and logs at his Idaho mills. Possibly he has a dislike for interest-bearing debt, and an indifference to any other kind.

On the basis of the little evidence available, the best guess seems to be that Mr. Herrick is trying to finance the Malheur project out of the profits of his Idaho projects, which would mean a delay of five or more years before logging and milling were actually under way; but that this is unnecessary.

And then further down under "General":

Mr. Herrick has delayed work on this project to an extent that throws very serious doubt on his intent to comply with the contract requirements.

Colonel GREELEY. Why do you omit the next paragraph?

Mr. DE NEFFE. I will read it if you wish:

There is also evidence that Mr. Herrick has refused to sell out the Malheur project to the Brooks-Scanlon Lumber Co. Exact terms of the offer are unknown. A certified check for $200,000 was dismayed by Mr. Barnes as constituting part of the offer.

GENERAL

Mr. Herrick has delayed work on this project to an extent that throws very serious doubt on his intent to comply with the contract requirements. They probably could not have been ready to operate by April 1, 1925, in any event, but could have been ready by October 1, 1925. By wasting the summer of 1924, the date by which it is feasible to begin operation has been pushed ahead to October 1, 1926; and unless work is conducted vigorously in 1924, operations by that date will be impractical. The engineering plans are finished. There is not now and has not been any cause for serious delay due to right-of-way matters. The failure last summer was due to Mr. Herrick's refusal or inability to put up the cash. In the judgment of all of the service men who were at Burns, he has failed to show good intent and good faith to an extent that justifies prompt cancellation of the contract unless there is an immediate and sustained reversal of his previous practices.

And Mr. Herrick in one of his letters mentioned that because the people were scattered around he was delayed, and he gave a lot of reasons for delay.
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Do you want me to read any more? Then there are recommendations.

Did this letter make any impression on you, Mr. Greeley, when you got this report from Mr. Carter?

Colonel GREELEY. Certainly.

Mr. DE NEFFE. Did you question his intent or good faith when you read that report?

Colonel GREELEY. You mean, question Mr. Herrick's intention or good faith?

Mr. DE NEFFE. Yes, sir.

Colonel GREELEY. Why, I took Mr. Carter's report and recommendations at full value. He was sent out there for the purpose of sizing up the situation, and he stated his finding.

Mr. DE NEFFE. And didn't you consider, in view of tire fact that he had made such a poor showing, had been so indifferent, had wasted the whole summer there without construction, that his contract should be canceled?

Colonel GREELEY. His contract was not available for cancellation at this time.

Mr. DE NEFFE. No; but you could see that he could not comply with it?

Colonel GREELEY. Certainly.

Mr. DE NEFFE. The report itself says that he never could comply with it, that it would be a physical impossibility to begin cutting by April 1, 1925. Isn't that correct?

Colonel GREELEY. Certainly.

Mr. DE NEFFE. It was only a little over a month and a half. Didn't you consider canceling the contract at that time, in view of this showing?

Colonel GREELEY. Yes, I considered it as one of the possible courses that might be taken.

Mr. DE NEFFE. But you did not cancel it?

Colonel GREELEY. No.

Mr. DE NEFFE. You gave him modifications and extensions, didn't you?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And then on February 27, 1925, you wrote a letter to Hon. Charles L. McNary, United States Senate—I will ask you if this is the letter?

Colonel GREELEY. Yes.

Mr. DE NEFFE. In this letter you use the following language. First, you recited that there had been a meeting; that you lead sent Assistant Forester Carter to confer with the assistant forester and his assistants in regard to this request. Then you say:

> They met with representatives of Mr. Herrick at Burns and also invited any of the citizens of that region to furnish them with any pertinent facts which should be placed before me for consideration in reaching a decision on Mr. Herrick's application.
>
> The facts as brought out at these conferences have convinced me that Mr. Herrick should have an opportunity to carry out his contract, but that any extension such as he requests should be accompanied by requirements of continuous and diligent work on a scale which will assure the completion of the necessary

railroad construction and other improvements by the time cutting must begin under the terms of the contract as modified. I have, therefore, authorized the district forester to approve the modification of contract under

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which definite requirements in the construction of a railroad from Burns to Seneca and in the construction of the mill and its appurtenances must be met by Mr. Herrick on July 1, October 1, and December 31, 1925, and April 1, 1926, and the railroad from the mill to the timber and the sawmill must be ready for operation and operations in Government timber must begin by October 1, 1926. These requirements are reasonable and I feel that failure to meet them will be ample evidence of a lack of good faith on the part of Mr. Herrick which will justify me in terminating his contract and reoffering the timber for sale through public advertisement.

And then you go on and state you have drafted the requirements, and you set them out substantially, and the point to which the railroad is to be built is a point near Seneca, not at Seneca.

Now, then, Mr. Herrick had spent $100,000 between April 1 and July 1, 1925, under this modification of the contract which was dated March 3, 1925. Is that right?

Colonel GREELEY. It was about that date, if it is not that exact date—March 12, 1925, it was approved.

Mr. DE NEFFE. Yes; signed on the 3d and approved on the 12th. He was to spend $100,000 between April 1 and July 1, 1925? Is that right?

Colonel GREELEY. That is correct.

Mr. DE NEFFE. Did he spend it?

Colonel GREELEY. No; not that much.

Mr. DE NEFFE. There was only 50 per cent compliance, wasn't there?

Colonel GREELEY. Approximately.

Mr. DE NEFFE. I think you stated that the other day, and the report of one of you men showed it. Then did you take any action to cancel the contract?

Colonel GREELEY. Not to cancel it.

Mr. DE NEFFE. But you said here in your letter to Senator McNary:

> These requirements are reasonable, and I feet that failure to meet them will be ample evidence of a lack of good faith on the part of Mr. Herrick which will justify me in terminating his contract.

Colonel GREELEY. Yes; the failure of Mr. Herrick to meet these requirements would have justified cancellation, but I did not believe that to be the best course for the Government or the community.

Mr. DE NEFFE. What changed your mind here —

Colonel GREELEY. My mind was not changed as to whether Mr. Herrick's failure to do these things would constitute a violation of the contract sufficient to justify a cancellation.

Mr. DE NEFFE. That is what you state here.

Colonel GREELEY. But I did not cancel the contract, because I did not see that anything would be accomplished thereby toward the purposes of the Forest Service in making the sale. We wanted action. We did not want to have to go to a lot of further readvertisement and delays. We wanted action, and I thought that we would get the best action through some modification that, would enable Herrick to go ahead.

Mr. DE NEFFE. How long would it have taken to readvertise it? How much time would it have consumed?

Colonel GREELEY. Well, the minimum advertising period required by the law is 30 days.

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Mr. DE NEFFE. Then you could have finished the advertisement by the middle of August anyway, couldn't you?

Colonel GREELEY. I have explained previously this morning that there are a good many other considerations involved: The whole process of acquiring the right of way, directing the initial work, duplicating and construction, and the question of either duplicating Mr. Herrick's work or buying him out, the possibility of legal entanglements —

Mr. DE NEFFE. He had only spent $109,000 at that time —

Colonel GREELEY (continuing). Led me to think that the best course would be to grant a continuance.

Mr. DE NEFFE. Even though Mr. Carter, the man in whom you have confidence, told you that at the rate he was going it would take five years to finish it you thought it would be better to let him piddle along five years than to go ahead and readvertise it?

Colonel GREELEY. I had no intention of letting him piddle along for five years.

Mr. DE NEFFE. Well, he has piddled along quite a while since then. Now, then, coming along toward the fall of 1925, Herrick had another modification, didn't he, in September?

Colonel GREELEY. About then.
Mr. DE NEFFE. Why was that modification necessary?

Colonel GREELEY. Mr. Herrick had complied in part —

Mr. DE NEFFE. What per cent had he completed?

Colonel GREELEY (continuing). With the requirements of the modification of March 12, 1925. Under the first of those he had expended $44,571, according to Mr. Holcomb's report. There had been a partial compliance with the railroad grade construction. I was again in the same quandary. I will admit frankly that it was not an absolutely clear-cut case. It was a perplexing and difficult case to handle. Herrick was not carrying out his requirements in good faith, but at the same time he was making some substantial investments, and I had this question before me constantly as to what would happen if his contract were canceled, where that would leave us. So after considering all of those factors, I decided to make another extension of time.

Mr. DE NEFFE. And you were very much concerned about his investment. Was that it?

Colonel GREELEY. No more concerned about his investment than I was about the accomplishment of our purposes in making the sale.

Mr. DE NEFFE. Weren't you concerned with the people of Burns and of Grant County, that they should have this development here?

Colonel GREELEY. I was, certainly; and it was because I was concerned for them that I refused to have the whole thing thrown into a stalemate, with Herrick owning the land, another man having a contract for the timber, and the Federal courts in a position to step in and tie up the whole thing for three or four years.

Mr. DE NEFFE. Do you think that could have happened legally?

Colonel GREELEY. It could have happened. Mr. Herrick could have thrown this case into the Federal courts.

Mr. DE NEFFE. Did he threaten to throw it into the Federal courts?

Colonel GREELEY. No.

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Mr. DE NEFFE. Did your solicitor advise you that Mr. Herrick could do that legally?

Colonel GREELEY. No.

Mr. DE NEFFE. What made you think he would do it, or that it could be done?

Colonel GREELEY. Because he would have had the way open.

Mr. DE NEFFE. Have you a legal opinion from any of your solicitors that he could do that, go into court and get an injunction as to the sale of the timber?

Colonel GREELEY. I have discussed it informally; I have no written opinion.

Mr. DE NEFFE. It certainly has come up here many times, Colonel Greeley, where it seemed to me you had occasion to know what your legal rights were.

Colonel GREELEY. I knew what my legal rights were.

Mr. DE NEFFE. But you can not say now that he could go into the Federal courts and enjoin the sale of this timber?

Colonel GREELEY. I know that he could go into the Federal courts. If the Forest Service undertook to sell that timber to another party Mr. Herrick could bring injunction proceedings to show cause why he did not have a valid contract to that timber, and it would have thrown the construction of the contract before the Federal courts. I am perfectly clear in my own mind that the Federal court would have sustained the action of the Forestry Service in canceling the contract.

Mr. DE NEFFE. Yes, certainly.

Colonel GREELEY. I had no doubt on that point, but the thing I wanted to avoid was the delay.

Mr. DE NEFFE. It would only take a few months to advertise and sell it again to the man who bought the timber? Herrick's road was not the only road up there, was it? Couldn't there have been another railroad built north of Burns into the timber?

Colonel GREELEY. Physically speaking, yes.

Mr. DE NEFFE. Yes, that would be possible. And there would have been a chance to bring the timber out, wouldn't there? Or if Mr. Herrick had wanted to go into the railroad business, he could have built on up into the timber and had all kinds of tonnage to haul out there?

Colonel GREELEY. That is all possible, but it was my judgment that no other agency would care to buy the timber and not control the railroad.

Mr. DE NEFFE. Why couldn't they build a railroad of their own, Colonel Greeley? They only had to build 50 miles instead of 80 miles as it was advertised before.

Colonel GREELEY. We could have bought it all over again.

Mr. DE NEFFE. Was not that one of the reasons, probably, why you did not have any bidders the first time, on account of the big railroad cost, 80 miles of construction there? Was not that one of the things that were not very attractive about the project? Now, if you advertised it again 30 miles of that railroad cost would be eliminated. Wouldn't that be a more attractive proposition then?

Colonel GREELEY. As far as that —

Mr. DE NEFFE. I wish you would answer the question.

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Senator WALSH of Montana. He is trying to do it.

Colonel GREELEY. As far as that 30 miles of railroad was concerned it would be, but it would certainly not attract a lumber company to go in there and buy the timber and have the best route for a railroad sewed up in the hands of another party.

Mr. DE NEFFE. How do you know it was the best and only right of way?

Colonel GREELEY. I assume it was the best, because it was the right of way that had been selected.

Mr. DE NEFFE. Couldn't they have condemned the right of way if he was not going to use it?

Colonel GREELEY. Possibly.

Mr. DE NEFFE. Surely.

Colonel GREELEY. But it would have taken many months time and delayed the consummation that we desired to bring about. That is my own conclusion. I admit there is a large element of judgment in this, Mr. De Neffe, and I admit that it was a difficult case for me to handle. The people of the locality, many of them, were pressing for cancellation of the contract. Other people of the locality were urging me to give Herrick a chance. We had these conflicting opinions and recommendations, locally.

Now, I do not claim any omniscience or that I took exactly the wisest course in all of these circumstances, but after weighing everything I did what I thought was best to accomplish our business of getting that timber cut and the railroad completed there with the least possible delay. I may have been wrong and I may have been right, but that was why I decided that way.

Mr. DE NEFFE. The people who were siding with Herrick—many of them he had patronized in a business way? Wasn't that a fact?

Colonel GREELEY. I do not know.

Mr. DE NEFFE. They were people who had business there, stores, and they naturally sided with Herrick? Isn't that a fact?

Colonel GREELEY. I do not know.

Mr. DE NEFFE. Then there was an extension granted on September 8, 1925?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And certain definite requirements were fixed in the modification? Isn't that right?

Colonel GREELEY. Yes—for instance, the furnishing of Liberty bonds in such a way that they could be canceled as liquidated damages.

Mr. DE NEFFE. Up to that time there had been no enforcement of the other bond, had there?

Colonel GREELEY. No. May I amplify my statement a little?

Mr. DE NEFFE. Yes.

Colonel GREELEY. You will appreciate that up to that time the only formal bond we had was a short-time bond which we could not cancel but against which we could proceed through the courts to collect proved damages. In other words, to obtain damages under the bond existing prior to this modification of September 8, 1925, we would have had to institute trespass action in court and prove damage. I felt that under the circumstances we should have some quicker and more effective form of redress than that and so the

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requirement was put in this modification, making $50,000 available as liquidated damages to be paid in automatically upon the failure of Herrick to comply with any of the stipulations.

Mr. DE NEFFE. Now, then, things dragged about the same as they had after you granted the second modification?

Colonel GREELEY. Well, there was a pick-up in the scale of work, a distinct pick-up. But the compliance was not 100 per cent complete.

Mr. DE NEFFE. And complaints began coming in again, didn't they? Isn't that right?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And then things got in such shape that Mr. Herrick was defiant, wasn't he? Isn't that a fact?

Colonel GREELEY. I do not know.

Mr. DE NEFFE. Didn't he take a very defiant attitude? Almost dictating to you people what you should do?

Colonel GREELEY. Not to my knowledge. At least I do not recall to what you refer.

Mr. DE NEFFE. Then the result of these complaints was that there was a meeting in Spokane, wasn't there, on July 24, 1925, at which there was present Mr. Ames of the Portland office, Mr. Hoffman, the logging engineer, Mr. Herrick, and Mr. Carter, isn't that right?

Colonel GREELEY. What is the date of this?

Mr. DE NEFFE. It is on page 71, in Exhibit 9. Do you remember that meeting in Spokane that was had?

Colonel GREELEY. I was not there, but I remember this report of it.

Mr. DE NEFFE. This is a letter or report dated July 24, 1925, from C. M. Granger, district forester at Portland, Oreg., to the Forester, Washington, D. C. It reads:

> On July 1 Logging Engineer Hoffman made an examination of the company's books at Burns to determine the degree of compliance with Stipulation 1, regarding construction work —

Requiring the expenditure of $100,000 between April 1 and July 1, 1925? Isn't that right?

Colonel GREELEY. That is correct.

Mr. DE NEFFE. (reading):

> Copy of Mr. Hoffman's report is inclosed. Since it was plain that the company had fallen short over 50 per cent of the amount required to be expended by July 1, immediate steps were taken to have a conference with Mr. Herrick. This conference was held at Spokane July 13, and Mr. Ames, Mr. Carter and I were present. Mr. Carter will be able to give you full details in regard to it. Mr. Herrick was informed that the purpose of the conference was to give him an opportunity to show cause why the contract should not be canceled in view of the marked failure of the company to comply with the first of the stipulations agreed to by him last March.

Mr. Herrick's home is in Spokane, isn't it?

Colonel GREELEY. I do not know where he lived.

Mr. DE NEFFE. Well, he said he lived there. Do you know why it was necessary for all of you forest officials to go chasing up to Spokane after him? Why didn't he come down to Portland?

Colonel GREELEY. I do not know anything about it.

Mr. DE NEFFE. He evidently was the magnet that drew them up there. This says further:

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It is difficult to give a clear presentation of Mr. Herrick's arguments because he did not make them at all clear himself. He made a strong point that the essence of the contract, according to his interpretation, is the cutting of 60,000,000 feet by June 1, 1928. He claims that the construction work has been going forward actively this season, and that therefore the Government should be satisfied even if the stipulation has not literally been complied with.

We endeavored to recall to Mr. Herrick's mind that even as long ago as in the spring of 1924 he was informed in this office that the terms of the contract were to be complied with, that when the contract was modified this spring the terms of the modification made it clear that noncompliance with any one of the stipulations would be cause for the cancellation of the agreement, that when the stipulations were forwarded to him it was again pointed out, and that in reply he had written that he would guarantee to get within requirements by July 1. All this he waved aside as immaterial, claiming that the wording of the contract throughout implies a liberal construction, and that he had assumed a liberal interpretation of the stipulations as well.

When asked what guarantee or assurances he could give that the remaining stipulations would be complied with, he had nothing to offer. It seemed impossible for him to grasp our repeated statements that we were faced with a violation of the terms of the contract and were endeavoring to ascertain whether we must recommend cancellation or whether he was prepared to take some action in the future which would justify us in not doing so.

After the discussion with Mr. Herrick, Mr. Ames Mr. Carter and I conferred and finally agreed that we would inform Mr. Herrick that we could not see our way clear, considering his attitude, to do otherwise than to recommend a cancellation of the agreement. Upon being so informed, Mr. Herrick asked for a further opportunity to confer with Mr. Girard and to go over the situation on the ground. He asked for a conference in Burns, which was refused, but I did agree to defer action until the 23d.

Yesterday Mr. Herrick, Mr. Girard, and Mr. Klobucher were here and had a conference with Mr. Ames and me. Mr. Herrick had actually nothing new to offer, and attempted to review the same ground that he went over in Spokane. In reply to our demand as to what assurances he could give that the October 1 and subsequent requirements would be met, he finally said he would see that Mr. Girard had the necessary money to comply with the requirements, but that he would not accept the requirement as to the building of the mill foundations this fall.

Now, did not that strike you, after having tried to dictate as to what he would or would not do, when he said he would not do this or that, did not that strike you, Colonel Greeley, as rather queer?

Colonel GREELEY. In one sense, yes. In another way you must bear in mind that the original contract had no stipulations at all and no clauses dealing with the mill.

Mr. DE NEFFE. I know that.

Colonel GREELEY. And that Mr. Herrick took the position that in drafting these stipulations the Forest Service had no right to go into the matter, to go into any matters which were not dealt with in the original contract.

Mr. DE NEFFE. He claimed he never was in default.

Colonel GREELEY. That claim has been made; yes. Now, I am just offering that by way of explanation of my reply.

Mr. DE NEFFE. I continue reading:

The situation, as you can see, is rather difficult. Here is a purchaser who has consistently refused to regard the contract stipulations seriously. It is a question what assurances can be given under the circumstances that would give us any confidence that future requirements will be met any better than those in the past.

I do not care to read any more of this unless Colonel Greeley wants me to do so. If he does, all right.

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Senator WALSH of Montana. I believe it is about time we went to adjourn, Mr. Chairman, and I shall have to go.

Mr. HALLOCK. Mr. Chairman, might we just have one question answered by Mr. Herrick here, a

statement made, before Senator Walsh goes?

The CHAIRMAN. Are you willing to remain just a moment or two, Senator Walsh?

Senator WALSH of Montana. Yes.

Mr. HALLOCK. Mr. Herrick need not take the stand; he could make the statement right here.

The CHAIRMAN. Very well.

STATEMENT OF FRED HERRICK, TIMBER OPERATOR, ST, MARIES, IDAHO, AND SPOKANE, WASH.

Mr. HERRICK. In reference to where Mr. Carter complains of me not paying my bills, let me say: Back in 1910, in Idaho, we had a large forest fire, and I bought timber on Big Creek and went in there, and there were 36 homesteaders that did not have their titles when we went in there. We got into an agreement between the Government and the homesteaders that the Government timber and the homesteaders' timber was to be consented to by the Government people and then settlements were to be made as title appeared.

In going into this matter with an attorney, we found that the greater part of these homestead claims were valid, and they kept proving up. At the ending of that practically out of 36 there were 2 that fell down—that amounted to less than $6,000—and we bought them with the understanding that they would appear and make good their claims. They moved out of the country and sued us in the Federal court, but they did not appear and we did not appear.

And then the way it started in that I had not paid my bills, there were 160 acres of land on Marble Creek that was burned over, and I bought the timber at bid, the same as the usual purchase, and let a contract to cut the timber; and the contractor and the local man that scaled the logs got into some trouble about the operation of that work, and the contractor abandoned it and I abandoned it, and that was unsettled until it was settled some time afterwards. That is what he had reference to.

I have been cutting Government timber and Indian timber for 40 years, and these are the only three items there has been any question about the payment of the bills; and that is one of the things I think Mr. Carter has had his horn out for me all along the line.

Senator WALSH of Montana. I want to ask a question right there. Prior to the time that you made this arrangement with the Continental & Commercial Bank here recently—last fall—through Mr. Flood, had you ever prior to that time attempted to make any arrangement to borrow money upon your securities and other property in order to carry on this work?

Mr. HERRICK. Why, no; only in 30, 60, and 90 days paper at a time.

Mr. HALLOCK. Pardon me; but will you tell the Senator about the effort by the Lumbermen's Trust. Co. over a year ago?

Mr. HERRICK. I first went to Portland in October to take up the question of getting finances.

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Senator WALSH of Montana. Mr. Flood told us about that. That was a part of the same transaction. But what I want to know is whether you ever prior to that time endeavored to make any banking or financial arrangements so that the money would be forth coining to do this work?

Mr. HERRICK. Not in a large amount like I concluded recently,

Senator WALSH of Montana. In order to meet current bills, from time to time you negotiated loans at various banks?

Mr. HERRICK. At various banks.

Senator WALSH of Montana. But you did not make any banking arrangements whereby the money would be forthcoming?

Mr. HERRICK. No; not until last October.

Senator WALSH of Montana. You never tried to make an arrangement of that kind?

Mr. HERRICK. I never tried to make a bond issue; no.

Senator WALSH of Montana. All right.

Colonel GREELEY. If Mr. De Neffe is now to go on, I will ask him to read the following three or four paragraphs.

Mr. DE NEFFE. Sure; I will be glad to do that.

The CHAIRMAN. We must recess now. As I understand, Senator Walsh, you can not be here to-morrow?

Senator WALSH. No.

The CHAIRMAN. Senator Kendrick, could you be here this afternoon in order that we might hurry this matter along? Of course, you are anxious, as all the rest of us are, to push it along.

Senator KENDRICK. Certainly; but we have another meeting here at, 3 o'clock this afternoon.

The CHAIRMAN. Very well, then; the committee will stand in recess until 10 o'clock tomorrow morning.

Mr. HERRICK. Senator Walsh, might I ,say that in December of the year before I did go to Portland in regard to financial matters, but they stated we did not have enough investment in there at the time to guarantee a loan on that. property for a bond issue.

Mr. DE NEFFE. Colonel Greeley, you will get the report on which you based your statement to Senator McNary that there had been three-quarters of a million dollars spent.

Colonel GREELEY. I will see if there is a report on that.

(Whereupon, at 1.10 p. m., the committee recessed to meet tomorrow, Saturday, February 19, 1927, at 10 o'clock a. m.)

HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREG.

SATURDAY, FEBRUARY 19, 1927

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON PUBLIC
LANDS AND SURVEYS,

Washington, D. C.

The subcommittee met at 10 o'clock a. m. pursuant to the recess on yesterday in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (CHAIRMAN), Cameron, and Kendrick.

Present also: Colonel Greeley, Chief of the Forest Service, and D. F: McGowan, attorney representing United States Forest Service; Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher, Frederick M. De Neffe, attorney representing Grant County, Oreg.

The CHAIRMAN. The subcommittee will come to order. Will you gentlemen proceed?

Mr. DE NEFFE. Mr. Chairman, if you will just give us a minute or two, we are trying to check up some letters Mr. McGowan and Mr. Hallock have furnished me, with my list.

Mr. MCGOWAN. It will only take about two minutes.

The CHAIRMAN. Well,. we have not much time, and must get along as fast as we can.

Mr. MCGOWAN. I think, Mr. Chairman, that it would probably expedite matters if we might have about two minutes to finish this.

The CHAIRMAN. Very well.

Mr. HALLOCK. Mr. Chairman. Mr. Hallock has a statement to make as I understand as soon as he has finished checking his list against the letters and papers furnished him, and in the meantime, I should like to make a statement.

The CHAIRMAN. Proceed. The subcommittee was simply waiting on you gentlemen.

Mr. HALLOCK. Mr. Chairman, I should like to read one document into the record, and offer another in evidence bearing upon the $25,000 payment that was made by Mr. Flood in behalf of Mr. Herrick, and which was mentioned in the testimony of Mr. Flood.

The subcommittee may recall that I advised on yesterday that the check in question had been requested to be sent here by air mail. I have received a letter this morning which I will read, as follows:

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THE EXCHANGE NATIONAL BANK,
Spokane, Wash., February 16, 1927

MR. BLAINE HALLOCK.
Washington, D. C.

DEAR SIR: As requested in Mr. Flood's telegram received to-day, I am inclosing herewith our cashier's check No. 91489, dated April 2, 1923, for $25,000, which was cashed by Mr. Flood at the Ladd & Tilton Bank, Portland, on April 4, 1923, the proceeds being used for Fred Herrick 's bidding check.

Yours very truly,

C. E. MCBROOM, *President*.

Now, if counsel will be good enough to admit that the document I hold in my hand, and show to counsel, is the check referred to in the letter, I should like to put it in evidence.

Mr. DE NEFFE. Well, Mr. Chairman, I do not believe that I should be expected to admit exactly what this paper is. I admit that it is a check of the date and for the amount shown on its face.

The CHAIRMAN. Oh, the check will speak for itself.

Mr. DE NEFFE. I would not want to make any admission that might bind me, Mr. Hallock.

Mr. HALLOCK. All right.

Mr. DE NEFFE. I do not know exactly what that might be: it might be some other check so far as I know and so far as is shorn on its face. I am in the position of neither denying nor affirming that the check is what is claimed for it.

The CHAIRMAN. The subcommittee will exercise its own view of that matter. The check may be put in evidence and will speak for itself.

Mr. DE NEFFE. Yes; it will speak for itself.

The CHAIRMAN. You may put the check in.

Mr. HALLOCK. The check is as follows:

Capital $1,000,000.28-2

THE EXCHANGE NATIONAL BANK.
Spokane, Wash, Apr. 2, 1923.

No. 91489
Pay to the order of E. E. Flood $25,000.00 dollars exactly twenty-five thousand dollars no cents.

Cashier's check.

P28-2D
4-4-23
(Perforation)

F. B. PEACH, *Assistant Cashier*.

(On obverse side of the check is the following:)

E. E. Flood

Pay to the order of
Any Bank, Banker Or Trust Co.
Apr. 4, 1923
Ladd & Tilton Bank
24-524-5
Portland, Ore.
Walter M. Cook, Cashier.

The CHAIRMAN. What was the date when bids were opened?

Mr. HALLOCK. My understanding from Mr. Flood's testimony is that they were opened, I believe, on April 5, 1923.

Mr. MCGOWAN. That is right.

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Mr. DE NEFFE. I do not believe he testified to that.

Mr. HALLOCK. That is my recollection of it, although I would not want to say positively without looking at the transcript of his testimony.

Mr. MCGOWAN. That is my recollection of it but anyway the bids were in fact opened on the morning of April 5, 1923.

The CHAIRMAN. All right, gentlemen, go right along.

Mr. DE NEFFE. Mr. Chairman, on yesterday I made a demand on counsel of the Forest Service for a number of letters, and I believe I then explained the suddenness with which the demand came about. I did not know until about 9 o'clock on yesterday morning that Colonel Greeley would be expected to take the stand. I had been going through all the letters, checking them over, to see just what ones I wanted to use, but had not taken out of the files any letters, merely making a memorandum of them. But I always intended to use them when Forest Service witnesses were put on the stand. That is the reason why I did not have a chance to make a longer demand for their production.

So it was that I made the demand on yesterday morning, and of course it was sudden, and I agree with Mr. McGowan that it was necessarily pretty hard for him to find them in such a short period of time.

Then on the suggestion of Senator Walsh of Montana, I turned over to him the list which I had prepared, and I think my list might have caused some confusion in finding the letters desired, because I had repeated on my memorandum a number of times some of the letters that I desired. I should like the subcommittee to know how that came about: I had made references in all the questions I had prepared to ask this witness, and other witnesses, and had the dates of the letters referred to on the margin. So in making up my memorandum of the dates of letters I desired, and which I turned over to the other side on the suggestion of Senator Walsh of Montana, I went through the testimony of all the witnesses and just took them down, and it was in that way the repetition occurred, because some of the letters I made a demand for occurred in a number of different questions that I had on my memorandum.

Furthermore, I made a mistake in the dates of three letters which I asked the other side to produce. The dates I gave were October 6, 1924, a letter from Ames to Girard, and a date, of October 6, 1924, another letter from Ames to Girard. These two I made a mistake about quite evidently, in my hurry.

The subcommittee will understand that the only time I could work was during the afternoon, and that I had a great mass of records and letters to go through, and I made my notes very hurriedly, and it was through that situation that the mistake occurred.

Of course there was no intention to confuse the other side in any way in my demand, but I can see how they probably had a hard time looking for the letters requested, and I want to say that they have been very diligent and that we have all looked quite earnestly; and I now offer my apologies, if they are necessary, on account of that situation.

Now, there is one more letter that I have asked them to produce, and I just mentioned it this morning. It is one that I should think would be dated about November 1, 1924, from Colonel Greeley, or

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some one from his office here in Washington, to Mr. Ames, the district forester in Portland. They have promised to look for that letter. The reason I asked for that was that because in a letter which Mr. Ames wrote to Mr. Girard, Mr. Ames mentioned having just received a letter from Colonel Greeley, or I imagine that it was from Colonel Greeley, as he says he had just received it from the Forester.

Mr. MCGOWAN. May I make one observation right there: The reason we could not find some of the letters requested on yesterday was because of inaccuracy in dates as stated by Mr. De Neffe in the memorandum that he handed to us yesterday morning. But we have gotten together again this morning, and the dates have been corrected, and we have now complied by furnishing every piece of paper Mr. De Neffe has called for.

Mr. DE NEFFE. Except the letter from the Forester which Mr. Ames mentioned in his letter to Girard, the Ames letter dated November 6, 1924.

Mr. MCGOWAN. We do not know that there is such a letter, but we are trying to find something that will satisfy Mr. De Neffe.

Mr. DE NEFFE. Yes; Mr. Ames says in his letter of November 6, 1924, he has just received a letter from the Forester, and I assume that he means from Colonel Greeley.

Mr. HALLOCK. I should like to say in this connection that I very much appreciate Mr. De Neffe's frank statement about the inaccuracy of dates of letters and repetition, which made it quite difficult for us to determine just what, he wanted. So I appreciate very much the statement that he has made.

The CHAIRMAN. Call your witness.

Mr. HALLOCK. I think Colonel Greeley was on cross-examination when adjournment was taken on yesterday.

Mr. DE NEFFE. Yes.

The CHAIRMAN. Colonel Greeley, you will resume the stand.

TESTIMONY OF COL. W. B. GREELEY, CHIEF FORESTER, UNITED STATES FOREST SERVICE, DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.-Resumed

(Colonel Greeley was duly sworn when first called to the stand on yesterday.)

(Cross-examination resumed by Mr. Frederick M. De Neffe, attorney, representing Grant County, Oreg.)

Mr. DE NEFFE. Now, Colonel Greeley —

Colonel GREELEY (interposing). Mr. De Neffe, if you will permit me. I should like to make a short statement to clear up what you raised on yesterday regarding a letter which I wrote to Senator McNary in January, 1925.

Mr. DE NEFFE. In February, was it not?

Colonel GREELEY. Or in February, it might have been, in which I made reference to the amount expended by Mr. Herrick in this operation. Mr. De Neffe asked me various questions as to whether that statement was based upon Mr. Herrick's own statement as contained in his letter of October 3, 1924, to the district forester at Portland. Now, I find that our records indicate that Mr. Herrick's letter of October 3, 1924, to the district forester at Portland, was

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transmitted to Washington with a letter from the district forester yonder date of December 11, 1924, and that I undoubtedly must have seen Mr. Herrick's letter shortly after its receipt in Washington on December 18.

The letter from the district forester at Portland transmitting Mr. Herrick's letter gives a general resume of the situation, but does not contain any specific statement regarding the Herrick expenditures. It neither confirms nor denies in fact does not refer to the list of investments contained in the Herrick letter of October 3. As far as I can ascertain from our files there was no report or statement available to me at that time from the district forester regarding the extent of the investments of Mr. Herrick to date. So that as far as I am able to reconstruct my action at that time, the statement contained in my letter to Senator McNary was probably based upon the list of investments contained in Mr. Herrick's letter of October 3, which showed a total of some $781,000.

It is true that the report submitted by Mr. Carter the following February, after he had gone to Burns and personally studied the whole situation, and obtained all the facts he could, indicates that Mr. Herrick's list does not represent correctly his own expenditures. Mr. Carter's report indicates the specific expenditures made by Mr. Herrick, or by his companies, to the extent of some four hundred and odd thousand dollars, and to that extent I admit that my letter to Senator McNary might have given an incorrect impression. But so far as I can reconstruct my whole action at that time, the letter to Senator McNary was based upon Mr. Herrick's letter of October 3, which was transmitted to my office by the district forester in December.

The CHAIRMAN. What was the amount shown by the report as having been expended?

Mr. DE NEFFE. Do you mean by the Carter report?

The CHAIRMAN. Yes.

Colonel GREELEY. The Carter report shows that there was expended by Mr. Herrick $170,000 on the railroad from Crane to Burns; an expenditure by him of $109,000 on the railroad from Burns toward Seneca. It also shows an expenditure of $92,000 by Herrick for the purchase of the mill site and the private timber which he obtained from Mr. Barnes, in which he says, "The amount for the mill site was not segregated." There were two other items in Mr. Herrick's statement, namely, his deposit of $25,000 with the hid, and the Liberty bonds which he had put up in support of the bid, $50,000, which perhaps should be included. I do not know just what these figures total, but it is materially less than the total given in Mr. Herrick's letter of
October 3.

Mr. HALLOCK. Might I have the date of Mr. Carter's report?

Mr. DE NEFFE. February 20, 1925.

Mr. HALLOCK. I thank you.

Mr. DE NEFFE. So you went by Mr. Herrick's letter of October 3, 1924, in writing this letter to Senator McNary, is that what I understand you now to say

Colonel GREELEY. As far as I can recall; Yes, sir.

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Mr. DE NEFFE. In an important matter of this kind is it not customary for you, or the district forester, to check up such an important statement that might be made by a man like Herrick as to what he has spent, when you know that that statement is being used as the basis for an extension or modification of the contract?

Colonel GREELEY. It certainly would be before any extension of time or modification were allowed ; and you will recall that in this case I sent Mr. Carter out there specifically to check up the whole situation on the ground before any extension of time would be considered.

Mr. DE NEFFE. But you knew that Senator McNary's inquiry was caused by the fact that many citizens had wired in to him, or written in to him, and complained about this delay, and that be wanted something reliable to go on in order to give them, to show what the status was; did not you know that, Colonel Greeley?

Colonel GREELEY. I presume that was the occasion for his request.

Mr. DE NEFFE. You knew that Senator McNary, in replying to those wires and letters he had received, would be governed by your statement in your letter to him.

Colonel GREELEY. Very likely.

Mr. DE NEFFE. So, acting on your letter, Senator McNary would naturally wire back and tell those various people that Mr. Herrick had spent $750,000 anyway; would not that be the result of your letter to him?

Colonel GREELEY. Yes, it might be.

Mr. DE NEFFE. And the people in that country would be probably satisfied, or quieted, I suppose that would be the effect, would it not?

Colonel GREELEY. Well, I do not know what effect it might have on them, but it apparently did not quiet anybody.

Mr. DE NEFFE. Did they keep on being restless—and you thought unreasonably so, did you not?

Colonel GREELEY. Well, I did not attempt to —

Senator KENDRICK (interposing). May I interpose a question right there?

Mr. DE NEFFE. Certainly, Senator Kendrick.

Senator KENDRICK. I thought the witness on yesterday testified, Mr. De Neffe, that he considered the action by Mr. Herrick in the prosecution of this work entirely inexcusable; but that he said also the situation presented the difficulty of two horns of a dilemma, and that he, in granting to Mr. Herrick the extension, simply did so because he thought that meant a more early development than he could secure in any other way. Now, your question suggests that Colonel Greeley was inclined to look on Mr. Herrick's efforts as entirely satisfactory, when he said on yesterday that he did not consider them so.

Mr. DE NEFFE. Well, may I ask Colonel Greeley another question, Senator Kendrick?

Senator KENDRICK. Yes; but what occurs to me is that we are going over these matters again and again, half a dozen times, as Senator Walsh suggested on yesterday. There are other places, where I really should be at work this morning, and yet I do not want to leave the Chairman alone. Mr. De Neffe, you will recall

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that when you were here we thought we could get through with this investigation in two or three days, and we thought within two days did we not, Mr. Chairman?

The CHAIRMAN. That is what we contemplated.

Mr. DE NEFFE. And I thought we could.

Senator KENDRICK. So I think we should not continue going too far into details, especially in an inquiry that has been gone into, and as it would seem the position of the witness made perfectly plain. I think if I may say so, and I do not know that this is necessarily a part of the record, that the witness on the stand was unsparing on yesterday in his criticism of Mr. Herrick, but that he attempted to show at that time why he—I mean from his own viewpoint had followed this course of granting an extension.

Mr. DE NEFFE. Senator Kendrick, I can see your viewpoint, but the people of Grant and Harney Counties have never gotten any satisfaction in this matter, and it has not done them any good in the past and will never do them any good now or in the future for Colonel Greeley to simply criticize Mr. Herrick, especially in view of everything that has happened. I am expressing their sentiments in this regard, and feel that I should go into the matter quite fully.

Senator KENDRICK. I have no doubt you are expressing their sentiments, but it seems to me that you have already gone over this more than once, and therefore it occurs to me that it is unnecessary to continue taking up the time of the subcommittee in that very matter.

Mr. MCGOWAN. I do not want to quibble in this matter, Mr. Chairman and gentlemen of the subcommittee, either with Mr. De Neffe or anybody else, but when he states that the people of Grant and Harney Counties are critical of the attitude of the Forest Service, he must say, if he sticks to the record, that there are a limited number who are critical, and yet, on the other hand, there is a very large element of substantial people of that community who are absolutely in support of the Forest Service in this matter, and —

The CHAIRMAN (interposing). Oh, well, now, that is unnecessary. We are sitting here to hear the testimony at this time and there is no necessity of counsel arguing matters.

Senator KENDRICK. I do not want to get into any argument, but I do wish to ask counsel to expedite his cross-examination of this witness as much as possible, and to refrain from going over matters this morning that were taken up and fully investigated and answered by the witness on yesterday.

Mr. DE NEFFE. I shall certainly try to avoid any repetition.

Mr. HALLOCK. At this juncture would it be helpful to the subcommittee for me to offer a document signed by every professional and business man of Burns except eight which shows the contrary to Mr. De Neffe's statement?

The CHAIRMAN. Let us have order, gentlemen. Mr. De Neffe is cross-examining the witness now on the stand, and I am sure that it would expedite things if counsel would not interpose statements for the obvious purpose of swaying the judgment of this subcommittee, which of course can not be done. We want the facts presented before the committee, and in an orderly way, and if at the proper time there is anything along the line of rebuttal, or anything that should be added, then that may be done with the permission

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of the subcommittee. Go ahead, Mr. De Neffe, with your cross examination.

Senator KENDRICK. Just a word. Mr. Chairman, do not you consider my objection entirely consistent?

The CHAIRMAN. I certainly do, but the thing I am objecting to is that either side should be bringing in extraneous matter, out of order, with the result of delaying, the proceedings, producing argument among counsel, and taking up unnecessary time.

Mr. DE NEFFE. I might also state that right there in the Government files I noticed at some place along here where there has been a protest signed by 750 citizens, I think it was, against Mr. Herrick, from the two counties, and there were about 56 signed in the same way in favor of Mr. Herrick. I might just make that remark in connection with the statement by Mr. McGowan that all of the substantial and worthwhile citizens of the community are with Mr. Herrick, and all of the others, who do not amount to anything, are against him.

Mr. MCGOWAN. I beg your pardon. I never made any such statement as that.

The CHAIRMAN. Now, gentlemen, we will have order. You will, all of you, discontinue these statements and arguments back and forth and let us proceed to the taking of testimony.

Mr. MCGOWAN. Very well, Senator, but I do not like to be misquoted, that is all.

Mr. DE NEFFE. Well, that is what I understood you to say.

The CHAIRMAN. Let us have an end to these contentions. Go along with the testimony, and at the proper time you may present your arguments.

Colonel GREELEY. May I state that practically in every stage of all these transactions we have had protests and letters of support, but that the responsibility for action rested with the Forest Service. One can not settle a matter of this kind by putting it up to a popular vote of the two counties in Oregon, however it might come out; the responsibility for making these decisions was ours.

Mr. DE NEFFE. You blamed Barnes, and Herrick blamed Barnes.

Colonel GREELEY. I have not said anything about blaming Barnes.

Mr. DE NEFFE. In a letter that Robert Duncan, a lawyer of Burns, wrote Mr. Ames, telling him that Barnes was a trouble maker, and that a majority of the citizens were in favor of Herrick, Mr. Cecil transmitted to you, do you remember that in inclosing the original or a copy you wrote back to Mr. Cecil and Mr. Ames thanking them very much, and stating that you were glad to have Duncan's letter and to know how the people stood, and that you would know how to treat Mr. Barnes when his protest arrived, do you remember that?

Colonel GREELEY. I do not recall that particular letter.

Mr. DE NEFFE. I noticed the letter in Mr. Herrick's file.

Colonel GREELEY. I might say that in my personal judgment Mr. Barnes has been very active in stimulating opposition, if you want to know what my judgment is.

Mr. DE NEFFE. And all that he has said is that Mr. Herrick has delayed unreasonably, and that he has not had enough money to go ahead, and that he has not furnished Girard with money, that he wasted the summer of 1924 and has not been acting in good faith, is not that all that he said?

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Colonel GREELEY. Yes; and he has made several offers to buy the timber.

Mr. DE NEFFE. What harm was there in that? You are avoiding the question. Is it not true that all that Mr. Barnes ever said by way of criticizing Mr. Herrick, was that he was not spending the money necessary and not hitting the ball?

Colonel GREELEY. As far as I can recall that is true.

Mr. DE NEFFE. Then why criticize Mr. Barnes and build up a smoke screen to divert the attention of the subcommittee from the main issue.

Colonel GREELEY. I am not trying to build up any smoke screen.

Mr. DE NEFFE. When your confidential man, Mr. Carter, made his report, February 20, 1925, and stated that at the rate Mr. Herrick was going the development would not be completed for about five years, that is just what Mr. Barnes had been saying, too, is it not?

Colonel GREELEY. I do not know what he said on that particular point.

Mr. DE NEFFE. Was Mr. Carter telling the truth or was he lying about it when he made these statements?

Colonel GREELEY. I believe he was telling the truth.

Mr. DE NEFFE. And when Mr. Carter says, "There is not now and has not been any cause for serious delay due to right-of-way matters," was Mr. Carter telling the truth, and was Mr. Barnes telling the truth about those matters; can you answer that?

Colonel GREELEY. I assume that Mr. Carter's report was a correct report.

Mr. DE NEFFE. Mr. Barnes and the other people against Herrick were repeatedly saying that the failure last summer was due to Herrick's failure or inability to put up cash, and that is what Mr. Carter said.

Colonel GREELEY. I have stated that myself on many occasions, and stated it here before this subcommittee on yesterday.

Mr. DE NEFFE. In the judgment of all of the Forest Service men at Burns, he has failed to show good intent and good faith, and that is all that Mr. Barnes had said. Barnes was not at the meeting of February 20, 1925, was he?

Colonel GREELEY. I do not know.

Mr. DE NEFFE. Does anybody here claim that Barnes there [looking around the room but without receiving a response]? They can not say that Barnes was there. Did Barnes have anything to do with the dictation of this report of Carter's?

Colonel GREELEY. I do not think so.

Mr. DE NEFFE. You do not claim that Barnes influenced Mr. Carter in any way, do you?

Colonel GREELEY. No.

Mr. DE NEFFE. Or that he and Mr. Carter were in collusion in this matter, do you?

Colonel GREELEY. No.

Mr. DE NEFFE. And still you people claim that Mr. Barnes was dominating the people of Grant County; is not that the way that you have felt about it all the time?

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Colonel GREELEY. It has been my judgment that Mr. Barnes has been very active in creating opposition and in inducing people to make protests.

Mr. DE NEFFE. And all that he has done has been to tell the truth; is not that it?

Colonel GREELEY. I am not criticizing Mr. Barnes for any statements that he has made.

Mr. DE NEFFE. Well, then, all these statements that Mr. Herrick and his witnesses have been bringing out about Mr. Barnes are untrue; is that right?

Colonel GREELEY. I do not claim to know whether they were true or untrue. I simply say to you that I am not personally claiming that anything Mr. Barnes has said is untrue.

Mr. DE NEFFE. If that is true, then what Mr. Carter, Mr. Hoffman, and Mr. Granger have said is untrue.

Mr. HALLOCK. Now, Mr. De Neffe —

Mr. DE NEFFE (interposing). That is a pretty touchy question, I understand, but —

Mr. HALLOCK (continuing). You put in letters of the highest and most commendatory character of Mr. Hoffman, of the building of this road.

Mr. DE NEFFE. Yes, and I might as well just state that if they had more men like Mr. Hoffman, and Mr. Carter, and Mr. Granger they would make out a great deal better.

Mr. MCGOWAN. Mr. Chairman, I submit that if Mr. De Neffe is going to testify he better be sworn and take the stand.

Mr. DE NEFFE. I am not testifying, and I do not have to be sworn as I am talking from the facts of the case.

The CHAIRMAN. Go along with the testimony, gentlemen.

Mr. DE NEFFE. Now, then, going back briefly to the beginning of this petition asking to have the timber put on the market it was under considerable different circumstances than the ordinary way that Government timber is sold; is not that right?

Colonel GREELEY. No essential difference.

Mr. DE NEFFE. I mean in this respect, that ordinarily it is the case of some operator who is asking to have timber sold, is not that right, instead of counties or communities like in this case asking to have it done?

Colonel GREELEY. In this case there was an exceptional amount of local interest; that is correct. We have the same thing in many other cases, however.

Mr. DE NEFFE. But in the majority of the cases an operator has a mill and logging operations, and is moving

toward Government timber, and then he applies to buy the timber.

Colonel GREELEY. Yes, sir.

Mr. DE NEFFE. And the community as a whole are not especially interested, and do not make any request perhaps; is that true?

Colonel GREELEY. That is true of perhaps the majority of cases. But, there are many cases that involve a community interest.

Mr. DE NEFFE. Now, then, this having been requested to be put on the market by these two counties and the communities there, did not the Forest Service feel that some duty was owing to the people

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there to be consulted about whatever was done that might affect their interests adversely?

Colonel GREELEY. The Forest Service felt that the wishes of the community should be considered in the matter of putting the timber on the market, and in such matters as the common carrier clause, and we did take pains to consult them at the time. That is evidenced by my going to Portland in 1922 and meeting a large delegation in Portland; and it is evidenced by my sending Mr. Carter to Burns in the winter of 1923.

Mr. DE NEFFE. You stated that the common carrier clause had not been changed in any way; do I quote you correctly'?

Colonel GREELEY. That is my belief.

Mr. DE NEFFE. In the modification, if you will turn to Exhibit No. 9, and I think on page 39 where it occurs, and I think that is the second modification.

Colonel GREELEY. September 8, 1925, the second modification.

Mr. DE NEFFE. Now, turn back to page 29, please. That is the modification of March 3, 1925, the first modification? Have you that?

Colonel GREELEY. Yes.

Mr. DE NEFFE. Paragraph 4 has reference to permanent, standard-gauge railroad tracks suitable for use in hauling logs in trains. Why was the word "passenger" left out of there?

Colonel GREELEY. I do not know of any reason why it was. The fact remains that there was no change in clause 38 of the contract, which specifically covers the common carrier features.

Mr. DE NEFFE. And after that in the newspapers you called it a logging road, didn't you?
Colonel GREELEY. I think that term was used in one of my letters to Senator McNary, which was published.

Mr. DE NEFFE. The proviso following what I read there would make it possible, would it not, Colonel Greeley, for them to keep that road under construction for quite a number of years there if they wanted to stall the thing along, and then refuse to haul passengers or take shipments of stock?

Colonel GREELEY. I do not so construe it because the contract has retained throughout the basic clause dealing with the common carrier features. That has never been modified.

Mr. DI: NEFFE. That, is your construction of it?

Colonel GREELEY. That is my construction of it. And I may say that there was absolutely no intent in any of these modifications to in any wise weaken the common carrier clause of the contract. If such a construction is possible, if I am mistaken in my construction, I certainly would rectify it.

Mr. DE NEFFE. Wouldn't it have been perfectly easy to add a provision there, "*Provided*, That nothing herein contained shall be construed to relieve Herrick of his obligations under section 38 to construct a common-carrier

railroad for freight and passengers?" Then there would have been no question.

Colonel GREELEY. That would have been done had it occurred to anyone that the common-carrier clause was jeopardized by that modification. That did not occur to me.

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Mr. DE NEFFE. You said that you never received any request from anybody in regard to the common-carrier clause. Did the people up there, any of them, ever see this contract up there, before they saw it here in this proceeding?

Colonel GREELEY. They have always had an opportunity to see it in the Supervisor's office.

Mr. DE NEFFE. You have heard what Mr. Barnes said. The county court ordered him to get a copy at Portland, and he could not get it.

Colonel GREELEY. His representative was given access to the files. He could have seen any of the contracts.

Mr. DE NEFFE. But as Senator Walsh has said, that is not as satisfactory as taking a copy to your attorney and having him analyze it and find out about it?

Colonel GREELEY. Probably not.

Mr. DE NEFFE. You say there is some regulation that prohibits that?

Mr. MCGOWAN. The record shows—and we must keep it straight—that there was a copy of this contract at John Day in the supervisor's office, which is right in the center of the local community, and open to inspection by anybody.

The CHAIRMAN. I am sure the committee has that thoroughly in mind. This is cross-examination, and that came out on direct.

Mr. MCGOWAN. Senator Stanfield, I do not want to take any exception to these proceedings at all, but I think it is always pertinent for an attorney to make an observation in connection with keeping the record straight without impinging upon the rights of the other fellow.

The CHAIRMAN. We are getting so much repetition here, and I want to avoid it if possible.

Mr. MCGOWAN. I will cut it as short as I can.

Senator KENDRICK. I would like to say to counsel that, I appreciate the necessity for thoroughness here, but reference has been made time and time again to this characterization of the road as a logging road, and every time it has been brought out I have been reminded that throughout the West we have common-carrier roads that are called cattle roads and ore roads, and that sort of thing, not because they fail as common carrier but because that is the principal service they render.

Mr. DE NEFFE. But in that first modification you changed the location of the northern terminus south of Seneca a mile or so, didn't you? You fixed a convenient point there near a section line?

Colonel GREELEY. I can not testify to that.

Mr. DE NEFFE. That is what it says.

Colonel GREELEY. What part of the modification do you refer to?

Mr. DE NEFFE. That same paragraph 4 of the first modification.

Colonel GREELEY (reading)

> A point near the southern line of section 34.

Mr. DE NEFFE. Yes. That does not go to Seneca, does it?

Colonel GREELEY. I do not know.

Mr. DE NEFFE. Were you consulted up there when that change was made?

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Colonel GREELEY. Not as far as I know.

Mr. DE NEFFE. It is in the testimony here that it does not reach Seneca, which is a well-established place, a post office.

Colonel GREELEY. As we explained yesterday, that is a question of the construction of the common-carrier clause, section 38, which says that a common-carrier railroad shall be constructed to Seneca. Now, if these people will present their complaint to me—which they have never done—I will see to it that that common-carrier clause is properly enforced. There seems to be some doubt as to just what point is Seneca, but as to the merits of that argument I do not know. I will enforce section 38, and if the local people have any complaint on that, I would appreciate very much their giving me an opportunity to pass on it.

Mr. DE NEFFE. They complained before, Colonel Greeley, you know, and you did not pay much attention to their complaint. Now, you said that the Burns-Seneca road would carry primarily logs. Wouldn't they carry livestock and freight out of the John Day Valley?

Colonel GREELEY. They would carry anything that is offered it for traffic.

Mr. DE NEFFE. You stated that the appraisal in the prospectus was based on an assumption that the Union Pacific would build into Burns. Can you show any place in that prospectus where anybody was given any assurance that the Union Pacific would build that Crane-Burns line?

Colonel GREELEY. No, we could not give a bidder any assurance. That was beyond our power. It was the assumption on which the valuation of the timber was arrived at.

Mr. DE NEFFE. Did Mr. Herrick ever make the contention, or Mr. Girard, that they ought to be given leniency here because they had been led to believe that the Union Pacific would build that section? Did they make that claim to you as the basis of any extension?

Colonel GREELEY. One of the reasons for requesting the extension was the delays and difficulties that have been encountered in working out an agreement between Mr. Herrick and the Union Pacific Co. for building and operating that stretch of track. I do not know that any claim was ever made by Mr. Herrick that he had been misled by our prospectus or by any other statement from the Forest Service as to how that section of road should be handled. You will appreciate that the service was in no position to say that the Union Pacific would build this road or would not. Our prospectus points out the fact that it would apparently be a desirable extension of the Union Pacific system, and the appraisers assumed that the Union Pacific system would build this road into Burns, and they started their calculation of costs and investments from that point. That is all that our prospectus amounted to from that angle.

Mr. DE NEFFE. You have stated that it was figured that Burns would get the regional freight rate. What did you mean by that?

Colonel GREELEY. The regional rate on lumber tariffs to common eastern markets. Apparently the appraisers assumed that Burns would get the same lumber rate to Chicago that Baker, Oreg., gets.

Mr. DE NEFFE. Or Spokane?

Colonel GREELEY. Or possibly Spokane.

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Mr. DE NEFFE. Even through Burns is farther inland than Baker, it would still get the same rate?

Colonel GREELEY. Yes. That often occurs in applying these regional rates. As I said, that was one of the

assumptions; it was not a matter of fact. When I reviewed the appraisal I realized that there was some element of doubt as to whether that assumption would actually pan out.

Mr. DE NEFFE. Do you believe that Bear Valley, around Seneca, and in Grant County would get the same rate that Baker would get?

Colonel GREELEY. Of course that is all subject to the regulation of the Interstate Commerce Commission and the Railroad Commission of Oregon.

Mr. DE NEFFE. But isn't it a fact that when this lumber was asked to be put on the market that was very much discussed by the citizens in there in Grant County, that they wanted a rate through the same rate as Burns. Isn't that a fact?

Colonel GREELEY. I do not know whether that particular point was a matter of discussion or not. I do not recall it. Of course they were all interested in getting a railroad.

Mr. HALLOCK. Mr. Chairman, I am going to object to that, only because it is an attempt to inject into the case an entirely new issue and one which is, it seems to rue, wholly irrelevant.

Mr. DE NEFFE. No, when I refer to your records I do not believe you will say that it is irrelevant.

Mr. HALLOCK. Pardon me. The point I want to make is that I do not understand that we are trying anybody here on the matter of freight rates. It seems to me that is very remote. I do not care about it other than that, but it takes a lot of time to work out freight rates.

The CHAIRMAN. Well, we will listen to it further.

Mr. DE NEFFE. It is something that the people up there are very much interested in, and Colonel Greeley is presumably running this matter in the interest of the people rather than in the interest of the Forest Service.

Mr. MCGOWAN. What was that last compliment, Mr. De Neffe?

Mr. DE NEFFE. I said, it is very important that Colonel Greeley administer the Forest Service in the interest of the people as well as for the Forest Service.

Mr. MCGOWAN. There might be some difference of opinion as to what was for the benefit of the people.

Mr. HALLOCK. I might say this, for the sake of the record, that the contract between Herrick and the Union Pacific Railroad expressly provides that its terminal rates are not to be extended up in the woods or something to that effect.

Mr. DE NEFFE. Yes. That is the vicious part of this thing as far as the people of Grant County are concerned especially.

Mr. HALLOCK. I have the contract here if you want to get that here.

Mr. DE NEFFE. Did you know that the original Malheur Railroad Co., which is one of the Herrick companies, had filed an application with the Interstate Commerce Commission and with the Public Service Commission of Oregon, asking to be allowed to be an intrastate carrier? You knew that, didn't you?

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Colonel GREELEY. No, I did not know anything about their application.

Mr. DE NEFFE. There are some records in your files here about that. Isn't that a fact?

Colonel GREELEY. That may be. I do not know.

Mr. DE NEFFE. You have been keeping in touch with this, haven't you?

Colonel GREELEY. I have had no personal knowledge of the applications for railroad permits or the character

of the permits granted.

Mr. DE NEFFE. Did you know that they also withdrew that application later on?

Colonel GREELEY. No.

Mr. DE NEFFE. And that that seriously affects the people of Grant County especially?

Colonel GREELEY. As I have said, I have no knowledge as to the handling of these railroad applications for permits.

Mr. DE NEFFE. I wish to refer to the records of the Malheur Railroad Co., especially to a record of the minutes of the board of directors dated April 10, 1922, at 11 o'clock a. m., held at Burns, Oreg., which record is signed by James W. Girard, vice president, and Frank D. Klobucher, secretary.

Mr. HALLOCK. Pardon me. Will you permit the record to show that you are reading from the minutes of the company, which we furnished at your request when the proceedings started?

Mr. DE NEFFE. Oh, yes, indeed.

The CHAIRMAN. These are the minutes of the railroad company?

Mr. DE NEFFE. Yes. And I want to say that Mr. Hallock has been very kind. He has turned over the minute books and stock books and all those things, and we have no complaint.

After stating that these applications to be allowed to do interstate business were filed with the Interstate Commerce Commission and the public service commission and also stating that later on the applications were withdrawn and setting out copies of letters received from representatives of the Interstate Commerce Commission showing that they will make a notation that the application had been withdrawn, these minutes, on page 5, go on to state that he—that is Mr. Girard —

> stated that for the purpose of making a record of the matter, a reference should appear in these minutes to said negotiations and particularly to the said letters last above quoted and that the record should disclose that the directors had decided to withdraw the application theretofore filed by this company for a certificate of convenience and necessity, whereupon it was moved, seconded, and unanimously carried that the secretary of this company so prepare the minutes for this meeting that a record of said matter would appear and that the action of said attorneys in requesting the withdrawal of the application for said certificate be in all things approved, ratified, and confirmed and that this company so conduct its transportation purchases as to avoid any and all interstate transportation and that it confine itself solely to intrastate or local movement of persons and property over its line of railroad under local tariff and upon local rates and charges and that it do not in any manner participate in interstate commerce and that it refrain from providing or publishing for the transportation of persons or property over its line any rates or charges other than for a purely local movement between the termini of this road.

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The effect of their withdrawal as interstate carries would be to make people in Grant County pay a much higher rate for any shipments east than the people at Burns. Isn't that right.?

Mr. HALLOCK. Just a minute. I wonder if counsel is contending that the fact that this common-carrier railroad will operate under local law as distinguished from the requirements of the Interstate Commerce Commission, particularly with respect to the floating of its securities, making its reports, responding to the recapture clause of the interstate commerce act, would in any manner affect the freight rates. Does counsel make that contention?

Mr. DE NEFFE. I make the contention that the people in Grant County in shipping a carload of livestock to Chicago would have to have, with this application withdrawn the way it is now, a much higher rate for a carload of cattle to Chicago or Kansas City than if this railroad were an interstate carrier.

Mr. HALLOCK. I was afraid that was your position, and I will have to take issue with you as a matter of law. It is purely a matter of law, and it would not affect the rates at all.

Mr. DE NEFFE. The people were not consulted about this application being withdrawn at all as far as you

know?

Colonel GREELEY. I know nothing about it, and I do not see that it affects the responsibility or concern of the Forest Service. We required that the railroad be a common carrier; we did not require that it be an interstate carrier or an intrastate carrier.

Mr. DE NEFFE. The Forest Service was interested in seeing that the people of Grant County were protected in this matter, too, weren't they?

Colonel GREELEY. Yes; but I do not think that the jurisdiction of the Forest Service should extend into questions of local verses national jurisdiction over common carriers.

Mr. DE NEFFE. Mr. McGowan, can you produce that Doctor Brooks memorandum? You said yesterday you could probably find it.

Mr. MCGOWAN. Yes; I think I have it right at hand.

Mr. DE NEFFE. You stated, Colonel Greeley, that in the Doctor Brooks memorandum, which he signed, making an offer of $2 which was the basis of a second advertisement, he wanted permission to cut 80,000,000 minimum, and you finally allowed him 50,000,000 minimum?

Colonel GREELEY. I do not remember in just, what form Doctor Brook's application in that respect was stated, but that was a part of his offer as I understood it at the time Mr. Carter went to Minneapolis and took the matter up with him.

Mr. DE NEFFE. And in the memorandum that was signed was there anything fixed about 50,000,000 feet being the minimum?

Colonel GREELEY. Just what memorandum do yon refer to?

Mr. DE NEFFE. The memorandum that Doctor Brooks signed, in which he agreed that if it was readvertised he would bid. He made an offer of $2 I think. Do you remember that?

Colonel GREELEY. That is my recollection.

Mr. DE NEFFE. Dated March 1, 1925.

Mr. MCGOWAN. In response to your request, Mr. De Neffe, here is the original, signed by Doctor Brooks and Mr. Carter representing Colonel Greeley.

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Mr. DE NEFFE. You are familiar with this, aren't you?

Colonel GREELEY. I think I have seen it.

Mr. DE NEFFE. You have what purports to be a copy of it. Can you find any place there —

Mr. MCGOWAN. Mr. De Neffe, the copy you have is the one you actually made from the one I now hand you, so if there is any mistake, there it is your mistake.

Mr. DE NEFFE. Of course. I am not infallible, especially when I am working in a hurry. and I make mistakes on the typewriter. But my recollection is that I copied this from a document that was like this [indicating], and not like the one you hand me. I do not see that they are different.

Can you find where there was any minimum amount required for Doctor Brooks to cut during any certain period?

Colonel GREELEY. The only question there is just what this memorandum includes. Paragraph 2 of the memorandum itself deals only with the maximum cut. There is attached to it and written on the same paper a revision of the entire clause dealing with cutting limits which covers both minimum and maximum cuts, and also

contains a provision as to what should be done in case the total amount of stumpage exceeds 890,000,000 feet.

Mr. DE NEFFE. But that was evidently a work sheet when you were preparing the Herrick contract, wasn't it?

Colonel GREELEY. Well, it is filed here as accompanying the memorandum for files of March 5, 1923. Now, Mr. Carter is here, and he conducted these negotiations with Doctor Brooks. He can testify more competently on that point than I can. This memorandum contains the complete clause, with the proviso dealing with maximum and minimum cutting limits.

Mr. DE NEFFE. Yes—page 1. I would like to have that introduced as evidence. And at this time I wish to have the record show that we introduced in evidence all of the letters and telegrams and copies of letters and telegrams which we have been talking about this morning which the Government furnished us and which I requested in my list.

(The memorandum of March 5, 1923, and accompanying memoranda, are here printed in full as follows:)

March 5, 1923.

Memorandum for file:

In accordance with instructions from the Forester, I met Mr. Ames, of the Portland office, in Minneapolis on the evening of February 26, and during the subsequent three days he and I discussed the terms of readvertisement of the Bear valley unit with Dr. D. F. Brooks, president of the Brooks-Scanlon Lumber Co. It was soon obvious that Doctor Brooks was unwilling to consider any change in the minimum price to be named in the advertisement of $2 per thousand for yellow pine, as given in his letter of February 17 to the Forester. In, fact, he stated definitely to Mr. Ames and myself that he would not consider agreeing to bid if a higher price were named, even if the contract permitted cutting at a rate as high as 80,000,000 feet a year, or if specific reservation of additional timber was made. Apparently he had agreed with other members of the Brook-Scanlon Co. that under no conditions would they consider a higher price. This may have been partly because of the necessity for purchasing a considerable amount of private timber adjacent to the sale area, for which they do not propose to pay any more than is necessary.

The discussion thereafter centered on the maximum rate of cutting, with Doctor Brooks emphasizing the very heavy investment necessary in railroad and the necessity for any purchaser's having a large cut to pay expenses of

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operation and depreciation. Doctor Brooks apparently appreciated the great advantages of regulation for the Silvies Working Circle, and finally agreement was reached that the contract should provide that the maximum amount to be cut should increase by 150,000,000 feet every three years of operation, with specific provision for the increase of these amounts by the district forester at any time when he was satisfied that the total cut from the sale area would exceed the estimated total cut of 890,000,000 board feet, log scale. As nearly as I can judge, it was the inclusion of this proviso which led him finally to agree to the maximum cut figures.

Mr. Ames and myself explained to Doctor Brooks the great desirability from his viewpoint and from ours of having the advertisement contain provision for extension of the period of advertising on application from responsible parties. Doctor Brooks insisted that if the period were to be extended he would have to withdraw the bid which he agreed to submit on the basis of a 30-day period for advertising. The wire to the Forester apparently did not make it clear that if extension were made possible by the terms of the advertisement Doctor Brooks would still submit a bid which would be withdrawn if the period were actually extended. At all events, the Forester's wire gave specific instructions for the 30-day period of advertising, and consequently the district was wired to begin the advertisement with the final date April 2.

Mr. E. W. Barnes was in Minneapolis during the time these negotiations were being conducted but did not participate in them. He was called to the office of the Brooks-Scanlon Lumber Co. twice to answer questions by Doctor Brooks in regard to the private timber options on right of way, and, of course, he talked to Mr. Ames and myself in the hotel at various times. In passing, it may be noted that Doctor Brooks stated that the terms of the offer to the Forester in the letter of February 17 were agreed on among the officials of the company before the expiration of the original period of advertising, and Mr. Barnes was therefore under a misapprehension in claiming that the offer was due wholly to his action in interviewing Doctor Brooks immediately after February 15, when it was known that no bids were submitted under the original advertisement. Mr. Barnes probably knew nothing in regard to this plan of the company.

E. E. CARTER, *Assistant Forester*.

(For Washington file copy only.)

Attached are (1) A memorandum of conferences signed by Doctor Brooks and myself; (2) form to replace second paragraph, section 3 of sample contract, as agreed upon between Ames and myself.

CHANGED SECOND PARAGRAPH OP SECTION 3, BEAR VALLEY UNIT SAMPLE CONTRACT

Unless such amounts are changed in writing by the district forester, at least 80,000,000 feet board measure, and not more than 150,000,000 feet board measure, shall be cut prior to April 1, 1928; at least 120,000,000 feet board measure, and not more than 300,000,000 feet board measure, shall be cut prior to April 1, 1931; at least 220,000,000 feet board measure, and not more than 450,000,000 feet, board measure, shall be cut prior to April 1, 1934; at least 320,000,000 feet board measure, and not more than 600,000,000 feet board measure, shall be cut prior to April 1, 1937; at least 420,000,000 feet board measure, and not more than 750,000,000 feet board measure, shall be cut prior to April 1, 1940; and at least 520,000,000 feet board measure, shall be cut prior to April 1, 1943: *Provided*, That whenever the district forester is satisfied that the cut from this sale area will exceed 890,000,000 feet hoard measure, he shall increase the maximum amounts which may be cut prior to each of the above-named dates which have not previously passed by such amounts as will permit the purchaser to cut thereafter an average annual amount sufficient to complete the cutting of the remaining timber covered by this sale, as the remaining cut may be estimated at that tune, by April 1, 1943.

MARCH 1, 1923.

DR. D. E. BROOKS,
Minneapolis, Minn.

DEAR SIR: Reference is made to your letter of February 17 to W. B. Greeley, Forester, and to your conference with Mr. Ames and myself in regard to the readvertisement of the timber in the Malheur National Forest.

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Our discussions, as I understand it, led to your agreement that your company would submit a bid, if the timber were readvertised, under the following conditions:

1. The minimum price for western yellow pine which will be considered to be $2 per thousand feet, log scale; and for other species, to be taken at the option of the purchaser, $0.50 per thousand feet, log scale.

2. The maximum rate of cutting the Government timber to be described in the contract is not to exceed 150,000,000 feet, log scale, in the first 3 years of operation (by April 1, 1928); not to exceed 300,000,000 feet, log scale, at the end of 6 years of operation; not to exceed 450,000,000 feet, log scale, at the end of 9 years of operation ; not to exceed 600,000,000 feet, log scale, at the end of 12 years of operation; and not to exceed 750,000,000 feet, log scale, at the end of 15 years of operation.

There is to be, however, specific provision in the contract to the effect that whenever the district forester is satisfied that the total amount which shall be cut from the sale area will exceed the 890,000,000 board feet which the Forest Service now estimates this stand will cut, the district forester shall make such increase in the amounts which way be cut by each of the dates specified above, as will enable the purchaser to complete the cutting of the Government timber in 18 years of operation, or, if the dates remain as specified in the sample contract previously issued, by April 1, 1943.

I told you that I believed the advertisement could be started so that this 30-day period of advertising, required as a minimum by law, would end on April 2, the bids to be opened on the morning of April 3, 1923. Your agreement to bid is to be considered void if the final date for receipt of bids is later than April 5. No extension of the advertising period will be made.

It was my understanding that you were willing to have the $25,000 check, which accompanied your letter of February 17, considered as the deposit to accompany bid, which is called for in all advertisement of national forest timber. This can be arranged readily by the Forest Service, although the advertisement will specify that the deposit must be made with our Portland office.

Yours very truly,

E. E. CARTER, *Assistant Forester*.

The foregoing substantially empresses my understanding of the results of my conference with Messrs. Carter and Ames, of the Forest Service.

D. F. BROOKS,
President Brooks-Scanlon Lumber Co.

Mr. DE NEFFE. Now, then, in this memorandum which you send to Doctor Brooks there is no requirement compelling them to operate at all, is there, over any definite period? You just fired the maximum amounts. Isn't that true?

Colonel GREELEY. And the minimum, by the three-year periods.

Mr. DE NEFFE. You are assuming that the last page here goes with the Brooks proposition? Is that it?

Colonel GREELEY. I think it is immaterial whether it does or not, because this was the terms on which the timber was readvertised and on which Doctor Brooks, along with anybody else, had to bid.

Mr. DE NEFFE. But this memorandum attached to it does not compel the operator after June 1, 1931, to cut any specific amount over any three-year period as was required in the contract shown in the prospectus? Isn't that right?

Colonel GREELEY. That is correct. There is a point there that has been brought out that it would be possible, if this is your contention—that it would be possible for an operator by cutting the maximum amount for the first three-year period to avoid cutting the minimum amount for the succeeding three-year period.

Mr. DE NEFFE. When the people of those two counties, Colonel Greeley, wanted that timber put on the market, didn't they want continuous operation of the sawmill and of the logging camps?

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Colonel GREELEY. Yes; undoubtedly.

Mr. DE NEFFE. And isn't that the reason why that paragraph was put in the contract appearing in the prospectus, requiring after June 1, 1931, a certain amount to be cut in every three-year period—100,000,000? Wasn't that the purpose of it?

Colonel GREELEY. Yes; to insure —

Mr. DE NEFFE. To insure reasonable stabilization of their industry so that the town could count on an increased population, so that they would have continuous operation there. He would be cutting on private timber some of the three-year period, and during the last year he would be cutting the Government timber? Wasn't that the plan?

Colonel GREELEY. Yes; that was the plan, and that was the same plan in the readvertisement. But the readvertisement was based on a different scheme of cutting Government timber so as to give the operator a greater leeway as to when and at what times he would cut the private timber.

Mr. DE NEFFE. Yes. That is, whenever the market was good he could cut his maximum? Isn't that right?

Colonel GREELEY. He could cut the maximum either according to market conditions or as a matter of logging convenience when it was more economical and convenient to operate in Government stumpage than in private stumpage. That clause does give the operator greater flexibility in those respects than the clause printed in the prospectus. That was the clause on which the timber was readvertised.

Mr. DE NEFFE. I will refer to paragraph 3 of the Herrick contract, which is the paragraph governing the amount of cut. Isn't it a fact, Colonel Greeley, that if Herrick should, under the provisions of that paragraph 3, if he should cut the maximum of 150,000,000 prior to June 1, 1928, he would not have to cut any more prior to June 1, 1931? Isn't that right?

Colonel GREELEY. That is true.

Mr. DE NEFFE. Because he would already have cut 30,000,000 feet more than the 120,000,000 feet required prior to June 1, 1931. Isn't that right?

Colonel GREELEY. Correct.

Mr. DE NEFFE. So that he could shut down his mill completely between June 1, 1928, and June 1, 1931, a period of three years. Isn't that right?

Colonel GREELEY. Yes; that could be done.

Mr. DE NEFFE. And if he so desired he could keep it shut down two years longer, making a five-year shutdown, because already having cut 150,000,000, which is only 70,000,000 feet less than the 220,000,000 feet required to be cut prior to June 1, 1934; he could very well cut that 70,000,000 feet in the one-year period between June 1, 1933, and June 1, 1934.

Colonel GREELEY. I think the figures would work out that way, but you have got to appreciate that the best possible guaranty of his continuous operation that you can get is an investment of four or five million dollars in an operation. No business concern is going to let that investment stand idle if it is possible to operate.

Mr. DE NEFFE. But Mr. Herrick yesterday testified that it does not pay to cut $9 logs when the market is only $5. Didn't he state that here?

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Mr. HALLOCK. No; he said it did not pay to sell a $10 tree for $5. He was talking about conversion.

Mr. DE NEFFE. All right. Do you remember that testimony?

Colonel GREELEY. If it is in the record it stands for itself, but the point remains you have got to provide some leeway if you are going to sell any Government stumpage. We could very easily create conditions to insure an absolutely theoretically satisfactory minimum cut, etc., and tie up our contracts with so many restrictions on them that we could not sell any timber. It is possible that there is a defect in that clause; I do not evade that question. I want to study that clause again in the light of this criticism, as to whether it does permit too great a period without any operation in Government timber.

Mr. DE NEFFE. Have you ever offered voluntarily to make this kind of change in that contract?

Colonel GREELEY. It had never been brought to my attention before this hearing by anyone.

Mr. DE NEFFE. Doctor Brooks brought it to your attention —

Mr. HALLOCK. Mr. Chairman, if you please, I want to say at this juncture in line with Colonel Greeley's statement, that I feel justified in saying in behalf of Mr. Herrick that if a study of that clause develops the fact that there could be a continuous period of idleness such as is contended by counsel and his people, I believe he will join me in saying that we want that adjusted properly.

Mr. DE NEFFE. Yes; it is all right for you to come here —

Mr. HALLOCK. If there is anything of that kind in it, I do not like the suggestion that we want any advantage.

Mr. DE NEFFE. No; you have never wanted any advantage. I am not through with how this contract was drawn. With this man practically telling those people up there to be damned, that he will run that thing the way he wants to, when we get you out in the open, the first time you have been out in the air, and now for you to come forward here and make an offer to change that —

Mr. HALLOCK. I am simply indicating, Mr. De Neffe, that I want to subscribe to anything that Colonel Greeley may have in mind that is fair for the development of this thing. This clause is something that Mr. Herrick never suspected; nobody intimated anything to us about it
before —

Mr. DE NEFFE. It is too bad about that —

Colonel GREELEY. Mr. De Neffe, do you claim that this clause is not the clause on which the timber was readvertised for sale and on which everyone was entitled to bid?

Mr. DE NEFFE. I have heard so much about that, Colonel Greeley—it started Monday, I believe. Senator Walsh expressed surprise that after we had gone on here for nearly a week on the basis that the old prospectus was used to readvertise, any claim should be made that anything else went out. We have not had any evidence of it. We have heard talk and conversations, and that is all.

Colonel GREELEY. I said yesterday that the timber was readvertised, and that certain chances from the prospectus were made, one of them being the change in price, the second being the redrafting of the cutting requirements.

Mr. DE NEFFE. And where is it?

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Colonel GREELEY. The sample contract which the district forester at Portland furnished to everyone who, as far as he knew, could be interested in bidding, contained this identical clause.

Mr. DE NEFFE. Which identical clause?

Colonel GREELEY. This identical clause, section 3 of the Herrick contract with the proviso following it.

Mr. DE NEFFE. And were the people of Grant and Harney Counties consulted about that?

Colonel GREELEY. I do not know that they were.

Mr. DE NEFFE. They were not consulted at all, were they?

Colonel GREELEY. I do not know. I do not know that they were.

Mr. DE NEFFE. Was there any advertisement in the paper that this clause in the original prospectus, in the contract, requiring the compulsory cutting of 100,000,000 during the three-year period after June 1, 1931—were they notified that that was being eliminated?

Colonel GREELEY. I do not know that they were.

Mr. DE NEFFE. As a matter of fact they were not notified were they?

Colonel GREELEY. I said, I do not know whether they were or not.

The CHAIRMAN. He has answered the question.

Mr. MCGOWAN. Mr. Chairman, it seems to me the point Mr. De Neffe is striving to make is absolutely immaterial in this discussion, for this reason. Let us assume that there is a defect in the clause. If it is true that under the readvertisement everybody who was interested had a chance to bid on the timber under the same conditions there could be a defect in the clause, but that would have absolutely no bearing whatsoever on the proposition that is before this committee now, to wit, what is contained in that Senate resolution, and what is contained in the resolution of the Oregon Legislature. It has absolutely no bearing. If you want to talk about relevant stuff, talk about this, but this has absolutely no bearing at all. The clause may be defective; let us assume that. And if we do assume it, then where do you get? It does not prove anything in the world. So long as Herrick had no advantage over anybody else in connection with that clause that was incorporated in the contract, it does not make any difference. Do I make myself clear?

The CHAIRMAN. I think that will be quite clear to the committee. The thought has been expressed in the record before, Mr. McGowan. But I do think that Mr. De Neffe should be granted, and he will be granted, the privilege of developing the testimony here to prove the circumstances that he evidently has in mind. There has not been any evidence submitted to the committee that I recall, other than statements made by counsel, that everyone had a right to the same liberal provisions that were. later put into the contract.

Mr. MCGOWAN. Very well then, I will try and submit that later, but in the interim —

The CHAIRMAN. Until such time as such proof is offered Mr. De Neffe will be permitted to go ahead.

Mr. MCGOWAN. In the interim then I submit it is entirely improper for Mr. De Neffe to put an argument into this record, which will be a permanent record, based upon an assumption that is not true.

Mr. DE NEFFE. It is based on the evidence.

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The CHAIRMAN. I really believe it would have expedited this investigation very materially if the supplement to the original contract or to the contract as advertised in the prospectus, had been introduced here. Until that is done I can not regard this as not germane to the charge that Mr. De Neffe is attempting to develop.

Mr. DE NEFFE. Absolutely. That is exactly our position. And we subpoenaed Mr. Ames to bring all his records.

Mr. MCGOWAN. He will have it all here for you and show you the whole thing.

Mr. DE NEFFE. Mr. McGowan's argument is based upon the assumption that the people of Grant and Harney Counties have no interest in this matter at all —

The CHAIRMAN. Proceed with the examination.

Mr. DE NEFFE. And that has always been the trouble with the Forest Service. They like to believe that the timber is their own instead of belonging to the people.

Mr. MCGOWAN. To the extent that they really wanted to get $2.80 for it.

The CHAIRMAN. Proceed with the examination and reserve these arguments until later.

Mr. DE NEFFE. I will ask you this, Colonel Greeley. Referring to paragraph 3 of the Herrick contract, in the event Mr. Herrick could cut the maximum of 300,000,000 feet prior to June 1, 1931, he would not have to cut any more prior to June 1, 1934? Isn't that right?

Colonel GREELEY. What was your first date?

Mr. DE NEFFE. First date—if he cuts the maximum of 300,000,000 feet prior to June 1, 1931, he would not have to cut any more prior to June 1, 1934, because he would already have cut 80,000,000 feet more than the minimum requirement of 220,000,000 feet prior to June 1, 1934. That is right, isn't it?

Colonel GREELEY. That is correct.

Mr. DE NEFFE. So he could shut down his plant between June 1, 1931, and June 1, 1934, three years, and keep it shut down two years longer, making a five years shutdown, until June 1, 1936? Because the minimum amount required to be cut prior to June 1, 1937, is 320,000,000 feet, which is only 20,000,000 feet more than he has already cut. Therefore he could easily cut this 20,000,000 feet in a few months between June 1, 1936, and June 1, 1937. Isn't that correct?

Colonel GREELEY. He could do that.

Mr. DE NEFFE. Now, further, if Mr. Herrick could cut the maximum of 450,000,000 feet prior to June 1, 1934, he would not, have to cut any more prior to June 1, 1940, because he would already lave, cut 30,000,000 feet more than the minimum amount of 420,000,000 feet required to be cut prior to June 1, 1940. So he could shut down his mill for six years from June 1, 1934, to June 1, 1940? Isn't that right?

Colonel GREELEY. Yes, I think that is correct.

Mr. DE NEFFE. Now, would you consider that that was a more favorable provision to have in a contract than the provision which appeared in the prospectus requiring him to cut during every three-year period after June 1, 1931, a minimum of 100,000,000 feet?

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Colonel GREELEY. To the average lumber company that would probably offer a more favorable plan, because of the greater flexibility in adjusting their cut between Government and private timber.

Mr. DE NEFFE. And also they can be cutting the maximum whenever the market is high? Isn't that right?

Colonel GREELEY. If they wish.

Mr. DE NEFFE. And by cutting the maximum they have a chance to protect themselves over any period of time in case the market is low? Isn't that true?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And in that way they would be allowed to shut down their operations—the Forest Service could not compel them under this contract to operate at all, could they, through those periods if they wanted to shut down?

Colonel GREELEY. Not if the minimum cut had been made.

Mr. DE NEFFE. And the mill would be idle, and the logging camp would be idle, wouldn't it?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And the result is, the pay roll would stop at Burns and up in the woods in Grant County?

Colonel GREELEY. If you assume that the operator is going to be content to let his investment lie idle.

Mr. DE NEFFE. Well, if he had a big margin there, wouldn't it pay him to let it lie idle?

Colonel GREELEY. It might under some conditions. But under the usual conditions it does not pay to shut down a plant altogether. It may be a paying policy to reduce the output, but very seldom is it a paying policy for a lumber concern to permit a plant to remain idle any length of time.

Mr. DE NEFFE. If there was a difference in the margin, as Mr. Herrick says, between a $9 tree and a $5 log, wouldn't it pay him to do it?

The CHAIRMAN. A $10 tree and a $5 tree was Mr. Herrick's statement.

Mr. DE NEFFE. I thought it was $9 —

Mr. HALLOCK. He was talking about selling his timber, and it was a question of conversion.

Colonel GREELEY. There are a good many practical considerations there, Mr. De Neffe, that make it a very much less simple proposition than you have outlined. Timber must be cut a good many months before it can be sold: Processes of logging, processes of manufacture, and particularly the process of seasoning, require the cutting of timber usually from 6 to 8 months or 10 months before the product is marketed. Now, if the operator anticipates a poor market six or eight or ten months ahead, he naturally ascertains if it is not possible to reduce his output. On the otter hand, he has certain fixed overhead charges that he must meet. He has a very large investment that must be carried financially; that must pay taxes, that must be maintained and protected from deterioration

Mr. DE NEFFE. He is not paying taxes on this, is he?

Colonel GREELEY. On his mill and railroad—the private property.

Mr. DE NEFFE. Not on the timber.

Colonel GREELEY. And for those reasons I know of a good many cases where lumber mills have been operated continuously on a single

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shift basis not withstanding that the current price that they mere receiving for their lumber was less than the cost of production, because they figured that they would lose more by shutting down the plant than they would by operating it and accepting a price less than the actual cost of production.

It is a complicated business problem and some operators would work it out in one way and some in another, but you have got to bear in mind that in this situation here there is, first, a large quantity of private timber that is in the picture. That private timber should logically be logged when it is the most feasible and practical time to log it in connection with particular spurs. In the second place they have the very large investment that must be maintained, and all of those conditions tend to create a greater stability than you have implied.

What Doctor Brooks wanted was more flexibility in cutting the Government timber, because he did not know just how or when he was going to operate with the private timber, and we readvertised the umber with this change in that clause to give that greater flexibility.

And I am willing to say that, to the average, lumber operator—that that is probably a more favorable clause than the one printed in the prospectus. As I said, I intend to reexamine it from that point as to whether or not any fixed cut through any three-year period should be required.

Mr. DE NEFFE. But you never intended to reexamine it until this hearing started, did you?

Colonel GREELEY. This is the first time that it ever came to my attention. It never came to my attention until this hearing started.

Mr. DE NEFFE. This is the first time you knew of that clause in the contract?

Colonel GREELEY. No; it is the first time that I knew of the possibility of cutting to a maximum for a certain period and then avoiding the necessity for cutting the minimum, and make it possible theoretically to allow a plant to remain idle. It is the first time that that possibility has come to my attention—during this hearing.

Mr. DE NEFFE. Didn't you think it possible, Colonel Greeley, when the market was a little off, that Mr. Herrick or any operator would be operating on his private timber, which he paid for himself—I will not say that there is no evidence of it. But., anyway, operating on his private timber on which he is paying taxes rather than on the Government timber, on which he is paying no taxes or interest? Is not, that good business?

Colonel GREELEY. It might be good business; but the practical Operator —

Mr. DE NEFFE. (interposing). Can't you conceive of a condition in which the price would drop, and the drop in price in logs would be so great that it would pay Mr. Herrick to shut down instead of operating at a great loss? Can't you conceive of that?

Colonel GREELEY. I can conceive of that; and he should be permitted to shut down.

Mr. DE NEFFE. He should be permitted to shut down?

Colonel GREELEY. Yes; otherwise he is headed for bankruptcy, which benefits no one.

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Mr. DE NEFFE. And the people in those counties—Grant and Harney Counties and that county—should not be permitted to complain? Is that your attitude and the attitude of the Forest. Service?

Colonel GREELEY. I did not say that; you assume that. If for several years the lumber could not be manufactured except at a loss, the operator should be permitted to shut down, because otherwise he is headed for bankruptcy, which benefits no one.

Mr. DE NEFFE. You think that Mr. Herrick, under his dilatory tactics—would you be willing, under his avowed purpose not to proceed, and in view of his attitude toward the people, and that he has no sense of the importance to the people, would you be willing to allow him to go ahead?

Mr. MCGOWAN. Is that a question or an argument?

Mr. DE NEFFE. That is a proper question. He is administering here the public forest—a public official—and all

I want is a right to get what his attitude is.

Colonel GREELEY. No; I can't say that the public interest should be left to Mr. Herrick's inclinations. They should be protected.

Mr. DE NEFFE. They certainly would be left to his own desires and judgment under that contract. Has the Forest Service ever given any other operator or person as favorable terms as to the cut as is in paragraph 3?

Colonel GREELEY. I can not answer that question offhand. We have written similar clauses for a good many contracts.

Mr. DE NEFFE. Can you name one?

Colonel GREELEY. Just how those clauses compare with this one I am unable to say.

Mr. DE NEFFE. Isn't it a fact that in every one of the contracts that you have written, that you have compelled a certain definite minimum cut over certain periods during the life of the contract?

Colonel GREELEY. That has been the usual form of the clause.

Mr. DE NEFFE. And it has always been the form, Colonel Greeley?

Colonel GREELEY. I can't say that it always has been. So far as I can recall, that has been required in our contracts.

Mr. DE NEFFE. Can you point to a single contract in the Forest Service throughout all your administration, or anybody else's administration, that this clause requiring a minimum cut over certain periods was not contained? Can you point to one?

Colonel GREELEY. I can not, offhand

Mr. DE NEFFE. Well, will you look at your records and find one? Will you do that?

Colonel GREELEY. I will be glad to have some of the contracts examined to see if there are any that are comparable to this one.

Mr. DE NEFFE. In your direct testimony you stated that the readvertising of this timber which was contemplated to be sold under the readvertising was certain timber on certain designated land; is that right?

Colonel GREELEY. That is right.

Mr. DE NEFFE. Now then, Mr. Girard is the man who appraised that timber and had it cruised; is that right.?

Colonel GREELEY. Mr. Guard did not cruise it. He made the appraisal of its value, in company with Mr. Hoffman.

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Mr. DE NEFFE. It was cruised under his superintendence?

Colonel GREELEY. Yes, sir.

Mr. DE NEFFE. And then he made the appraisal?

Colonel GREELEY. Yes; with Mr. Hoffman.

Mr. DE NEFFE. What does he do when he makes the appraisal?

Colonel GREELEY. The appraiser examines the timbered area by traversing it at various points, so as to get direct familiarity with temple areas to determine its quality, and the character of the ground; locate the most feasible

routes for logging railroads, etc. And then from that determine the investments that must be made to operate it.

Mr. DE NEFFE. Does he have, anything to do with determining the amount of timber that there might be there?

Colonel GREELEY. No; the appraiser takes the amount of timber furnished him by the cruising party. He may make a check estimate on typical sections if he wishes, but the procedure is to make the cruise first and turn its results over to the appraiser and he determines the value of the timber.

Mr. DE NEFFE. Yes. Do you know who made this regulation prohibiting any copies of the records to go out? Did you make that? Did you make the regulation?

Colonel GREELEY. I think that is in the administrative regulations of the Secretary of Agriculture, but I will have to verify that.

Mr. DE NEFFE. And you stated, I believe, if I do not misquote you, that the policy of your office is not to let out any copies of any contracts or documents unless there is an indication of legitimate public purpose. Do I quote you correctly?

Colonel GREELEY. I think that is substantially my testimony.

Mr. DE NEFFE. Now, didn't, you consider, when the people of Grant and Harney Counties wanted to look at the contract which effected their interests so vitally, that they had a legitimate public purpose?

Colonel GREELEY. They were given the opportunity to look at it.

Mr. DE NEFFE. Well, there seems to be a difference of opinion on that. You said that very often you have to make modifications in contracts where the operator is not responsible. Is that the class that you put Mr. Herrick in here, as an irresponsible operator?

Colonel GREELEY. I said where the operator is not responsible for the circumstances requiring modification.

Mr. DE NEFFE. Well, isn't he responsible for the circumstances requiring the modifications?

Colonel GREELEY. In part, yes.

Mr. DE NEFFE. Well, isn't he wholly responsible?

Colonel GREELEY. I explained my judgment on that matter fully yesterday. I said I did not regard him as wholly responsible, but as partially responsible.

Mr. DE NEFFE. Well, why isn't he wholly responsible? I didn't get that explanation.

Colonel GREELEY. I said that I thought, after taking into account all of the conditions encountered in going into this country, that a longer period for the construction of the improvements than two years was reasonable; but not the entire delay as incurred. If you wish me to express it more specifically, I would say that it would have been reasonable to give Mr. Herrick three years rather than

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two before beginning the cutting of timber. It would not leave been reasonable for Mr. Herrick to delay the cutting of timber beyond three years. As a matter of fact, it has taken four years, and to that extent I hold Mr. Herrick responsible for lack of due diligence.

Mr. DE NEFFE. And you stated that you wanted to discourage speculations and contractors in prosecuting that diligence and acting in good faith. Do you still maintain that Mr. Herrick was acting in good faith in this matter?

Colonel GREELEY. He has acted in good faith to a considerable degree; not to a satisfactory degree.

Mr. DE NEFFE. Well, then —

Colonel GREELEY (interposing). He has made a large investment. His work, his construction work, has been

substantial, with every indication of permanency. Now, so far as those are indications of good faith, he has shown it. He has not shown good faith, if you wish to term it that, in advancing the funds that were required as rapidly as the construction work should have been prosecuted.

Mr. DE N NEFFE. And that was exactly the cause of the whole trouble, wasn't it, Colonel Greeley, that he did not do it, and he willfully did not do it'? Isn't that the cause of the whole trouble in this matter?

Colonel GREELEY. Primarily, Yes, sir.

Mr. DE NEFFE. That is entirely so, because how could Girard or anybody build a railroad unless he had the money down there?

Mr. HALLOCK. Mr. De Neffe, if you will stick with that, I think we are through.

Mr. DE NEFFE. Wait a minute. I still have a few things here. Then you do not agree with Mr. Carter when you say he has shown good faith? Do you believe in that?

Senator KENDRICK. Mr. De Neffe, while I do not want to interrupt —

Mr. DE NEFFE (interposing). Yes; I won't go further.

Senator KENDRICK (continuing). My opinion is that Colonel Greeley has answered that question more than one time.

Mr. DE NEFFE. Yes; I guess he has. I don't want to repeat it. Now, Colonel Greeley, isn't it a fact that a lot of the lumber operators, including Mr. Herrick here, have felt that the timber is being put on the market too fast, and that it is being developed too fast, and that it is costing too much, and that it is having some effect on the lumber market? Haven't you gotten letters to that effect from some of the lumber men and timber men?

Colonel GREELEY. Yes, sir.

Mr. DE NEFFE. And one of them was from George Cornwall; wasn't it, who publishes The Timberman?

Colonel GREELEY. I have had communications from Mr. Cornwall at various times dealing with that question. I do not remember any particular one.

Mr. DE NEFFE. Last year?

Colonel GREELEY. Oh, a good many lumbermen in the Northwest have criticized the Government for putting the stumpage oil the market.

Mr. DE NEFFE. And they want to hold it back because they do not want any more lumber on the market than possible, isn't that a fact?

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Colonel GREELEY. That is their viewpoint.

Mr. DE NEFFE. And Mr. Cornwall pointed out that there had been developments in Polk and Lake Counties, and it would be better to have this held back; isn't that it?

Colonel GREELEY. I don't know that anybody has said that this particular development should be held back.

Mr. DE NEFFE. Wasn't that —

Colonel GREELEY (interposing). But we have always had that general criticism ever since we have begun selling timber, that the stumpage in Government hands should not be put on the market in competition with private stumpage. We had that complaint always. That is perennial.

Mr. DE NEFFE. And didn't it occur to you, in view of these delays—the inexcusable delays, the lack of good faith on Mr. Herrick's part that the reason he was shoe stringing this along was that he didn't want to put any more lumber on the market in competition with all of the mills that he said he owns up in the Northwest? Did that ever

occur to you?

Colonel GREELEY. That may have been his reason.

Mr. DE NEFFE. Yes.

Colonel GREELEY. It wasn't a satisfactory reason for the Government.

Mr. HALLOCK. Was it ever assigned by Mr. Herrick or any of his people?

Colonel GREELEY. I don't believe that that reason was ever cited in any request for a modification.

Mr. DE NEFFE. Now, you say there are some financiers who have been interested and who are talking of floating a bond issue on his properties.

Colonel GREELEY. I have been so informed.

Mr. DE NEFFE. Have they talked to you about it?

Colonel GREELEY. Mr. Flood has talked with me.

Mr. DE NEFFE. He represents the financiers?

Colonel GREELEY. He represents, according to his own testimony, certain banking interests. That is all I know about it.

Mr. DE NEFFE. Have you not received letters from banking houses concerning this matter?

Colonel GREELEY. I received a letter from Mr. Flood during tile present month, with which he transmitted a copy of the statement of Mr. Herrick's assets and a copy of the purported agreement looking to the financing of this operation.

Mr. DE NEFFE. Have you got a copy —

Colonel GREELEY (interposing). I don't know —

Mr. DE NEFFE (interposing). Pardon me.

Colonel GREELEY. I don't know whether it was an agreement that was actually entered into or one that was proposed.

Mr. DE NEFFE. Have you a copy of that?

Colonel GREELEY. I think it is in our files here.

Mr. DE NEFFE. Can I get a copy?

Mr. HALLOCK. I have a signed copy. I think I have it right here.

Mr. DE NEFFE. I can get it after we adjourn?

Mr. HERRICK. I think it is right here, Mr. De Neffe.

Mr. DE NEFFE. I will go ahead.

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Mr. HALLOCK. Here it is. Here is an executed document. It think is the one the witness is referring to [handing paper to Mr. De Neffe].

Mr. DE NEFFE. It is such fine print and indistinct it is pretty hard for me to read it.

Mr. HALLOCK. It may be we have a better copy of it here.

Mr. DE NEFFE. Well, I would like to have it go into the record and then have all opportunity to study it, and to question Colonel Greeley later on. They are asking for modifications in there, are they not?

Colonel GREELEY. No; not so far as I can recall, there is no request for a modification in this statement.

Mr. DE NEFFE. But you stated yesterday there have been requests for modification?

Colonel GREELEY. There have been no formal requests, but Mr. Hallock, in a conversation with me during January —

Mr. DE NEFFE (interposing). Of this year?

Colonel GREELEY. Of this year.

Mr. HALLOCK (interposing). Pardon me. Wasn't that just before Christmas?

Colonel GREELEY. Possibly.

Mr. HALLOCK. I was at home for Christmas. I remember that.

Colonel GREELEY. It was either during December or January, in which he indicated the general purpose of Mr. Herrick to refinance his operation and the necessity in connection with that, if the plan were to go ahead, the necessity of securing modifications of his contract.

Mr. DE NEFFE. And did he state what modifications would leave to be made?

Colonel GREELEY. No; we didn't go into any specific discussion of that.

Mr. DE NEFFE. I see. And then when this contract was made did you understand and Mr. Ames understand that Mr. Herrick would build and develop a three or four million dollar proposition out of the earnings of his other mills? Was that the understanding?

Colonel GREELEY. We had no such understanding.

Mr. DE NEFFE. But you soon learned, didn't you, that that was what be was doing?

Colonel GREELEY. I have never had any specific information on that point. It had no bearing upon the action of the Forest Service. It has been stated in various communications I have received that apparently Mr. Herrick was seeking to finance this operation out of the earnings of other lumber companies, rather than through a direct bond issue or solve other particular form of financing. That has been stated a number of times, as I recall.

Mr. DE NEFFE. When was the first that you learned that he was financing it out of his other operations?

Colonel GREELEY. I have never learned that specifically —

Mr. DE NEFFE (interposing). I refer to a letter from Herrick, which Herrick writes from St. Maries, Idaho, September 30, 1924, in which he says:

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> I am going to ask you for one year's extension of time on this contract, and I know that you will consider that this is a big transaction to work out. Getting the cash out of the left-hand pocket and putting it in the right-hand pocket.

What did you think that meant, when he was writing you about getting money with his left hand out of his pocket, and putting it in his right-hand pocket?

Colonel GREELEY. I am very frank to say I didn't know just what it meant.

Mr. DE NEFFE. Didn't you think he was operating on a shoe string? That he was financing it out of his other

operations?

Colonel GREELEY. It might mean that he was financing one operation out of the profits of another.

Mr. DE NEFFE. Wouldn't it mean that to anybody of intelligence, that he was operating it on a shoe string?

Mr. MCGOWAN. Where does that appear?
Mr. DE NEFFE. On page 24.

Mr. MCGOWAN. That is one we offered in evidence?

Mr. DE NEFFE. Yes, sir. I am not saying you are suppressing it.

Mr. MCGOWAN. Yes: but give the source of your information. Keep the record straight.

Mr. DE NEFFE. Yes; I am not making any charge. I only regret that the people of those counties did not have these records to look at before we came here; it would not have taken so much time.

Mr. MCGOWAN. It is perfectly evident they have not got as much as they expected to find.

Mr. DE NEFFE. Oh, yes. You also state that when it came along in February, 1925, when the decision had to be made as to whether this contract should be canceled in view of the absolute failure of Mr. Herrick to show good faith, based on Mr. Carter's report, that you were interested in not declaring a cancellation at that time because you thought there would be quite a lot of delays on account of readvertising again, and that it would be difficult to get anybody else to go in there and bid, because Herrick had a partially completed railroad in there.

Colonel GREELEY. Let me insert this: I do not think the contract was subject to cancellation at that time.

Mr. DE NEFFE. But it would be in a few months, wouldn't it?

Colonel GREELEY. It was subject to cancellation at later times, Yes, sir.

Mr. DE NEFFE. April 1, 1925, was the date at which he would have to have his railroad completed and have the timber begun to cut, was it not?

Colonel GREELEY. No.

Mr. DE NEFFE. Why not?

Colonel GREELEY. On April 1, 1925, he was required to begin cutting public or private timber.

Mr. DE NEFFE. On April 1 be was required to cut, public or private timber?

Colonel GREELEY. Yes, sir.

Mr. DE NEFFE. Now, your decision was made, according to the letter to Senator McNary of December 7, that you would grant the extension. You stated that you had instructed the district forester to grant. an extension.

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Colonel GREELEY, That is correct. I am sure of the due, but about that time.

Mr. DE NEFFE. Now, March—April l, there would be a month that he would be in default; isn't that right? And it was a foregone conclusion that he could not complete that contract.

Colonel GREELEY. He could have complied with that contract.

Mr. DE NEFFE. Could he have complied to build a railroad up there in a —

Colonel GREELEY (interposing). He did not have to build a railroad. He could have taken a couple of motor trucks up there and began to cut, and made a technical compliance.

Mr. DE NEFFE. Oh, I see. So you agree with Mr. Herrick, that he could have made a technical compliance?

Colonel GREELEY. At that time, and that is one of the reasons we made specific requirements as to the construction.

Mr. DE NEFFE. Then you didn't intend that he should have had the railroad finished there by April 1 and October 1, 1925; is that it? You never intended to make him do that?

Colonel GREELEY. Why, the contract as originally drafted stands for itself. The contract as originally drafted contained no railroad requirements, and no mill requirements. It said that cutting must begin on private timber or Government timber April 1, 1925, and on Government timber not later than October 1, 1925. Now, he could have complied with those requirements without building a railroad, if he saw fit to do so.

Mr. DE NEFFE. You would have sustained him in that technical compliance, would you?

Colonel GREELEY. Probably I would have to. Now, we appreciated when the railroad was not built that the development was not going forward as we thought it would and should, and that it was desirable to make the terms of the contract more specific, and that was done in the modification.

Mr. DE NEFFE. Then, you also claim that during 1926 he could have made a technical compliance and cut a few trees, and taken them out with a few trucks —

Colonel GREELEY (interposing). No; because the first modification approved March 12, 1925, sets forth specific stipulations for construction work.

Mr. DE NEFFE. I am talking about, when you were granting an extension there.

Colonel GREELEY. Yes; that was the very first extension that was made.

Mr. DE NEFFE. The situation was in a condition where he had defaulted; your own reports show that it was physically impossible to complete it, and to comply with the requirements?

Mr. HALLOCK. Mr. Chairman, I think he has already said that there was no requirement; there was no requirement for a railroad or mill at that time. He has made that clear.

Mr. DE NEFFE. Then all I have got to say is this, that if the Forest Service does not protect the Government any better than to allow a man to make that sort of a contract to cut a few trees when everybody thought that he was going to have a railroad up there, and giving it out that way, I think it is about time that the people know how it is administered.

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Colonel GREELEY. You have studied this contract, I take it, Mr. De Neffe?

Mr. DE NEFFE. Yes.

Colonel GREELEY. And you know that the original documents contained no construction requirements. There is nothing in there said about the date of building a railroad. We did say that he must build a common carrier railroad to a certain point.

Mr. DE NEFFE. Yes.

Colonel GREELEY. That is in compliance with our contracts in general. And since you have made reference to the laxity in administration, I want to make this statement: In selling timber in general, we do not attempt to go into specifications as to when or how a railroad shall be built, or the mill shall be constructed. We assume that those things are going to be done as a part of the necessary process to cutting the Government timber. Now, we drafted the original contract in this case on the same basis, in accordance with our readvertising; on the basis on which the timber was offered for bidders. And then when we found, following Mr. Carter's trip to Burns in 1925, that the work was going slowly, when he felt it necessary to put pressure upon Mr. Herrick to move more rapidly, we also felt that it was necessary to put specific conditions into these modification as to the amount of construction work to be done.

That later led to specific conditions as to the construction of a mill.

Now, we have gone into these matters in much greater specific form and detail in dealing with the Herrick case than in any other case within my knowledge of the Forest Service, in order to put the proposition in such state that he would be required to go ahead in the specific construction of mill and railroad which the local people wanted.

Now that policy was applied to this sale beginning with the first modification of the contract in March, 1925.

Mr. DE NEFFE. You have also stated, Colonel Greeley, that one thing that deterred you from declaring a forfeiture was, that you would have to readvertise, and it might be difficult to get any other bidders. Now, then, there were other routes that could be taken for building the railroad north of Burns, wasn't there? You didn't have to follow his route, isn't that a fact?

Colonel GREELEY. Very likely. I can not call to mind now the routes.

Mr. DE NEFFE. They did not have to follow Mr. Herrick's route, and anybody who took the proposition over would have the benefit of the Crane-Burns route.

Colonel GREELEY. Presumably.

Mr. DE NEFFE. It was already built.

Colonel GREELEY. Presumably they would.

Mr. DE NEFFE. And then there was this proposition, this railroad was built, and Mr. Herrick has already $100,000, or more, in it. Wouldn't that be a favorable proposition for somebody to bid, because he would figure that he could buy Mr. Herrick's railroad very favorably?

Colonel GREELEY Depending on Mr. Herrick's willingness to deal with him.

Mr. HALLOCK. We submit, Mr. Chairman, that is largely argumentative.

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The CHAIRMAN. I think it is. Mr. De Neffe, do not consume more time than is necessary. I do not want to be drastic about the requirements of this examination, but do not consume more time than is necessary.

Mr. DE NEFFE. I will hurry as much as possible. You said that it is nothing new to have men in the Forest Service resign and get employment with the lumber and logging companies; is that true?

Colonel GREELEY. That is true.

Mr. DE NEFFE. That is very frequently done.

Colonel GREELEY. That is true.

Mr. DE NEFFE. And it is customary for them to do that after they have appraised the timber in a big unit like this, and gotten out the prospectus, and made the deal with the purchaser, like Girard did with Mr. Herrick here, stopping when he got a certain buyer?

Mr. MCGOWAN. We object to that, Mr. Chairman, on the ground that it assumes a thing that is absolutely not in the record.

Mr. DE NEFFE. He said it himself.

Mr. MCGOWAN. That he had anything to with the writing of the prospectus?

Mr. DE NEFFE. He had something to do with the figure and the appraisement. Girard said that himself.

Mr. MCGOWAN. That he wrote the prospectus?

Mr. DE NEFFE. I don't know whether he took the printing machine and wrote it up, or not. But he had something to do with the preparation of the figures in the prospectus.

Mr. MCGOWAN. We submit that you should confine yourself to what is in the record. That is the point I make.

Mr. DE NEFFE. I am trying to. But Mr. Girard said that he prepared the data that went, into the prospectus. Can you point, to another instance like that?

Colonel GREELEY. I do not know of any other case that parallels this one, of the one who appraised a tract of timber and then is interested in his securing —

Mr. DE NEFFE (interposing). By securing a bidder?

Colonel GREELEY. In getting a good bid for it, and then in course of time went into the employment of the company. I do not think of any case that parallels that. I do not see that it is vital to the point that I way making. I remember the case of a supervisor in California who entered the employ of the lumber company which had very recently, or at that time—no, recently. bid on a large tract of timber in which he had a large part, or some part m the cruising, although not as an appraiser.

Mr. DE NEFFE. Yes, sir.

Colonel GREELEY. We have had cases where men who bought Government timber, or who had going contracts with the Government dealt with men who afterwards entered their employ. The experience of the service —

Mr. DE NEFFE (interposing). Now, isn't it a fact that whoever buys Government timber has to submit to certain Government regulations in regard to the marking of the trees, and the scaling, and all that kind of thing?

Colonel GREELEY. That is true.

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Mr. DE NEFFE. And the marking or sealing can react to the benefit or to the detriment of the buyer?

Colonel GREELEY. That is true.

Mr. DE NEFFE. And it is very important to have some man buying that timber, to have in his employ men who are on good terms with the Forest Service; isn't that true?

Colonel GREELEY. I don't know what you mean by that question.

Mr. DE NEFFE. Isn't that natural, to desire to have someone in their employ who is friendly with the Forest Service, rather than someone who is not friendly with them?

Colonel GREELEY. It is not a question of friendship or not friendship. I have had lumbermen say it is difficult to understand the regulations, and naturally they desire someone who understands the Forest regulations.

Mr. DE NEFFE. Is an ex-service man the only man who can understand those regulations?

Colonel GREELEY. No.

Mr. DE NEFFE. And isn't it true that you knew that the only reason Mr. Girard resigned and went with Mr. Herrick is because Mr. Herrick expected him to get a favor of that kind?

Mr. MCGOWAN. I object to that.

Mr. DE NEFFE. That is what I want to know.

The CHAIRMAN. I think Colonel Greeley might answer "yes" or "no" to that question.

Mr. MCGOWAN. Let me get my objection made, if you please.

The CHAIRMAN. Yes.

Mr. MCGOWAN. There is not a line of evidence in the record that would justify an assumption of a hypothesis such as is in this question. It is an improper question.

Mr. DE NEFFE. The record is full of suspicious circumstances; of mysterious circumstances, into which he went, detailing the circumstances —

The CHAIRMAN (interposing). I think Colonel Greeley may answer "yes" or "no" to this question.

Colonel GREELEY. I knew nothing of the kind.

Mr. DE NEFFE. Nothing has ever occurred here to give you the idea that there was some kind of a frame-up about that?

Colonel GREELEY. Let me repeat here what I said yesterday. If there was any improper influence or improper actions in connection with this whole matter, it could not have gone through without my knowledge. When you ask me that question you are indirectly accusing me of some collusion with Mr. Girard.

Mr. DE NEFFE. That is what I want to find out.

Colonel GREELEY. As to that I said yesterday that I had no communication with either of these gentlemen during the time in which this transpired, except the letters I put into the record, and that I had no correspondence or anything of that kind on which to base any information of that sort with respect to Mr. Girard or Mr. Girard's services with the Government.

Mr. DE NEFFE. Have you found that letter of Mr. Ames, of around the 1st of November?

Mr. MCGOWAN. If you will tell me the date of it, Mr. De Neffe, I will try to get it for you.

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Mr. DE NEFFE. I don't know the date of it.

Mr. MCGOWAN. Here are the files, and you can find it yourself. Here are the whole files of the Forest Service, and you can look for it.

Mr. DE NEFFE. Is that your attitude, Mr. McGowan?

Mr. MCGOWAN. There is my answer.
Mr. DE NEFFE. You have made no effort to produce the letters.

The CHAIRMAN. Gentlemen, do not get into a controversy about it.

Mr. MCGOWAN. I will give him anything that is in the Forest Service files, if he tells me what he wants.

The CHAIRMAN. Has he made it sufficiently clear to you so that you understand what he wants?

Mr. MCGOWAN. No; he does not understand it himself.

Mr. DE NEFFE. I said a letter around the 6th of November, Mr. Ames wrote to Mr. Girard, in which he says, "I have just received your letter," etc. You know how long it takes a letter to go to Portland. You know about what the date of it would be.

Mr. MCGOWAN. If you want that letter you are welcome to have it if we can find it.

Mr. DE NEFFE. I made that request at 10 o'clock this morning, and a number of your men are sitting around here doing nothing much. That is the basis of my statement that you have not produced it.

Mr. MCGOWAN. The men are here in this situation listening to this argument.

Colonel GREELEY. If we have any letter that you desire we will produce it.

The CHAIRMAN. You think the letter is of some date between the times mentioned from the Portland office?

Mr. DE NEFFE. I can not produce the date.

Mr. MCGOWAN. Mr. Ames furnished me a letter dated October 31, 1924, from Mr. Carter to the district forester. Is that the one you want [handing paper to Mr. De Neffe]?

Mr. DE NEFFE. I don't know.

Mr. MCGOWAN. Well, look it over.

Mr. DE NEFFE. No; that is not the one, because it is a different date, you see. Let me see now. Well, maybe that is it. I want this in, however, for another reason. Yes; that is right.

The CHAIRMAN. Is that the letter now?

Mr. DE NEFFE. Yes.

Mr. MCGOWAN. I am glad to furnish it.

Mr. DE NEFFE. You understand, Mr. McGowan, I have been working under pressure, having volumes of records to look over, and I can not give all these dates, and can not give in full any data.

Now this letter from E. E. Carter to the district forester that can't be the one, because he says that Colonel Greeley wrote the letter.

Colonel GREELEY. Doesn't he say the Forester?

Mr. DE NEFFE. The Forester; yes.

Colonel GREELEY. That expression is often used to refer to a letter from the Washington office.

Mr. DE NEFFE. That is what I took it. [Reading:]

> I have just received a letter from the Forester.

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So I thought it was from Colonel Greeley. I don't want to ask you about some letter that somebody else wrote.

Colonel GREELEY. The letters from the Forester are referred to in our correspondence as letters from the Washington office.

Mr. DE NEFFE. Well, I don't want to accuse you of something you didn't write. I was going by what Mr. Ames had said in his letter.

Now, you stated that you had decided that you are going to take some vigorous action on Mr. Herrick's contract irrespective of the investigation; is that right?

Colonel GREELEY. I thought I took some vigorous action last spring when I forfeited $50,000. I stated that I was going to act as is necessary, for the Forest Service should act in regard to whether we are going to cancel or extend the contract.

Mr. DE NEFFE. But hasn't this investigation had something to do with your determination in speeding up this matter?

Colonel GREELEY. Not at all.

Mr. DE NEFFE. Did the Portland office send you a record of this Herrick transaction at the time he made the bid?

Colonel GREELEY. The Portland office advised us of the bids that were submitted, as I recall.

Mr. DE NEFFE. And the only —

Colonel GREELEY (interposing). And we instructed them to accept the Herrick bid, subject to his furnishing evidence of financial responsibility.

Mr. DE NEFFE. And they furnished the statement that you have introduced here.

Colonel GREELEY. They procured the statement that was in the record.

Mr. DE NEFFE. Why was there such a light bond required here? A fifty-thousand dollar bond, wasn't it?

Colonel GREELEY. That is as high as I think any bond we have got, or asked for

Mr. DE NEFFE. Isn't that the amount usually asked for in a transaction involving $100,000 to $200,000?

Colonel GREELEY. The amount of bond asked for in connection with Government contracts varies according to the size of the operation. I think the limit for equally large sales has been $50,000.

Mr. DE NEFFE. Can you point to any sale as large as this having been made?

Colonel GREELEY. The sale to the California Fruit Growers in the Lassen National Forest of California, if my memory is correct, was in excess of a billion feet of stumpage.

Mr. DE NEFFE. What was the amount of the bond?

Colonel GREELEY. Mr. Carter says $50,000.

Mr. DE NEFFE. You didn't make any difference in the amount. of the bond?

Colonel GREELEY. The sale to the Sierra Sugar Pine Co., in California, ran up to a very large figure. I think that bond in that case was $50,000.

Mr. DE NEFFE. What was the amount of money involved?

Colonel GREELEY. The amount of the contract?

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Mr. DE NEFFE. Yes; the amount of money that would probably be paid in, figuring the amount of the stumpage and the price of the stumpage.

Colonel GREELEY. Well, it would run up in excess of a million dollars, I am sure. I would have to verify that. from the record.

Mr. MCGOWAN. Might I interject here, to speed things along, that the original prospectus in connection with this sale, at page 10, states:

> As a guaranty of the faithful performance of the contract, the purchaser is required to furnish a bond of $50,000.

So that that was in there before Herrick was ever heard of in connection with this matter.

Mr. DE NEFFE. Did Mr. Girard ever tell you anything about the financial condition of Mr. Herrick?
Colonel GREELEY. He has told me —

Mr. DE NEFFE (interposing). I mean, before the contract was signed?

Colonel GREELEY. Before the contract was signed? No.

Mr. DE NEFFE. Well, who was there when the contract was signed? Was he in Portland?

Colonel GREELEY. I do not know.

Mr. DE NEFFE. You were there, were you not,?

Colonel GREELEY. No, sir.

Mr. DE NEFFE. On April 27, 1923, wasn't that the time —

Colonel GREELEY (interposing). It is possible I was there. I don't recall it.

Mr. DE NEFFE. You made a speech at Portland during the noon hour, did you not?

Colonel GREELEY. I can not answer.

Mr. DE NEFFE. Don't you remember you were there at the Forest Service in the forenoon working on this proposition, and then you made a speech, and then you went back again and worked on the contract, you and Girard?

Colonel GREELEY. In 1923?

Mr. DE NEFFE. Yes, around April 27, 1923.

Colonel GREELEY. I Have no desire to evade your question, but I can't recollect being there at that time.

Mr. DE NEFFE. You don't remember making a speech there, do you, during the noon hour, at a luncheon?

Colonel GREELEY. Not on that occasion.

Mr. NEFFE. Well, where, were you when the contract was signed?

Mr. HALLOCK. Pardon me, Mr. De Neffe, aren't you confusing that with the check that was made between the first and second advertising?

Mr. DE NEFFE. No, not at all.

Mr. MCGOWAN. The contract was made June 15. To refresh your recollection, "Signed in duplicate, this 15th day of June."

Mr. DE NEFFE. Yes; but you have a memorandum there dated July 14, 1926, in which it states otherwise, Mr. McGowan.

Mr. MCGOWAN, Here is the contract Mr. De Neffe. Take it and look at it.

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Mr. DE NEFFE. The contract was delivered on June 15, 1923. That is, the bond was, put up. Will you refer to your record —

Mr. MCGOWAN (interposing). The contract says on the bottom of it— "Signed this 15th day of June, 1923."

Mr. DE NEFFE. Yes.

Mr. MCGOWAN. The date and the month are transposed. Then, approved at Portland, Oreg., under the conditions above, June 15, 1923. George H. Cecil.

Mr. DE NEFFE. I want to look at the history from your records.

Mr. HALLOCK. May I make a statement at this point, please?

The CHAIRMAN. Yes.

Mr. HALLOCK. We produced and there has been delivered to Mr. De Neffe the executed contract, between Mr. Herrick and the Continental & Commercial National Bank, of Chicago, involving the writing of the $2,500,000 bond issue. Now unless counsel insists upon it or unless the committee does, it occurs to me that perhaps it would be well not to put that contract into the record. It involves a pending transaction between Mr. Herrick and the bank of substantial magnitude. Mr. Culver testified that he had hoped to get the bid, but did not think he was going to get it, as the Chairman will recall, and I am just wondering whether the bank itself might take some exception to putting that document into the record, otherwise I would have no objection to it.

The CHAIRMAN. I am sure there is no disposition on the part of the committee to do anything to embarrass ether party to this case.

Mr. DE NEFFE. I do not want to either, unless there is something I might want to refer to.

Mr. HALLOCK. Yes.

Mr. DE NEFFE. I might want to refer to some modification there.

Mr. HALLOCK. That is perfectly proper.

Mr. DE NEFFE. I might want to refer to some modification, and that would be proper, yes. I do not want to disclose it.

Mr. HALLOCK. I would appreciate it then on behalf of the bank, whose consent I do not have, with respect to making that a public document, that it be not incorporated in the record.

The CHAIRMAN. It will not be incorporated in the record unless there is sonic important or specific part that counsel for the plaintiff here desires, and in that event I would suggest that instead of it being made a part of the record that it be simply filed with the committee for their perusal, so that no confidences are exposed.

Mr. HALLOCK. I appreciate that greatly, particularly in view of the fact that it actually names the price, etc., in which we are not, interested.

The CHAIRMAN. No; we are not interested in that.

Mr. DE NEFFE. Have you a copy of that, Mr. Hallock?

Mr. HALLOCK. I do not know, Mr. De Neffe, whether I have a copy, but in that connection it does not seem to me that you should expect us to furnish you a copy of this contract with the bank unless you secure the consent of the bank. Then I would leave no objection at all. But I am afraid I am taking an advantage of the bank in undertaking to furnish copies of that contract at this juncture. I would be glad to get you in touch with the bank.

Mr. DE NEFFE. May I leave a chance to read it over, Mr. Hallock?

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Mr. HALLOCK. Absolutely, Mr. De Neffe. You have it now, and you are welcome to read every syllable in it. But I just do not like the idea of it being broadcasted

Mr. MCGOWAN. May I call this to the attention of Mr. De Neffe? The original contract shows the execution on June 15, 1923. The bond that was filed with it by Mr. Herrick is dated June 15, 1923, and there is an affidavit by F. D. Strauss, notary, of Multnomah County, State of Oregon, to the effect that Herrick acknowledged the execution of the power of attorney on the 15th of June, 1923. So I think that fixes the date pretty well.

Mr. DE NEFFE. Well, I think I kept a copy of that on the memorandum that I have here. This is a copy of a memorandum appearing in the files of Colonel Greeley. It is the 1926 files. And it is dated June 14, 1926, and it is entitled "Memorandum for the Forester." It says, "Status Fred Herrick sale Malheur, 6-15-23 up to 6-12-26." Then, "Timber advertised, pine, 2.75. Final date 2-15-23. Timber readvertised, pine, $2.00. Final date 4-4-23. Two bids received. Fred Herrick, pine, 2.80. D. F. 1.05." over 55. "Brooks-Scanlon, misc." with a line drawn through it, and written above is "Min. 2.00. Awarded to Herrick about April 27th, 1923. Agreement signed by Herrick about April 27, 1923. Agreement approved G. H. Cecil 6-15-23."

Mr. HALLOCK. So the agreement was executed on the 15th day of June, 1923, by the approval of Mr. Cecil for the Forest Service, if I understand it right.

Mr. DE NEFFE. And it was signed by Mr. Herrick on the 27th of April, 1923, do you remember that?

Colonel GREELEY. I don't remember that personally. It is all a matter of record.

Mr. DE NEFFE. Well, you were there when it was approved then on June 15, 1923?

Colonel GREELEY. I Was in Portland at about that time. I may have been there on that particular date, but I have no recollection to connect my visit with this particular event.

Mr. DE NEFFE. Well, you were there before the contract was actually turned over to Herrick, were you not?

Colonel GREELEY. No; my first trip to Portland that year was in June. I was there about the 15th of June.

Mr. DE NEFFE. And that was the time Herrick put up Liberty bonds; isn't that right?

Colonel GREELEY. That was about the time when the contract was approved by the district forester.

Mr. DE NEFFE. And that was the time Mr. Herrick put up some Liberty bonds?

Colonel GREELEY. Well, I do not know just when. It was then or previously, because the contract was not approved until the bonds had been submitted.

Mr. DE NEFFE. Who drew the contract, do you remember?

Colonel GREELEY. The contract was drawn in the Portland office.

Mr. DE NEFFE. And then was it submitted to you?

Colonel GREELEY. I do not recall that anything was submitted to me after I approved the terms for readvertisement in March.

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Mr. DE NEFFE. Do you not have the final say on these contracts?

Colonel GREELEY. If necessary, yes; but the execution of the contract after the terms of sale have been approved rests with the district forester. The district forester's name appears as the agent of the Government.

Mr. DE NEFFE. Yes. And you had nothing to do with any of the provisions then, do I understand, that went into this contract?

Colonel GREELEY. The provisions were approved in connection with the first prospectus, together with the changes made therein, at the time of the second advertisement. Now the execution of the contract was more or less an administrative matter as long as no changes were involved from those previously approved by the Forester's Office.

Mr. DE NEFFE. In this change which you claim was made in the contract when it was advertised the second time was this proviso, under paragraph 3, which we have referred to as a new provision, reading as follows:

> *Provided*, That, whenever the District forester is satisfied that the cut from this sale area will exceed 890,000,000 feet, board measure, log scale, he shall increase the maximum amounts which may be cut prior to each of the above-named dates which have not previously passed, by such amounts as will permit the purchaser to cut thereafter an average annual amount sufficient to complete the cutting of the remaining timber covered by this sale, an the remaining cut may be estimated at that date, by June 1, 1945.

Was that in the memorandum or whatever you claim that went with the prospectus when it way advertised the second time? Was that provision in it?

Colonel GREELEY. Well, that provision was approved by me as a part of the readvertisement, and in my recollection it was put in the sample contract at that time which was sent out in connection with the second advertisement.

Mr. DE NEFFE. It was not in the Brooks memoranda offered there, was it?

Colonel GREELEY. I think it was.

Mr. MCGOWAN. Mr. De Neffe., let us keep the record straight, if you please. If you will look at that Brooks agreement you will find attached to it a copy of the provision that was included in the contract and a copy of Mr. Carter's memorandum.

Mr. DE NEFFE. Well I notice the dates there are fixed April 1 all the time. Isn't that right.?

Mr. HALLOCK. Could you clear it up a little, Mr. De Neffe, by telling us what it is that you are getting at? Maybe we can simplify it a little.

Mr. DE NEFFE. Well, I am trying to get it from Colonel Greeley, though.

Mr. MCGOWAN. Well, he has the record right there in his hand, the original agreement that was signed up with the Brooks-Scanlon people.

Colonel GREELEY. If it will clear your point, I will say that section 3, as it now appears completely in the Herrick contract, is the revision of the cutting requirements that I approved following Mr. Carter's conference with the Brooks-Scanlon Lumber Co., and which at that time became the basis of the readvertisement of the timber. I

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am not aware of any change being made section 3, including the proviso from that point.

Mr. DE NEFFE. And that proviso was put in in order to take up the large increase of the maximum cut provided in paragraph 3, was it not? Wasn't that the purpose?

Colonel GREELEY. The purpose of the proviso, the first paragraph beginning "Unless such amounts are changed," etc., was to recast the maximum or minimum cuts along the line that we lave discussed over and over again, based upon a possible maximum cut of 50,000,000 feet a year throughout the entire life of the contract, beginning with the first year.

Mr. DE NEFFE. And that was put in so that in case it should develop that instead of there being 890,000,000 feet in that unit there might be 1,200,000,000, that Mr. Herrick would get the benefit of that extra cut?

Colonel GREELEY. Yes, any one who bought the timber. That, as I said yesterday, was simply an administrative interpretation of the fixed feature of the contract that says that the agreement covers all of the timber designated for cutting in a specified area.

Mr. MCGOWAN. In other words, Colonel Greeley, the man couldn't cut any more timber under the revised paragraph 3 than he could under the clause of the contract as set out in the prospectus. The amount of the timber would depend on the quantity of the timber that was actually on the ground?

Colonel GREELEY. Exactly.

Mr. DE NEFFE. You knew that Mr. Girard had gotten Herrick as the bidder here, as the purchaser, didn't you?

Colonel GREELEY. I was advised of that by the district forester at Missoula.

Mr. DE NEFFE. And how did he come to advise you?

Colonel GREELEY. Well, Mr. Girard was working under his supervision at that time.

Mr. DE NEFFE. And Mr. Girard went out and hunted him up, isn't that right, and got him as a purchaser of this

timber from the Government?

Colonel GREELEY. I have no personal knowledge of just what he did. I was advised by the district forester that Mr. Girard had interviewed Mr. Herrick and had told him of this timber and that as the result of Mr. Girard's information Mr. Herrick had submitted his bid. That was all the knowledge I have had of that matter until the testimony that has been developed at this hearing.

Mr. DE NEFFE. Is it customary for your men to go out and hunt up purchasers of timber tracts?

Colonel GREELEY. Yes; wherever we have an opportunity.

Mr. DE NEFFE. And it is their duty, isn't it, to get the best price they can for the Government, isn't that light?

Colonel GREELEY. Yes; to interest bidders where they can. I have done it myself on more than one occasion.

Mr. DE NEFFE. If they found a man, for instance, who was willing to pay $2.80, and they knew of a number of other men who might be induced to pay more, wouldn't you think it was the duty of such a man to go and try to get some other parties to pay more for the timber? To make a bid at a higher price?

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Colonel GREELEY. In general terms it is the duty of our employees to get as many bids and as good bids as they can.

Mr. DE NEFFE. And not when they find one man willing to bid a certain amount to stop and not make any other effort, isn't that right?

Colonel GREELEY. As a matter of general service practice I would say it was their duty to interest as many people as they could.

Mr. DE NEFFE. Yes. But didn't you know that Mr. Girard—you heard his testimony, didn't you—after he got Mr. Herrick to make an offer of $2.80 did not make any further effort to see Rosenberg or the Winton people? You heard the testimony about that, didn't you'?

Colonel GREELEY. I heard his testimony. That is my only source of knowledge on the subject.

Mr. DE NEFFE. And you heard him state the reason was that he felt that Mr. Herrick might think that he had thrown him down or had not treated him right?

Mr. HALLOCK. Well, pardon me, Mr. De Neffe, wouldn't it be better to let the record stand on what Mr. Girard's testimony was?

Mr. DE NEFFE. I thought I would ask what Colonel Greeley thought about it. You heard it?

Mr. HALLOCK. You can not pick out one sentence and ask for his construction of that.

Mr. DE NEFFE. And would you not consider under the circumstances, that Mr. Girard held a higher duty to the Government that he did to Mr. Herrick?

Colonel GREELEY. Why certainly, as long as Mr. Girard was in the Government employ his duty was to the Government.

Mr. DE NEFFE. As long as he was out getting a buyer here now it was his duty to keep going, wasn't it, and get other buyers and get a high bid? Isn't that a fact?

Colonel GREELEY. In general terms, yes.

Mr. DE NEFFE. Well, in general terms—under all conditions, shouldn't he?

Colonel GREELEY. Well, I am not undertaking to say all of the circumstances which should govern the actions of a member of the Forest Service in those actions. Mr. Girard has made his own statement. If I were handling what he set out to do I would not have done it in the same way.

Mr. DE NEFFE. Well, can you tell me any circumstances, Colonel Greeley?

Colonel GREELEY. But you have heard Mr. Girard's statement, and I think the committee can judge for themselves whether that was an honest and honorable thing or otherwise.

Mr. DE NEFFE. Well, do you think that he should have kept going and tried to get a higher bid there? That can be answered yes or no.

Colonel GREELEY. I refuse to answer it, yes or no. I think that what Mr. Girard might preferably have done was to have communicated with three or four concerns without learning what any one of them intended to bid. Or I can appreciate that having been told by Mr. Herrick what he intended to bid, it did put him in an embarrassing situation in going to somebody else.

Mr. DE NEFFE. As far as Mr. Herrick was concerned?

Colonel GREELEY. As far as Mr. Girard was concerned.
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Mr. DE NEFFE. That is the only place there could have been any embarrassment?

Colonel GREELEY. As far as Mr. Girard's reputation as a reputable forester is concerned I can appreciate that there might have been some embarrassment, but in general terms as I stated, our general practice would be to interest as many different people as we could.

Mr. DE NEFFE. Would it have hurt Mr. Girard's reputation as an officer of the Forest Service if he had gone out and gotten another man or a number of other men who would bid more than $2.80 on that timber?

Colonel GREELEY. It would not have hurt his reputation with me.

Mr. DE NEFFE. Would it with anybody?

Colonel GREELEY. Well, it might have hurt his reputation with the local people there.

Mr. DE NEFFE. What local people? In Harney —

Colonel GREELEY. No; in Idaho.

Mr. DE NEFFE. How would it have hurt his reputation? Loyalty to the service and the Government, would that hurt a man's reputation any place, under any conditions?

Colonel GREELEY. Well, you are asking me to comment on a situation that comes down to the working of the mind of an individual. Now Girard felt that having been informed by Herrick that he was going to bid a certain amount, if he then went to somebody else and tried to get them to bid he would be in a position of double-crossing Mr. Herrick. Now that was his own affair. I am not attempting to say that he did right or wrong. I do say that our general practice is not to try to interest one individual, but to interest as many as we can, and at the same time not getting in possession of information that would be of any embarrassment to us in going from one to another. Every one knew that we were interesting as many different people as possible. I have done that myself recently in connection with large sales in Alaska.

Mr. DE NEFFE. Well now, having learned that Mr. Girard put this deal over in this way, are you willing to sustain him in it and say that it was all right? Is that what I am to understand?

Colonel GREELEY. Yes.

Mr. DE NEFFE. All right, we understand each other.

Mr. MCGOWAN. I just want to have the record complete on that point. That the Girard efforts in that connection were honest effort, is shown by the fact that the moneys that the Government would get out of this transaction ultimately by reason of the $2.80 price as against the $2 bid would amount to $689,000. If that is fraud, why you can make the most of it.

Mr. DE NEFFE. Yes; that was the shield they but up.

Mr. MCGOWAN. Yes.

Mr. DE NEFFE. Then you do not consider, Mr. McGowan, that all of these extensions that have been granted and the concessions and modifications were of any value to a man in a proposition of this kind which he could shoestring along and get a contract that would throttle the people and the industries in those two counties?

Mr. MCGOWAN. If you want me to go on the stand, Mr. De Neffe, and answer questions I will be sworn. Colonel Greeley is on the stand.

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Mr. DE NEFFE. All right. When did Mr. Girard first notify you that he was going to resign from the service?

Colonel GREELEY. Well, I will have to refer to the record there. I can not recall the date. There have been several letters read into the record. I first got a letter from Mr. Herrick saying he was going to hire the best man in the Forest Service, and some time subsequently I got a letter from Mr. Girard. I can not place the date.

Mr. DE NEFFE. Mr. Herrick told you that he had Girard in mind, did he not, at that time?

Mr. HALLOCK. That letter is in the record, Mr. De Neffe.

Mr. DE NEFFE. I am asking from his recollection.

Colonel GREELEY. As I recall that first letter, it did not mention any name.

Mr. DE NEFFE. And then when did you learn that Girard was really going into the employ of Mr. Herrick?

Colonel GREELEY. The best of my recollection is that Girard wrote me some time in the early summer or midsummer of 1923. I can not fix the date.

Mr. DE NEFFE. Have you that letter? It must be in your file, is it not?

Colonel GREELEY. It is in the record here, isn't it?

Mr. MCGOWAN. I think we gave you a copy of that, didn't we?

Mr. HALLOCK. Wasn't that put in the record?

Mr. DE NEFFE. I do not remember. It may have been, but I do not remember seeing it. Could you produce that, Mr. McGowan?

Colonel GREELEY. A letter was read into the record which constituted my reply to Mr. Girard.

Mr. DE NEFFE. But I would like to have the letter that Mr. Girard wrote Colonel Greeley.

Mr. MCGOWAN. I will try to find it.

Mr. DE NEFFE. Mr. Girard wrote you before the contract was signed, did he not?

Colonel GREELEY. I can not fix the date.

Mr. DE NEFFE. He resigned on May 4, 1923, did he not, from the Forest Service?

Colonel GREELEY. Whatever our record shows.

Mr. DE NEFFE. And the contract was not signed until June 15, 1923?

Colonel GREELEY. That is correct.

Mr. DE NEFFE. So you knew before the contract was signed that Mr. Girard had resigned and was going in with Mr. Herrick, did you not?

Colonel GREELEY. That is doubtless true, Yes, sir.

Mr. DE NEFFE. Yes. And didn't that seem rather strange to you, the fact that he had gotten Mr. Herrick as the purchaser and that he was going with Mr. Herrick and becoming a partner in this enterprise?

Colonel GREELEY. No.

Mr. HALLOCK. Pardon me. We object to the reference to him as partner in this enterprise There is nothing in the record to show that.

Mr. DE NEFFE. Why, he is a stockholder.

Mr. HALLOCK. All right.

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Mr. DE NEFFE. Officer and director in the company.

Mr. HALLOCK. Not a partner, sir.

Mr. DE NEFFE. No; if you are using the technical legal phrase there.

Mr. HALLOCK. No, I am taking the fact.

The CHAIRMAN. I think the record shows that it was not in the nature of a partnership. That he was a stockholder in the two corporations that are going to operate the lumber mill and cut this timber.

Colonel GREELEY. No; it did not surprise me, because, as I have said, we have had a good many men hired out of the Forest Service and because I knew that Mr. Girard had had a considerable number of offers.

The CHAIRMAN. It seems to me that is a repetition that has been gone over time and again, and Colonel Greeley has explained to you that it occurs often.

Mr. DE NEFFE. Did Girard tell you what salary he was going to get from Herrick?

Colonel GREELEY. Not that I recall.

Mr. MCGOWAN. I have the letter here that Mr. Girard wrote to Colonel Greeley. But in order that the record may be complete in that connection there should be offered first the letter of the district forester to Colonel Greeley of April 12, 1923; a copy of Colonel Greeley's letter of April 17, 1923, to Mr. Girard; a copy of Mr. Girard's letter of April 24 to Colonel Greeley; and a copy of Colonel Greeley's letter of April 30, 1928, to Mr. Girard, and I think that completes it.

Mr. DE NEFFE. Yes; let them go in, all of them.

Mr. MCGOWAN. Let them all go in.

Mr. HALLOCK. Will you read them into the record, Mr. McGowan?

Mr. MCGOWAN. No; let them go in.

Mr. DE NEFFE. I would just as soon read them, but it will take up a lot of time.

(The four letters presented by Mr. McGowan for the record are here printed in the record in full, as follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE DISTRICT 1
Missoula, Mont., April 12, 1923.

THE FORESTER, *Washington, D. C.*

DEAR COLONEL GREELEY: I suppose the news has come to you that Herrick bought the Malheur chance without ever going near it or sending any one from his organization to investigate the proposition. He became interested in it originally, I believe, through McHarg, and as the time for opening the bids approached and he decided that he really wanted to consider it seriously he got together with Girard, who went over the proposition with him. Herrick decided that Girard's judgment was good enough for him, and he bid $2.80 because Girard said the limber was worth that much money. He, of course, was not certain that there would not be a bid in excess of $2 or he would have bid a lesser amount, but that does not discount the statement that he was willing to pay the $2.50, and to make a three or four million dollar investment on Girard's judgment.

I understand that Herrick has written you that he is going to hire Jim to take charge of the operation. I believe he has not made any definite proposition to Girard, but will likely do so. I don't think it likely that he will get him, because Girard has serious doubts about his ability to work with Herrick and would want a tighter contract than Herrick would probably be disposed to make before going with him at any price. Nevertheless, the offer may be so

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big that he can not afford to refuse it. My purpose in writing is to ask, if it has not already occurred to you, that you write Jim a short letter of congratulation and appreciation for putting the deal over. It seems to me it is by far the biggest expression of confidence that I have ever seen tendered to any Forest Service man. It is the kind of action that in the business world would be rewarded in an appropriate financial manner. Since the Forest Service can not do that, an expression of appreciation becomes doubly important, and I am sure it will be valued by Girard as highly as a financial reward would be.

Very sincerely yours,

FRED MORRELL, *District Forester.*

APRIL 17, 1923.

MR. JAMES W. GIRARD,
Care of District Forester,
Missoula, Mont.

DEAR JIM: I have just learned of the important part you played in securing the bid of $2.50 for the pine timber on the Bear Valley unit from Mr. Fred Herrick, and I want to tell you, so far as can be done in a letter of my appreciation. The fact that Mr. Herrick had such confidence in your judgment must be gratifying to the Forest Service. Mr. Herrick wrote me that he was going to try to get the best man in the Forest Service to take charge of the railroad building and logging, and under the circumstances I suppose he meant you. I wrote him back that we never stood in the way of any of our men who were offered good jobs in outside employment, which is true; but I need hardly say that if you should he offered a satisfactory position in Mr. Herrick's new business undertaking you would leave a hole in the Forest Service which would be hard to fill. From the purely selfish standpoint we would be sorry to see you go, but we would wish you Godspeed and good luck.

Very sincerely yours,

W.B. GREELEY, *Forester*

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE, DISTRICT 1
Missoula, Mont., April 24, 1923

Col. W.B. GREELEY,
Washington, D.C.

DEAR COLONEL: Reference is made to your letter of April 17.

I knew before I received your letter that you would appreciate what I did in connection with the sale of the Bear Valley Unit. I used all the arguments I could think of to convince Mr. Herrick that the chance was really worth, at the present time, the original advertised rates. If I had not made the trip to see Mr. Herrick, it is my firm belief that the yellow pine would have gone for $2 per thousand. I did not want Mr. Herrick to

submit the bid without seeing the limber, but his reply was to the effect that I knew more about the chance than anyone he could send dawn there.

I, of course, appreciate the confidence he has in my Judgment, but it is now up to me to go down there and build that 85 miles of railroad. He made me a proposition that I could not very well turn down. I am going to Oregon with the understanding hat I will be permitted to pile and burn brush on the privately owned lands which it will be necessary for him to purchase. I am also planning to leave the small yellow pine for seed trees.

Any time that I can not do the things which I feel are so essential to the future prosperity of this country, Jim Girard will be looking for another job, regardless of what the salary may be. I am therefore leaving the forest Service for the following reasons:

1. I will have an opportunity to do something in a real big way.

2. I will he permitted to put into practice, on privately owned lands, reasonable, practicable principles of forestry.

3. The salary is much more than I can ever hope to get in the service.

I will be on Fred Herrick's pay roll, but I want you to feel that I am still a part of the Forest Service organization and I want to cooperate with you to the fullest extent possible. I want to go down there and start the job

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off because it is a wonderful opportunity, but I am leaving the service with the feeling that some day I will again be a member of the best organization in this country.

Very sincerely,

JAMES W. GIRARD,
Logging Engineer.

APRIL 30, 1923.

MR. JAMES W. GIRARD.
Care of District Forester, Missoula, Mont.

DEAR JIM: I have your letter of April 24.

First, I want to tell you that I think you are doing the right thing. You have a big opportunity to demonstrate practical forestry on a large scale in connection with the Bear Valley operation, and yon will he doing a real public service by taking advantage of that opportunity. We hate to lose you from the Forest Service, but I thoroughly understand your situation and I believe that forestry in the United States may be advanced more as a result of your taking this job than if you had not left Government work.

I can assure you that the door into the Forest Service will always be open to you if this job should prove to be less attractive or to offer less opportunities than now appear to be the case. May the best of good luck go with you in the new undertaking.

Sincerely yours,

W. B. GREELEY, *Forester*.

Mr. DE NEFFE. Your office here had information that Mr. Herrick was trying to dispose of his project, didn't you, at different times?

Colonel GREELEY. We never had any direct information on that point, that I can recall. I have heard rumors of that sort of thing.

Mr. DE NEFFE. I am referring to a letter written by Assistant Forester E. E. Carter to the district forester at Portland, Oreg., dated January 19, 1925, in which the following language is use:

> The greatest difficulty to following exactly the program proposed in the letter to Senator McNary is that Mr. Herrick, according to reports that reach us, has from time to time endeavored to dispose of his project on the Malheur to various people under circumstances that, taken by themselves, do not indicate as firm an intention to push construction work as his statements to the Forest Service would lead one to expect.

Do you remember seeing that letter or a copy of it?

Colonel GREELEY. Yes, I remember now of seeing that letter in the files. It refers to reports that would come in. Well, I have had a lot of those things.

Mr. DE NEFFE. This is a report of this man Mr. Carter, is it not?

Colonel GREELEY. Well, he refers there, does he not, to reports that he has received?

Mr. DE NEFFE. Yes.

Colonel GREELEY. He is not saying that of his own information, is he?

Mr. DE NEFFE. And this was before the extension was granted, too, way it not?

Colonel GREELEY. Well, the date would show that.

Mr. DE NEFFE. Yes; January 19, 1925. And didn't that give you a kind of a suspicion in view, of the failure of accomplishments here on Mr. Herrick's part, and in view of this report from Mr. Carter, which gave the exact status of things, didn't that make you suspicious that this was a shoestring, speculative proposition! Can you answer that?

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Colonel GREELEY. It made me appreciate the fact that there were perhaps elements of doubt as to Mr. Herrick's good faith at that time.

Mr. DE NEFFE. And yet in the face of all that you went ahead?

Colonel GREELEY. We asked ourselves that question a good many times. I developed all that yesterday.

Mr. DE NEFFE. Yes; but I wanted to go over it again.

Mr. HALLOCK. Mr. De Neffe, in that connection may I ask you if you have any proof of any character that Mr. Herrick ever endeavored to speculate with this project or dispose of it other than the reference to some rumor in Mr. Carter's letter?

Mr. DE NEFFE. Well, I don't know; it seems to have satisfied Mr. Carter pretty strongly.

Mr. HALLOCK. Well, that was not what I was asking you. I wondered whether you had any evidence of that fact or claimed fact? The testimony shows to the contrary, as I recall it.

Mr. DE NEFFE. Well, that is a matter of argument too, and when all the testimony is in, of course that is something that is the subject of argument on the record.

Do you know anything about Mr. Girard in the summer of 1926 having been away for about six weeks on this work in the construction of this railroad?

Mr. MCGOWAN. What date?

Mr. DE NEFFE. In the summer of 1926.

Colonel GREELEY. Had been away from the railroad work?

Mr. DE NEFFE. Yes.

Colonel GREELEY. I was informed that he had been away for some time. I do not know how long.

Mr. DE NEFFE. He was down in California, wasn't he, cruising some redwood timber? I believe Mr. Hallock mentioned that.

Colonel GREELEY. I have been so informed.

Mr. DE NEFFE. Who was he cruising for, do you know; the Government?

Colonel GREELEY. No; he was employed as one of a party of arbiters in an endeavor to work out a plan for buying certain private redwood lands in California that were desired for public parks. The Save the Redwood League was interested in the acquisition of these lands. It was a very valuable redwood forest, and between the Save the Redwood League and the owners of the properly I think three men were selected. The Government had nothing to do with it.

Mr. DE NEFFE. Would some of the Government timber go in on that?

Colonel GREELEY. No.

Mr. DE NEFFE. I See.

Colonel GREELEY. Not a bit of it. It was all private.

Mr. DE NEFFE. Was it, a private transaction?

Colonel GREELEY. Entirely.

Mr. DE NEFFE. And I suppose he was paid by private people to go down there and do the work, isn't that right?

Colonel GREELEY. I have no knowledge as to his remuneration.

Mr. DE NEFFE. I see. When this matter came up for another extension did it not seem rather strange to you that the cause of all

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this delay was because the work was not being prosecuted, and here was the general manager away on a private job? Didn't that strike you as rather peculiar?

Colonel GREELEY. I do not recall whether I knew of that at the time that this extension came up. You refer to the extension on what date?

Mr. DE NEFFE. Along in July, July 6, 1926. It was not an extension, I think; it was the modification. Maybe it was an extension or maybe it was the modification. Is it not true that you knew about it?

Colonel GREELEY. I can not. answer that question whether I knew of it at the time that this extension was made or not.

Mr. DE NEFFE. Well then, take it along in the fall of 1926, when he was asking for a fourth modification, was it not? Am I wrong in saying fourth? There were two in 1925?

Colonel GREELEY. There have been three extensions thus far. There has been no fourth modification.

Mr. DE NEFFE. But he applied for one, and you were considering it, Were you not?

Colonel GREELEY. I do not recall that there was any application for a fourth modification, until the matter was taken up with me in, a very tentative way by Mr. Hallock.

Mr. DE NEFFE. And Senator McNary and Representative Sinnott were taking the matter up with you frequently, were they not, last fall, in response to petitions and protests?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And wires from citizens out there?

Colonel GREELEY. Yes; I got several inquiries from them as to the status of the matter.

Mr. DE NEFFE. And you knew by that time, did you not, that Girard had been down there on this private job?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And you wrote to Congressman N. J. Sinnott, House of Representatives, under date of November 30, 1926, at the bottom of which letter you said:

> Altogether, I believe that Mr. Herrick has shown good faith in the construction work done during the past six months and may be expected to complete his mill and start operating it within a reasonable time.

Do you remember writing that letter?

Colonel GREELEY. Yes.

Mr. DE NEFFE. I offer that in evidence.

(The letter presented by Mr. De Neffe is here copied in the record in full, as follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
Washington, November 30, 1926

HON. N. J. SINNOTT,
House of Representatives.

DEAR. MR. SINNOTT: In our recent telephone conversation you asked me to let you know the present status of the limber sale on the Malheur Forest to Mr. Fred Herrick. This I am very glad to do.

The reports that reach men {me?} are that railroad construction has progressed very satisfactorily during the late summer and fall. The grade has been nearly, if not entirely, finished by this time, and track laying is going forward rapidly with about 30 miles already laid and with good prospects for the

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completion not only to the vicinity of Seneca, but also into the timber by the middle of January. Progress on the mill has been so {also?} rapid. The reports that reach me are that the power house and generator buildings are under construction, and unless abnormally cold weather prevents the pouring of concrete, should be finished by Christmas. The sawmill building itself, however, has not yet been started, although I understand that an order for the machinery has been placed and that the boilers and turbine have been purchased. Recent reports are to the effect that Mr. Herrick has made arrangements for the bonding of his undertaking in the amount of $500,000, in order to finance the construction and equipment of the mill and to have working capital for the beginning of logging. It has been his boast up to this time that the undertaking had no indebtedness in spite of the very heavy expenditures which have been made for railroad construction, pond excavation, power-house construction, etc.

Altogether, I believe that Mr. Herrick has shown good faith in the construction work done during the past six months and may be expected to complete his mill and start operating it within a reasonable time.

Very truly yours,

W. B. GREELEY, *Forester*.

Colonel GREELEY. If you wish to make a point of that letter, I just want to bring out that the report that I had from the district was that on September 15, 1926, the requirements for railroad building had been complied with under the latest modification of the contract. There had not been a specific 100 per cent compliance with all of the specified requirements, but there had been a considerable amount of work done that was not specified, so that in general terms the report on September the 15th was that there had been substantial compliance with the requirements for construction work up to that date.

Mr. DE NEFFE. Had all the grading been done north of Burns?

Colonel GREELEY. Now, I do not know. I do not know that that was required.

Mr. DE NEFFE. Under the modification? By September 15?

Colonel GREELEY. You say this was September 15. This was not a final —

Mr. DE NEFFE. The steel had not been laid, had it?

Colonel GREELEY. I say I am basing my report upon a statement received on September 15, or based upon the work up to September 15.

Mr. DE NEFFE. Yes; and he was supposed to have the mill finished by March 1, 1927, wasn't he?

Colonel GREELEY. Yes.

Mr. DE NEFFE. And you knew that he had not even started the mill, except maybe this power house, or generator?

Colonel GREELEY. My statement, as I understand it in that letter, referred to the construction work during the past season, did it not?

Mr. DE NEFFE. Yes. You say:

> The sawmill building itself, however, has not yet been started * * * the grade has been nearly, if not entirely, finished by this time, and track laying is going forward rapidly, with about 30 miles already laid —

that would leave about 20 miles or more to be laid yet, would it not?

> and with good prospects for the completion not only to the vicinity of Seneca, but also into the timber by the middle of January.

He was supposed to have that finished before the middle of January, was he not?

Colonel GREELEY I think he was supposed to leave it done by September 15.

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Mr. DE NEFFE. Yes; so he was a month and a half late there, and the sawmill was to be finished by the 1st of March, 1927; isn't that right?

Colonel GREELEY. That is correct.

Mr. DE NEFFE. And you say:

> The sawmill building itself, however, has not yet been started, although I understand that an order for the machinery has been placed and that the boilers and turbine have been purchased. Recent reports are to the effect that Mr. Herrick has made arrangements for the bonding of his undertaking in the amount of $500,000, in order to finance the construction and equipment of the mill and to have working capital for the beginning of logging.

Who did you get those reports from that he was making arrangements to finance?

Colonel GREELEY. I don't remember where that information first came from. I don't remember from what source that information first came to the Washington office.

Mr. DE NEFFE. You were not sure that he had really made any arrangements, were you? Did you have any written commitment or anything to show that he really had made any?

Colonel GREELEY. Just what does that letter say on that point?

Mr. HALLOCK. What was the date of the letter, pardon me?

Mr. DE NEFFE. November 30, 1926. I will show you the letter, Colonel Greeley.

Colonel GREELEY. I said:

Recent reports are to the effect that Mr. Herrick has made arrangements * * *.

There is nothing there that says that I know that he has made arrangements.

Mr. DE NEFFE. You were only going on reports, is that right, Colonel Greeley?

Colonel GREELEY. Yes, in that statement.

Mr. DE NEFFE. In handling an important matter of this kind you did not want any written, definite, concrete evidence?

Colonel GREELEY. Well, our files are filled with the specific reports that have been made by the logging engineers of the Forest Service from time to time, which have come up here in due course. We have had specific evidence at repeated stages in the matter. We have had specific evidence every day, or every week. But whenever the question of the modification of the contract was up we had just as complete and authoritative evidence as possible to obtain from our own men.

Mr. DE NEFFE. And it was all detrimental to Mr. Herrick, was it not, as to his intent and his good faith and his performance and everything, is that not a fact?

Colonel GREELEY. Not all.

Mr. HALLOCK. Pardon me, Mr. De Neffe, you have read into the record the report of Mr. Hoffman, which is highly commendatory of Mr. Herrick and his organization and his force.

Mr. DE NEFFE. Show me that report, will you?

Mr. HALLOCK. I Will.

Colonel GREELEY. It Was not all detrimental. At certain periods the work was pushed satisfactorily. At other periods it was not.

Mr. DE NEFFE. I think that is all for the present.. There may be something else I might want to ask Colonel Greeley afterwards.

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Mr. HALLOCK. I see it is 10 minutes to 1. May we proceed, Mr. Chairman, for a little time?

The CHAIRMAN. I would like to continue up until 1 o'clock and a few minutes later.

(Redirect examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Colonel Greeley, in your administration of this Herrick matter you have endeavored to keep the faith with the local community, have you not?

Colonel GREELEY. I have tried to, to the best of my judgment.

Mr. MCGOWAN. Now, following the first advertisement where there were no bids received, and then along about the 10th of March, 1923, did you receive any protest from any of the local lumbermen in connection with putting this timber on the market at $2?

Colonel GREELEY. Yes; I recall a protest from a man by the name of Geddes, whom I recall was an operator in eastern Oregon.

Mr. MCGOWAN. I hand you a letter dated March 10, 1923, from yourself to Mr. Geddes, and ask you if you recall that document?

Colonel GREELEY. Yes; that is correct. That is my letter.

Mr. MCGOWAN. I Would like to read that into the record.

Mr. DE NEFFE. No objection.
Mr. MCGOWAN. (reading):

MARCH 10, 1923.

MR. WILLIAM C. GEDDES,
Oregon Lumber Go., Baker, Oreg.

DEAR MR. GEDDES: Mr. Cecil has shown me the message received from yourself and other purchasers of national-forest timber in the Baker district regarding the contemplated sale of the Malheur timber unit in central Oregon. There seem to be certain misapprehensions concerning the action of the Forest Service in this case which I am anxious to remove and I am therefore writing you to make clear exactly what is proposed and why this course has been determined upon.

As you doubtless know, the development of this timber requires the construction of 80 miles of main line and tap-line railroad in addition to the logging spurs info the timber. The construction of this railroad will be a factor of great importance in the general development of central Oregon, in connection with settlement, irrigation development, and general industrial growth. There appears to be little likelihood that this railroad can be constructed except in connection with a large timber operation and since the Government controls a very large proportion of the tributary timber, the railroad construction and regional development depend upon the purchase of national-forest timber.

This timber unit was advertised at the price fixed by Forest Service appraisers for a period of six months. It was advertised more fully and widely than any other tract of stumpage which the Forest Service has ever placed upon the market and no stone was left unturned to interest possible purchasers in bidding for the timber. In consideration of the transportation facilities needed by the region, the terms of sale required that the 80 miles of main and tap-line railroad be constructed and operated as a common carrier. The railroad requirement, together with milling and logging equipment, necessitates an immediate investment probably not less than $4,000,000. These conditions limit the number of firms who would be interested in a proposition of such magnitude. However, the Forest Service did everything possible to find a purchaser at the price originally appraised, and the failure to obtain a bid at this price has satisfied me that the timber is not marketable at these terms.

I do not feel that the Forest Service can ignore a certain degree of obligation for the development of regions a large part of whose industrial resources are included within national forests; and also for utilizing the resources of the national forests where they form a large part of the natural wealth of a county so as to yield to that county some commensurate income. Any such policy

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must, of course, be kept within reasonable and proper limits; but within such limits I think we all must agree that an obligation of this character does rest upon the service. In the case at point it was established by the prolonged and widespread advertisement that the timber is not marketable at the rate at which it was appraised. Rather than withhold this timber from development, and thereby postpone indefinitely the extensions of railroads and commercial growth of the region, it seemed to me the wiser course in view of all the public interests involved in the State to reappraise the timber at a lower price at which we had ascertained at least one bid would be received. This action has accordingly been taken.

The undertaking and the investment involved in this enterprise as so large and the uncertainties and unknown factors to be worked out are so many that an appraisal of the timber on a basis comparable to a locality where transportation is installed. freight rates established and operating costs known is not possible. The reappraised price of $2 per M feet on yellow pine may be low in comparison with the stumpage rates prevailing in the Baker district, or it may not. I do not believe that that question can be answered definitely until the major railroad transportation has been installed, freight rates thereon determined, and the operation started. The point is that we tried our best to dispose of this timber at $2.75 without finding a taker. Now in view of what I regard as an obligation resting upon the Forest Service in relation to regions like the Malheur country where the Government's resources largely control the time and progress of development I felt satisfied that the course to take was to give the general interests of the locality the benefit of the doubt and reappraise the timber at a rate which apparently will find a taker. The contract will contain our usual provisions concerning the readjustment of stumpage prices. under which the Government will have ample authority before any great amount of stumpage is cut, to bring the prices in this sale into line with those prevailing elsewhere in the State if they are found to be out of line.

One point I wish to make very emphatic, namely: that this proposed sale involves no departure from the policy of appraising stumpage prices which the Forest Service has hitherto followed. There will be no departure from the basis which we take in reappraising timber under contract provisions. We shall continue

our appraisals and reappraisals under exactly the same policies and methods as in the past. If the price under the proposed Malheur contract is found to be out of line with general stumpage values, after the operating and transportation conditions have become really established. we will bring that price into line exactly as we would in the ease of any other operator.

Furthermore, the timber is now open for competitive bid; and if it is a bargain for anyone who desires to come into competition for it.

Permit me to say also, and I do this because of certain statements that seem to be current regarding this matter, that the proposed sale is not the result of effort on the part of Representatives from Oregon in the House or Senate to influence the actions of the Forest Service. The proposition has, of course, been discussed at various stages with Oregon men in the National Congress; but it would he as unjust to accuse them of seeking to influence the action taken by the Forest Service as it would be unjust to charge the Service with approving this sale as a measure of political expediency. There is just one man who is responsible for the action which has been taken or proposed, and that is myself. I divide that responsibility with no one. I have been influenced by the desire to aid the development of a part of Oregon which has long been handicapped by lack of transportation facilities, because I do not feel that the Forest Service can ignores its obligations of this character to western regions where there are extensive national-forest holdings.

I would be very loath indeed to take any course which would result in unfair competition with established purchasers of national-forest timber. It should be, and is, the policy of the Forest Service to avoid that. I do not believe that such competition will ensue from the sale of this stumpage at the terms proposed; but I do not see how that can be determined in any definite or final way until the new development has been installed.

I would appreciate it greatly if you will show this letter to other operators in the Baker district who are interested with you in this matter.

Very sincerely yours,

W.B. GREELEY, *Forester*

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Mr. NEFFE. Have you the letter that Mr. Geddes wrote to Colonel Greeley?

Mr. MCGOWAN. That, apparently, was a telegram; but we have a reply from Mr. Geddes to the letter that I have just read.

Mr. DE NEFFE. Well, I mean the letter that Mr. Geddes wrote Colonel Greeley which prompted Colonel Greeley to write him.

Mr. MCGOWAN. It refers to a message.

Mr. HALLOCK. It refers to a message.

Mr. MCGOWAN. Yes; the original.

Mr. DE NEFFE. Have you the message which prompted Colonel Greeley to write him this letter of March 10, 1923, to Mr. Geddes?

Mr. MCGOWAN. No.

Mr. DE NEFFE. You have not got that?

Mr. MCGOWAN. No; as far as I can find, there is no original letter from Mr. Geddes: but this letter of Colonel Greeley to Mr. Geddes of March 10, 193, states that "Mr. Cecil has shown me the message received from yourself." I take it that Mr. Cecil had received a telegram from Mr. Geddes.

Mr. DE NEFFE. I see. Well, that would be in the Portland file, then, would it not?

Mr. MCGOWAN. If there was such a message.

Mr. DE NEFFE. We would like to have that message—whatever it is—and put it in the record.

Colonel GREELEY. As I recall it, it was a message sent to Mr. Cecil by Mr. Geddes and several other lumber manufacturers in the Baker territory, in which they protested against the advertisement of the Malheur timber at as low a rate as $2 per thousand. They said that that involved unfair competition with them as established operators in the lumber business.

Mr. MCGOWAN. Here is a memorandum in reference to this Geddes letter, which I will put in the record.

(The memorandum referred to is here copied in the record in full; as follows:)

PORTLAND, OREG., *March 1, 1923.*

Mr. Geddes, of the Oregon Lumber Co., called me up at my residence in the evening and inquired as to the truth of the report that the timber in the Bear Valley unit is to be readvertised at $2. I told him that we had received instructions by wire to advertise the timber at that price for a period of 30 days. He stated that he felt that this action was discrimination against the present operator in national-forest stumpage and suggested that the following wire be sent to the Forester, telling me, however, that I might make any changes I thought advisable.

"Baker operators who have always maintained fair and friendly relations with the Forest Service feel that the proposed reduction in the appraised price of the Pear Valley unit is a mistake on the part of the Government and tends to nullify the hard work of local forest officials in their efforts to secure a reasonable price for stumpage and further tends to toward demoralizing the basic price in pine contracts and is also an in justice to operators who now hold contracts at higher rates."

I sent the following wire:

"Baker operators request me to wire you that they feel proposed reduction in Bear River unit unwise on the part of the Government, tending to demoralize basic prices in pine contract, and also an injustice to operators who now hold contracts at higher rates."

G.H.C.

Mr. MCGOWAN. Colonel Greeley, your solicitude for the protection of the local interests, as expressed in the Geddes letter that I have

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just read, is just as keen now as it was at the time the letter was written; is that not true?

Colonel GREELEY. It has never changed.

Mr. MCGOWAN. It has never changed.

Mr. DE NEFFE. Mr. McGowan, could I ask him just one question?
Mr. MCGOWAN. Surely.

Mr. DE NEFFE. The Forest Service has a right to reject all bids, has it not?

Colonel GREELEY. Yes.

Mr. DE NEFFE. Whenever timber is advertised?

Colonel GREELEY. Yes.

Mr. DE NEFFE. Yes.

Mr. MCGOWAN. That is all.

Mr. HALLOCK. Mr. Chairman, I had some cross-examination of the colonel. I have not had an opportunity yet to interrogate him.

The CHAIRMAN. You nay proceed.

(Cross-examination, by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Colonel Greeley, you were reading, or counsel directed your attention to a report received by you from Mr. Carter along in February, 1925, in which Mr. Carter appears to have approached this matter with some aggressiveness and severity toward Mr. Herrick. Now, is it your impression that Mr. Carter's attitude may have resulted to some extent from his inability to agree with Mr. Herrick with respect to the latter's construction of the essence of the contract on the occasion of the meeting at Spokane?

Mr. DE NEFFE. What report do you refer to now, Mr. Hallock? Of Carter?

Mr. HALLOCK. Yes.

Mr. DL NEFFE. There had been no meeting at Spokane at that time.

Colonel GREELEY. This report was dated February 20, 1925. Mr. Hallock.

Mr. HALLOCK. Well, perhaps I have confused the dates. But the report that you have is the one I am referring to. To put it another way, Colonel Greeley, what are the facts as to whether or not Mr. Carter has manifested toward Mr. Herrick rather an unusual aggressiveness and severity?

Colonel GREELEY. Do you mean prior to this report?

Mr. HALLOCK. Yes. At all times, as far as that is concerned.

Colonel GREELEY. That is not correct.

Mr. HALLOCK. It is not Correct?

Colonel GREELEY. No, sir.

Mr. HALLOCK. I was interested in several statements that had appeared in Mr. Carter's letter, one of which as I recall it, was to the effect that these companies which were constructing these properties over in Harvey County had repudiated some of their checks, or that the checks had been declined on account of insufficient funds, or something of that sort. Are you acquainted with the source of Mr. Carter's information bearing on that point?

Colonel GREELEY, No, sir; I am not.

Mr. HALLOCK. You do not know to what extent he determined the fact before making that statement?

Colonel GREELEY. No, sir; I do not.

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Mr. HALLOCK. And is the same thing true with respect to Mr. Carter's observation to the effect that he had heard rumors sustaining the claim that Mr. Herrick was disposed to sell out his contract of speculate with it?

Colonel GREELEY. I do not know on what information that statement of Mr. Carter's was made. He is here. You will have to ask him, sir.

Mr. HALLOCK. Yes. I was just wondering, Colonel, if you had of your own knowledge any facts which you believed a statement of that kind could be predicated upon.

Colonel GREELEY. I have no knowledge of any facts. I have heard rumors from time to time. On one occasion, to be specific, Senator McNary in a meeting in his office told me that he was concerned because of the reports he had received in Portland from people he knew to the effect that Mr. Herrick was seeking to sell out his contract. Now, no one was specified, but the Senator told me he had such reports from a number of people of his acquaintance. Now, all of my information is of that character; mere hearsay. Mr. Carter may have had some other. I do not know.

Mr. HALLOCK. Now, about the time that Mr. Carter made his report that I am referring to what are the facts as

to whether you had received a petition and protest signed by citizens of Burns about any disposition upon the part of the Forest Service to decline to grant Mr. Herrick reasonable extensions?

Colonel GREELEY. I received a petition with a letter dated October 24, 1924, and the letter was from Mr. Robert M. Duncan, and it transmitted a petition which contained a considerable number of signatures, the effect of which was that confidence was expressed in Mr. Herrick, and as I recall it that in necessary extensions of time or otherwise Mr. Herrick should be given consideration by the Government.

Mr. HALLOCK. I have copies of those documents, and I would like to read the letter into the record and the petition itself, which is brief. I will not endeavor to read all the signatures, but will comment upon them. [Reading :]

BURNS, OREG., *October 24, 1924*

COL. WILLIAM B. GREELEY,
Forester, Washington, D.C.

DEAR SIR: I have the honor to hand you herewith original resolutions adopted by the business and professional men of Burns at an informal meeting and later signed by some who did not attend the meeting.

Am requested to invite your attention to the fact that the resolution bears the signatures of all the business and professional men of Burns with the exception of eight persons or firms.

Am also requested to advise that the petition circulated in Burns and vicinity recently which asks the Forestry Department not to grant extension of time to Fred Herrick Lumber Co. was signed by many persons by misrepresentation and misstatement of fact made by the circulators {sic} of the petition, namely, that the Fred Herrick Lumber Co. had already applied for an extension of time of two years; that they were holding the contract purely for speculation and were trying to "hold up" persons who were anxious to put the project through.

I assure you that the business and professional men and the people generally of this community sincerely desire to cooperate with your department and with Mr. Fred Herrick, and that the resolution is a true expression of the opinion and position of a large majority of our people.

Very truly yours,

ROBT. M. DUNCAN.

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And the petition reads [reading]:

Whereas certain interests have caused a petition to be circulated in Burn; and vicinity that expresses a lack of confidence in Mr. Fred Herrick and Fred Herrick Lumber Co. and accuses them of bad faith in the development of the Bear Valley timber unit purchased from the Government; and

Whereas the circulators[1] of such petition have secured signatures thereto by making statements and representations that are not founded on fact; and

Whereas the said Fred Herrick and Fred Herrick Lumber Co. have completed the railroad from Crane to Burns Oreg., and have constructed considerable grade north of Burns, and in so doing have expended in excess of $500,000 and in such development have favored local labor and business enterprises as far as possible; and

Whereas the development of the said timber unit is progressing as rapidly as is consistent with market conditions, material costs, and other elements that must be considered by the prudent investor seeking to install a permanent industry

Now, therefore, we the undersigned business, professional men, taxpayers, and residents of Harney County, Oreg., take this method of repudiating the representations made by persons attacking the said Fred Herrick and Fred Herrick Lumber Co., and by this means express our unlimited confidence in the high purpose and integrity of the said Fred Herrick and his associates and hereby pledge our support to the said Fred Herrick and his associates in any that will prevent embarrassment to his interests and will further his interests.

Mr. HALLOCK. I direct attention to the fact that that document bears 58 signatures, beginning with the mayor of the city. That it embraces all business activities apparently, as it includes banking, the register of the public land

[1]This word is used several times during the hearing.

office, the publishers, merchants in different lines of activity, and business activities generally. It apparently does not include the sewer man nor the janitor, who were referred to here the other day, but it contains 58 signatures.

Mr. DE NEFFE. All of the good people of Burns.

Mr. HALLOCK. I think so; yes, sir.

Mr. DE NEFFE. What is the date of that, Mr. Hallock?

Mr. HALLOCK. That is transmitted with Mr. Duncan's letter of October 24, 1924.

Now, Colonel Greeley, when you commented, in response to counsel's question, about the fact that while there were some protests against extensions of time, you were likewise receiving earnest solicitations from reliable business men to grant extensions of time, did you refer to documents and communications of the character of that which I have just read?

Colonel GREELEY. Yes; this was one of the communications which I referred to. There were many others. Many individual communications.

Mr. HALLOCK. And did you feel that those communications were properly entitled to consideration in the action that you ultimately decided to take?

Colonel GREELEY. Yes.

Mr. HALLOCK. And gave them some degree of consideration, I assume?

Colonel GREELEY. Yes.

Mr. HALLOCK. Now, relative to Mr. Barnes's activities and his interests in this matter, what are the facts, Colonel Greeley, as to whether or not, as far as you could learn, Mr. Barnes had manifested his displeasure at the fact that Mr. Herrick had secured this con-

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tract through the fact that he was the successful bidder, from the inception of this transaction?

Colonel GREELEY. I have no information of my own knowledge to indicate that Mr. Barnes was opposed to Mr. Herrick from the inception of the transaction. Of course, I have heard the testimony in this hearing, and I have heard those same things before the hearing by word of mouth.

Mr. HALLOCK. Yes. What are the facts as to whether or not you had pretty definite reason to believe from what you had heard and learned that Mr. Barnes had represented timber concerns such as the Brooks-Scanlon Lumber Co. and others to a greater extent than he bad endeavored to represent the public? I just, want your impression of that from what you have learned and heard.

Colonel GREELEY. I do not like to base an answer upon general impressions. Mr. Barnes, in connection with his visit to Washington in 1922, told me, as I recall it, that he had been in touch if not in the employ of the Edward Hines Lumber Co. of Chicago in connection with the cruising of timber and examination of possible operations in this region. At the time when I met the Oregon people in Portland in July of 1922, Mr. Barnes was very insistent that the timber could not be sold for more than $1.50 because of the statements made to him, by, as I recall, a number of different interests with which he had been in consultation. Now, as to just how far that influenced his viewpoint and activities in the matter I am not prepared to say.

Mr. HALLOCK. What can you say as to whether or not Mr. Barnes himself had addressed you or your organization with proposals to acquire Mr. Herrick's interests in behalf of other concerns? I think there are letters in the record to that purport.

Colonel GREELEY. I have a letter from Mr. Barnes, in 1924, and as I recall, in March, 1924, in which he stated that others are prepared to take over the Herrick contract. I had a telegram from Mr. Barnes in April, 1926, in which he made a definite and specific offer to take over the timber, and in which he was quite insistent that the Herrick contract be canceled. He stated that he was prepared to pay the same stumpage for the timber, and to reimburse Mr.

Herrick dollar for dollar for every item which he had expended as shown by an audit of his books. I recall these two specific offers.

Mr. HALLOCK. With that as the situation, and with such information as you picked up along that line, what can you say as to whether or not, you felt that Mr. Barnes was entirely sincere in appearing as the Christopher Columbus of that country and as the savior of the interests of the people over there?

Colonel GREELEY. I could only give a supposition or impression on that.

Mr. HALLOCK. Well, I should appreciate your doing it.

Colonel GREELEY. It is my impression that, from what I had heard of Mr. Barnes's extensive options on timber and land, and his natural desire to see his own property developed or increased in value, that there was a very large element in his activity of personal interest. That is my impression. I can not sustain that by any specific proof.

Mr. HALLOCK. Colonel Greeley, about how long have you known Mr. Girard?

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Colonel GREELEY. Since about 1908.

Mr. HALLOCK. I wonder if you care to give us an expression for the record on Mr. Girard's integrity and veracity?

Colonel GREELEY. I was associated with Mr. Girard quite intimately for three years when I was district forester at Missoula, Mont., and formed a very high opinion of his ability as a lumberman and a forest officer; and later when I came to Washington, for a period of nine years, I should say, or seven years terminating with the war, when I was in charge of timber sale work of the Forest Service, and was in the field frequently, I met Mr. Girard frequently. During that period Mr. Girard was being given more responsible assignments. We formed a high opinion of his ability as a logging engineer, which is best evidenced by the fact that he was called upon frequently to go out of his district when particularly difficult or important appraisals were to be made as in the instance where he was sent to Arizona. I have had a very high opinion of Mr. Girard's ability as a logging engineer, and I have always had a very high opinion of his personal integrity.

Mr. HALLOCK. And what can you say as to his veracity?

Colonel GREELEY. And as to his veracity also I have never known in my acquaintance with Mr. Girard, extending back to 1908, of his saying an untruth.

Mr. HALLOCK. Have you had any occasion to suspect the integrity or veracity of Mr. Girard?

Colonel GREELEY. No.

Mr. HALLOCK. Have you any occasion at this time to suspect the integrity or veracity of Mr. Girard?

Colonel GREELEY. No; I have not.

Mr. HALLOCK. Mr. Frank Klobucher is directly charged with being a party to collusion and a fraudulent effort in the matter of securing, as I understand it, certain favors and considerations for his principal, Mr. Herrick; how long have you known Mr. Klobucher?

Colonel GREELEY. I have known of Mr. Klobucher as a member of the Forest Service, but I had never met Mr. Klobucher; in fact I never identified him until he appeared here in connection with this investigation.

Mr. HALLOCK. You had never even met Mr. Klobucher?

Colonel GREELEY. I do not recall ever having met him. I might have met him at some time in connection with a considerable group of forest officers, but at least I do not recall having recognized Mr. Klobucher in this connection.

Mr. HALLOCK. Mr. Klobucher sits over there at the end of the room. Do you know who he is now?

Colonel GREELEY. Oh, yes.

Mr. HALLOCK. Counsel has asked you whether or not this investigation speeded your action in the matter of the Herrick contract, and I think you told him it had not. What are the facts as to whether or not it has actually impeded the progress of dealing with the Herrick situation?

Colonel GREELEY. I do not know that it has impeded the progress of the Forest Service, but I can well imagine that it might have impeded the progress of the people who are interested in organizing Mr. Herrick's finances, so that he would be in a position to present

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satisfactory assurances to the Forest Service in connection with the contract.

Mr. HALLOCK. You have indicated in your testimony about what you feel should be done in this situation in any event, and it is my understanding, and I ask you if that understanding is correct, that but for the delay and expense incident to this investigation, and its possible effect upon Mr. Herrick's financial program, you feel that greater progress might have been made toward pushing forward the whole matter?

Colonel GREELEY. Well, that depends upon the effect of the investigation upon either the financial ability or otherwise upon Mr. Herrick's position in reference to giving the service the necessary assurances on which only we are willing to consider any further modifications. The Forest Service has been ready to take this matter up at any time.

Mr. HALLOCK. You would appreciate, of course, that any financial house interested in Mr. Herrick's situation would naturally hesitate to extend to him that same credit and to deal with him as generously because of this investigation as it might have done had not the investigation been instituted.

Colonel GREELEY. I can readily see that financial agencies would hesitate to assist Mr. Herrick at all as long as this investigation was hanging over his contract.

Mr. HALLOCK. Now, just another question, and I will endeavor to conclude. Something was said with respect to the fact that the minutes of the Malheur Railroad Co. disclosed a request to withdraw the application for a certificate of public convenience and necessity, that application having been filed with the Interstate Commerce Commission. Now, are you at all acquainted with the provisions of the transportation act providing for such certificate with relation particularly to what we term the recapture clause bearing upon excess earnings?

Colonel GREELEY. No, sir; I am not.

Mr. HALLOCK. Or the necessity for going through with a very elaborate program in order to secure authority to issue bonds?

Colonel GREELEY. No; I am not familiar with those things.

Mr. HALLOCK. Or in order to issue stock certificates or notes or anything of that kind?

Colonel GREELEY. No.

Mr. HALLOCK. In short, you would not be able to say, as I understand it, what difficulties of that character Mr. Herrick might avoid at this juncture by declining to deal with the Interstate Commerce Commission?
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Colonel GREELEY. No; I am not competent to testify on any of those things.

Mr. HALLOCK. You do appreciate, I assume, that that situation could not in any event have any effect upon the common-carrier status of the railroad?

Colonel GREELEY. No, sir; as long as the railroad is a common carrier it is not the function of the Forest Service to say whether it shall operate under State law or Federal law.

Mr. HALLOCK. And whether or not the rates of this common carrier are prescribed by the Interstate

Commerce Commission or the

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Public Service Commission of Oregon, you have had experience to know that those rates must be just and reasonable for the transportation of all products over any common-carrier line.

Colonel GREELEY. That action is not any function or responsibility of the Forest Service.

Mr. HALLOCK. Yes; but I was just wondering whether you could indicate your notions as to whether we could avoid just and reasonable rates for the transportation of all products even if we were not at this time under the direct jurisdiction of the Interstate Commerce Commission.

Colonel GREELEY. Well, my reply to that question would simply have to be based upon an assumption that the Railroad Commission of Oregon is functioning properly in the public interest, and I would grant that assumption, of course.

Mr. HALLOCK. One more question and I am through. You were interrogated at some length with respect to the interpretation of the modifications that appeared in section 3 of the contract?

Colonel GREELEY. Yes.

Mr. HALLOCK. And it is my understanding that one of those modifications had the effect of creating a situation where a greater cut would be accomplished in the earlier stages of the development than would be the situation under the arrangement provided in the contract which is set up in the prospectus; is that correct?

Colonel GREELEY. That is correct.

Mr. HALLOCK. What are the facts, then, as to whether or not the provisions in the prospectus would be more favorable to a man coming into the country with a new investment and starting his development, as against the modified clause which dealt with a greater cut of timber during the earlier stages of that development?

Colonel GREELEY. Well, it is my impression that because of the greater flexibility of the modified clause as readvertised it would be preferable from the standpoint of an operator to the clause given in the prospectus. The change was in fixing the maximum cut for the earlier years. The modified clause allows a larger maximum cut during the first six years of operation, as I recall, than is the clause as given in the prospectus. During the later years of operation that has to be compensated for in the total amount which is the same in each case. So that in the later years of operation the maximum cut under the modified clause would be less than that allowed in tile clause given in the prospectus.

Mr. HALLOCK. But as a general proposition, is it not really to the operator's advantage to be confronted with a lesser cutting obligation in the earlier stages of the operation than in the latter stages?

Colonel GREELEY. Yes; in general, that is an advantage.

Mr. HALLOCK. And in the prospectus the maximum cut during the earlier period, I think, was set at a hundred and ten million feet, and as modified it is 150,000,000 feet; is not that correct?

Colonel GREELEY. Yes; that is correct.

Mr. HALLOCK. I think that is all.

The CHAIRMAN. Is that all you wish to ask Colonel Greeley?

Mr. MCGOWAN. Right at this point let me make a statement. Mr. De Neffe, you asked for the message on which Colonel Greeley's letter to Mr. Geddes was based. I hand you a memorandum taken from

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the files of the district forester. Apparently that was a telephone message to Mr. Cecil, who was district forester at that point. May I ask that this memorandum of March 1, 1923, be attached to Mr. Geddes's letter so that they will be in the record together?

Mr. DE NEFFE. Very well; that may be done.

The CHAIRMAN. Any further questions?

Mr. DE NEFFE. Yes; if you please.

(Further cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Colonel Greeley, I do not know that I quite understood your last few statements. Did I understand you to say that paragraph 3 in the Herrick contract in regard to allowing a larger minimum cut is more favorable to the operator than paragraph 3 in the contract shown in the prospectus; is that right?

Colonel GREELEY. Now, the larger maximum cut.

Mr. DE NEFFE. A larger maximum cut, that that is more favorable?

Colonel GREELEY. I think the average operator would consider it as more favorable.

Mr. DE NEFFE. Then, is not the provision in paragraph 3 of the Herrick contract allowing Herrick a larger minimum cut more favorable than the contract shown in the prospectus?

Colonel GREELEY. No.

Mr. DE NEFFE. Why not?

Colonel GREELEY. You mean a smaller minimum cut?

Mr. DE NEFFE. I mean a larger minimum cut.

Colonel GREELEY. Well, the operator would like to have, from his standpoint, no specifications of this sort at all.

Mr. DE NEFFE. That is, as to a minimum cut?

Colonel GREELEY. As to either a minimum or a maximum cut. He would like to have all the timber and be able to take it off just as fast or as slow as he wishes. That is what he would naturally prefer. Now, the larger you make the minimum cut, why, the less favorable is the contract to the operator, because the more it forces him to take that specified amount. The smaller you make the maximum cut the less favorable is the contract to him, because it refuses him an opportunity to cut more rapidly at a time when he may desire to cut a greater amount.

Mr. DE NEFFE. Well, I think we have gone over all of that, so I shall not take up any mere time on it.

Mr. HALLOCK. At this point I just, want to call the attention of the subcommittee to the fact that one of the signers of the petition that accompanied Mr. Duncan's letter was Mr. William Farre, who testified here the other day in behalf of Mr. Barnes.

Mr. DE NEFFE. Colonel Greeley, this letter you received from Mr. Geddes is dated March 10, 1923.

Mr. MCGOWAN. The letter that he wrote Mr. Geddes?

Mr. DE NEFFE. Yes. Isn't that dated March 10, 1923?

Colonel GREELEY. Yes.

Mr. DE NEFFE. At that time the timber was being readvertised, the second time.

Colonel GREELEY. Yes.

Mr. DE NEFFE. So you had already made up your mind —

Colonel GREELEY (interposing). Yes.

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Mr. DE NEFFE (continuing). As to what was to be done. And is it not a fact that when you decided to advertise it for the six months' period, you told a number of people, including Mr. Barnes, that if no bids were received at the end of the six months' period that you would readvertise it again at a minimum of $2 a thousand feet, do you remember that?

Colonel GREELEY. I did not specify any minimum as I recall it. I told Mr. Barnes and the people I met in Portland that if we failed to secure a sale on this advertisement I was willing to readvertise it, and I told Mr. Barnes that if he got hold of any offers to let me know, as I would be very glad to consider them.

Mr. DE NEFFE. You have never questioned the truth of the statements in Mr. Carter's report, have you, Colonel Greeley?

Colonel GREELEY. No; I have never questioned the truth of those statements. I have never attempted to verify them in detail, but I accepted it as a responsible report.

Mr. DE NEFFE. Now, you said that before you made your decision there, in the spring of 1925, about granting an extension, you received the letter of Mr. Duncan, dated October 24, 1924, transmitting the petition signed by a great many people down there expressing confidence in Mr. Herrick, etc. Did that weigh very strongly with you in making up your decision to give an extension, in March, 1925?

Colonel GREELEY. No; it did not weigh very strongly, because I knew that the sentiment of the local people was divided. At the same time, or at about the same time, I received a contrary petition signed by a large number of people.

Mr. DE N NEFFE. Signed by about 1,200 people, was it not?

Colonel GREELEY. Well, the memorandum that I have of it here says that 787 names were attached from Harney and Grant Counties. I knew that the sentiment of the local people, as far as it had been expressed to me, was divided.

Mr. DE NEFFE. Could we introduce that other petition in evidence? Have you that there?

Colonel GREELEY. This seems to be a copy.

Mr. DE NEFFE. It is signed by how many people?

Colonel GREELEY. At the very bottom it says. " Signed by 787 from Harney and Grant Counties."

Mr. DE NEFFE. Then it is not exactly a fact, as Mr. Hallock says, that the only ones who did not sign the first petition that Mr. Hallock introduced, were the janitor and the sewer man and a few people of no consequence, like that. Is that right, Colonel Greeley?

Mr. HALLOCK. One minute. I did not mention "people of no consequence." There are many people of consequence that I am not bringing into this thing one way or the other.

Mr. DE NEFFE. Colonel Greeley, is not that a fact

Colonel GREELEY. Is not what a fact?

Mr. DE NEFFE. Is it a fact that everybody signed the petition that Mr. Hallock introduced except a few people like the janitor and the sewer man and so on?

Colonel GREELEY. Well, it is evident, that 787 people signed that petition.

Mr. DE NEFFE. And how many signed the first petition that Mr. Duncan inclosed?

Colonel GREELEY. Between 50 and 60 if I recall aright.

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Mr. DE NEFFE. Then in view of the fact that there were 787 who signed a contrary petition, and that Mr. Carter sent in a very strong report giving the facts, yet you still thought you ought to give Mr. Herrick an extension; is that the way you felt about it?

Mr. HALLOCK. Pardon me just one moment for an explanation, please. I notice that the petition you are referring to as signed by 787 people purport to be citizens of Grant County only, as I read it, "We, the undersigned citizens of Grant County."

Mr. DE NEFFE. There are evidently some from Harney County, because it says 787 names are attached, Harney and Grant Counties.

Mr. HALLOCK. I want to make my position clear. Colonel Greeley, did you take into consideration the attitude of the people of Burns, where this development was being carried forward?

Mr. DE NEFFE. Burns is not the only place that was interested.

Mr. HALLOCK. Well, Grant County was interested as far as the stockmen were concerned.

Mr. DE NEFFE. Yes; and —

The CHAIRMAN (interposing). Gentlemen, gentlemen! I do not think this argument is at all material. Let us have the evidence of the witness, and then the subcommittee will be able to consider it. Go ahead with that.

(The petition referred to as containing 787 names, with attached correspondence, is here made a part of the record, as follows:)

BURNS, OREG., October 24, 1924.

CAPT. FRED AMES,
Assistant Forester, Portland, Oreg.

DEAR SIR: Inclosed herewith I hand you copies of the resolution and letter of transmittal of originals to Col. William B. Greeley.

These are sent you for your information and convenience.

Yours very truly,

ROBERT M. DUNCAN.

BURNS, OREG., *October 24, 1924.*

Col. WILLIAM B. GREELEY.
Forester, Washington, D. C.

DEAR SIR: I have the honor to hand you herewith original resolution adopted by the business and professional men of Burns at an informal meeting and later signed by some who did not attend the meeting.

Am requested to invite your attention to the fact that the resolution bears the signatures of all the business and professional men of Burns, with the exception of eight persons or firms.

Am also requested to advise that the petition circulated in Burns and vicinity recently which asks the Forestry Department not to grant extensions of time to Fred Herrick Lumber Co., was signed by many persons by misrepresentations and misstatement of facts made by the circulators of the petition; namely, that the Fred Herrick Lumber Co. has already applied for an extension of time for two years; that they were holding the contract purely for speculation and were trying to "hold up" persons who were anxious to put the project through.

I assure you that the business and professional men, and the people generally, of this community, sincerely desire to cooperate with your department and with Mr. Fred Herrick, and that the resolution is a true expression of the opinion and position of a large majority of our people.

To the Oregon delegation in Congress:

GENTLEMEN : We, the undersigned citizens of Grant County, State of Oregon, do respectfully relate and petition as follows:

Whereas the product of our national forests constitutes one of the major resources of our county, and the sale and use of our timber inures to the

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direct and immediate benefit of all citizens and will assist and bring about the development of our other resources, principally agriculture, and that is was for the purpose of securing this general development the United States Forestry Department did, upon petition of the citizens of Grant and Harney Counties, Oregon, offer for sale and did under bid accepted April 5, 1923, contract for the sale of the Bear Valley unit in the Malheur National {*sic*} to Fred Herrick; that under said contract it was provided that a connection should be made with a main line of railroad to Seneca, near said tract, and the construction of a mill and the commencement of the manufacture of lumber by April, 1925; and

Whereas under said contract the said Fred Herrick has not shown good faith and diligence in the prosecution of the construction work under said contract, and to this date has completed only the 30-mile-rail extension from Crane to Burns and the grade for the first 12 miles north of Burns, constituting the cheapest and easiest portion of said rail construction, and has had the rails for the 12 miles of grade on hand since September 1 and has not commenced of provided for the construction of the mill pond, the mill and the remaining mountain grade of railroad, although there has been ample time and the most favorable weather conditions for the same: Now, therefore,

We do hereby protest against any extension of time being granted by the Forestry Department under said contract unless the said Fred Herrick shows faith and from this time to April, 1925, prosecutes said construction on the lumber mill and the railroad with diligence which will justify an a extension of time after April, 1925, and in the event of the failure of the said Fred Herrick so to do, we do respectfully ask that said contract be cancelled and awarded to other interests who are able to and will carry on said necessary development as herein outlined.

We authorize Mr. E. W. Barnes to present the foregoing petition and protest and to represent us

with the delegation and before the department.

(787 names attached from Harney and Grant Counties.)

Whereas certain interests have caused a petition to he circulated in Burns and vicinity that expresses a lack of confidence in Mr. Fred Herrick and Fred Herrick Lumber Co. and accuse them of bad faith in the development of the Bear Valley timber unit purchased from the Government; and

Whereas the circulators of such petition have secured signatures thereto by making statements and representations that are not founded on fact ; and

Whereas the said Fred Herrick and Fred Herrick Lumber Co. have completed the railroad from Crane to Burns, Oreg., and have constructed considerable grade north of Burns, and in so doing have expended in excess of $500,000, and in such development have favored local labor and business enterprises as far as possible; and

Whereas the development of the said timber unit is progressing as rapidly as is consistent with market conditions, material costs and other elements that must be considered by the prudent investor seeking to install a permanent industry: Now therefore,

We, the undersigned, business, professional men, taxpayers, and residents of Harney County, Oreg., take this method of repudiating the representations made by persons attacking the said Fred Herrick and Fred Herrick Lumber Co., and by this means express our unlimited confidence in the high purpose and integrity of the said Fred Herrick and his associates and hereby pledge our support to the said Fred Herrick and his associates in any manner that will prevent embarrassment to his interests and will further his interests.

W.E. Huston, mayor; Harney County National Bank, banking; J. J. Donegan, register United States Land Office; Julian Byrd, publisher Times-herald; W.Y. King, county treasurer; A.C. Welcome, jr., druggist; I. S. Geer & Co., merchants; N. Brown & Sons, merchants; Sam Mothershead, publisher Harney County News; P. C. Peterson, president Harney County National Bank; Charles W. Ellis, lawyer, Burns, Ore.; Robert M. Duncan, lawyer, Burns, Oreg.; Albert A. Traugett, real estate and insurance; Weinstein Mercantile Co., merchants; Chip G. Smith, butcher; J.E. Rounsevelle, investments; Brunnhilde L. Bathrick, Hotel Grand; D.M. McDade, high-school principal; George S. Sizemore, district attorney, Harney County; Burns Power Co., electric light and power; C.H. Voegtly, hardware merchant;

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Service, Garage, garage; J. Lampshire, garage; George Fry, retired; Seth S. Smith. tin shop; M.A. Older, painter; Robert J. Schreeder {?}, butcher; H.E. Topp, manager Skaggs Store; H.R. Riley, proprietor electric service station; George W. Cawfield merchant; G.N. McGee, barber; Ester F. Swartz. merchant; M. Schwartz, mohtometrist {*sic*}; J. Gemberling, jeweler; B.A. Richardson, merchant; J.M. Dalton, merchant; Fred Lunaburg, merchant; Charles Rohn, barber; Frank J. Hossman, merchant; Pat H. Donegan. lawyer; J.R. Weaver, merchant; W.C. Brown, dentist; H.B. Mace, farmer and stock raiser; William Farre, insurance {and} committee of 10; W.W. Gould, merchant; Ben Brown, merchant; Chester Mace, farmer and stock raiser; N.T. Smith, Burns Hardware; M. Jay Gould, Pastime Cigar Store; DE. W.C. Brown, dentist; Eve E. Luce, Summit Hotel; Peter Hansen, Summit Hotel; C.R. Liebig, Highway Garage; R. C. Ward, physician: Ted W. Patterson, laundry; G.W. Clevenger, furniture; H. J. Hanson, butcher; W.M. Sutton, principal public school; George M. Shaw, blacksmith.

Mr. DE NEFFE. And I notice also in this computation they state that there has been in excess of $500,000 spent up there in the development. I think Mr. Carter's report showed that there had only been about $170,000 and $190,000, and I think there was $92,000 that went into the dam and mill site. That would be $371,000. So they were considerably off there, too, weren't they?

Mr. HALLOCK. I object to that.

Colonel GREELEY. I believe you should add $75,000 to that to cover the deposit of the bond, although that is not material.

Mr. HALLOCK. I want to object to that, Mr. Chairman, on the ground that the resolution accompanying the Duncan letter referred to an expenditure there of over $500,000. I take the position—and I want to make it clear—that Mr. Herrick, when he signed this contract, obligated himself to see that this work was accomplished, the

railroad and the other features, and it is wholly immaterial whether he enlisted the services of the Union Pacific Railroad to assist him or whether he may ultimately have been able to contract to farm out all of it. It was through the fact that he had signed the contract and had gone in there and was responsible for this development that the Government compelled that development, and whether he personally produced every dollar or induced others to put money in is wholly immaterial.

Mr. DE NEFFE. We have gone over that a good many times.

Mr. MCGOWAN. Just a word. In connection with the reading of these petitions I submit that there ought to be a notation in the record calling attention to the letter of January 23, 1927, from Burn. Oreg., to the Oregon delegation in Congress, signed by R. J. Williams and others in support of the position of the Forest Service in this matter.

The CHAIRMAN. That has been repeated a great many times. The committee has a thorough understanding of it.

Mr. DE NEFFE. You said you had received a letter from Mr. Barnes in March, 1924, saying that others were prepared to buy. Is that right?

Colonel GREELEY. That is my recollection of his language.

Mr. DE NEFFE. And in April, 1926, he wired you making a definite offer. Now, this was after Herrick had been stalling and delaying

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and delaying and delaying? Isn't that a fact? These all came in after that?

Colonel GREELEY. The April, 1926, offer from Mr. Barnes was after a lot of delay on Mr. Herrick's part.

Mr. DE NEFFE. And in March, 1924, too. He had delayed and stalled along, as your confidential man told you?

Colonel GREELEY. Well, in March, 1924—that was less than a year after the contract had been signed.

Mr. DE NEFFE. Yes; and the testimony shows he did not do the work, and he was delaying —

Colonel GREELEY. The only point I was making was that the March, 1924, offer followed along about nine months after the contract had been executed. The offer by telegraph of May, 1926, was nearly three years after the contract had been executed and there had been a good deal more delay.

Mr. DE NEFFE. You do not think there was anything wrong about Mr. Barnes's statement that Mr. Herrick's performance showed that he was not going to do the work and comply with the contract? And there was nothing very exceptional about his asking that somebody be brought in there who would do it? Was there anything wrong about that?

Colonel GREELEY. Oh, there was nothing wrong about that.

Mr. DE NEFFE. You say you have great confidence in Mr. Girard's integrity. Do you still say that after listening to his testimony in regard to the way he got Herrick to bid here and then did not go out and try to get higher bidders?

Colonel GREELEY. Absolutely.

Mr. DE NEFFE. Then you indorse everything Mr. Girard did in that respect.?

Colonel GREELEY. No; I do not indorse everything Mr. Girard did, but I believe he was absolutely honest in everything he did.

Mr. DE NEFFE. And that he owed no further duty to the Government to get higher bidders? Is that the way you want to go on record?

Colonel GREELEY. I want to go on record as saying that I believe everything Mr. Girard did in that matter was absolutely honest. I do not want to go on record as saying that I approve the exact way in which he handled that matter.

Mr. DE NEFFE. It looked suspicious, didn't it?

Colonel GREELEY. It does not look suspicious to me, but I think it would have been more in accordance with the general policy and the intent of the service for Mr. Girard to have given that information to a considerable number of people.

Mr. DE NEFFE. And if Mr. Girard had not a few days after the contract was let to Herrick gone into Herrick's employment at a larger salary and got some stock it would not have looked so suspicious, would it?

Colonel GREELEY. Well, you can derive all the suspicions from that fact that you wish. I know Mr. Girard too well to entertain any suspicions on that score, if you want my personal opinion.

Mr. DE NEFFE. Do you think this investigation has interfered with Mr. Herrick's financing program?

Colonel GREELEY. I do not know that it has.

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Mr. DE NEFFE. You are still defending Herrick in his contract, aren't you?
Colonel GREELEY. How do you mean defending him?

Mr. DE NEFFE. You are defending Herrick in his contract—the course that he has taken here.?

Colonel GREELEY. I have not defended the course that Mr. Herrick has taken.

Mr. DE NEFFE. But you are defending his contract, aren't you?

Colonel GREELEY. His contract is in effect at this date, if that is what you mean. It has not been canceled yet.

Mr. DE NEFFE. I am just referring to press reports. Here is one from the Portland Oregonian. I do not know where they got the information, but it says, "Colonel Greeley declares he will back the contract." Is that true? Where did they get this information?

Mr. MCGOWAN. What is the date of that, please, for the record?

Mr. DE NEFFE. This is in the Oregonian, for the 9th day of February, 1927.

Colonel GREELEY. I do not know where that information came from.

Mr. DE NEFFE. Then this is not true? You are not backing him now?

Colonel GREELEY. I am certainly not backing him through thick and thin. My position has been made perfectly clear in my testimony of yesterday. I have said that if Mr. Herrick or his company furnishes complete and satisfactory assurance that the work will proceed and that the funds will be available to complete the job and can not be diverted to anything else I am willing to extend the contract, but I am not willing to extend it under any other condition than that.

Mr. DE NEFFE. But you laid down those conditions three times before, and he did not comply.

Colonel GREELEY. You can call that backing the contract if you want to, but that is my position.

Mr. DE NEFFE. You laid down those conditions three times before, and he did not comply with them. And you are still willing to give him another chance? Is that right? That is all.

Colonel GREELEY. If you care for me to answer the question I will.

The CHAIRMAN. Answer the question, Colonel Greeley.

Colonel GREELEY. We have not laid down conditions before such as I propose now, because I propose now, if anything is done to extend that contract, to demand proof that the money is actually available in cash, and available in such form that it can be expended for this purpose, and expended for this purpose only, and that the whole amount shall be available.

Mr. HALLOCK. Just one more question, please. Colonel Greeley, I understood that in Mr. Carter's letter to you, of January 17, 1925, he comments upon the fact that Mr. Barnes is a real-estate speculator in that territory, and that undoubtedly he is to a large extent influenced in his activity by the desire that that may be developed rapidly. Did that statement to some extent leave an impression with you that Mr. Barnes was not actuated wholly by an altruistic motive in his interest in this matter?

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Colonel GREELEY. Yes.

Mr. DE NEFFE. Then, did you think that Mr. Barnes influenced Mr. Carter's report?

Colonel GREELEY. This is not just a question of dealing with impressions. I had gotten the impression from statements made as to the extent of Mr. Barnes's taking options and acquiring lands and getting ready for the development there, that he was seeking personal financial advantage from the development coming to Burns.

Mr. MCGOWAN. Mr. De Neffe, in view of Colonel Greeley's statement to the effect that he stated he did not see anything in Mr. Barnes submitting the proposition in 1926, in connection with the cancellation of the Herrick contract, and Mr. Barnes's suggestion that the timber be awarded to him, would you have any objection now to permitting Mr. Barnes to disclose to the committee the identity of his principal?

Mr. DE NEFFE. We object to Mr. Barnes or any of his people getting a contract similar to the one, or containing the same provisions as the Herrick contract.

Mr. MCGOWAN. All right—just answer my question, though.

Mr. DE NEFFE. I have nothing to do with him or his principal. I am representing Grant County, and Grant County does not want that kind of contract with paragraph 3 in it where they are not obligated to cut any particular amount over every three-year period. That is the way Grant County feels.

Mr. MCGOWAN. You do not appear here, then, as Mr. Barnes's attorney?

Mr. DE NEFFE. No, sir; I appear as attorney for Grant County, and I am not representing anybody but Grant County. I want to make that clear.

The CHAIRMAN. I think that sufficiently appears.

Mr. DE NEFFE. There has been an insinuation that I appear for some one else, but as yet we have not had any disclosure as to who Mr. Barnes's principal was.

The CHAIRMAN. The subcommittee will recess until 3 o'clock.

(Thereupon, at 1.50 o'clock p. m., a recess was taken until 3 o'clock p. m.)

AFTER RECESS

The subcommittee resumed its session at 3 o'clock p. m., pursuant to the taking of the recess.

Mr. DE NEFFE. Mr. Chairman, may I introduce into the record an article from The Oregonian, of Portland, Oreg., dated February 9, 1927, which gives an account of this hearing which is to be had, and I wish particularly to call attention to the following language —

The CHAIRMAN (interposing). Mr. De Neffe, would it serve your purpose just as well if you read an excerpt from the article?

Mr. DE NEFFE. Yes; just three or four lines, is all I want. [Reading :]

Col. William S. Greeley * * * strongly resents the adoption of the memorial and is prepared to back Fred H. Herrick, the defendant contractor, to the limit.

Mr. HALLOCK. That is what?

Mr. DE NEFFE. That is what I want to read.

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The CHAIRMAN. That is taken from an article of what date?

Mr. DE NEFFE. February 9, 1927.

Mr. HALLOCK. It does not purport to be an interview, does it?

Mr. DE NEFFE. No; I do not believe that it states here that it is interview.

The CHAIRMAN. Probably from their Washington correspondent.

Mr. HALLOCK. I will call Mr. Klobucher.

Mr. DE NEFFE. Mr. Chairman, I would also like to introduce the analysis of paragraph 3 under the Herrick contract, which J. W. Biggs made. I want to introduce that also because that is the analysis from which I quoted to Colonel Greeley in his testimony.

Mr. HALLOCK. We are going to object to the analysis made by any witness going in. The testimony is on the record. You have read certain parts of this to Colonel Greeley. But we object to the analysis, which is some other person's views. It is not substantive evidence at all.

Mr. DE NEFFE. Colonel Greeley agreed to this analysis on the witness stand this morning.

Mr. HALLOCK. I object to it. It is not substantive evidence; merely a resume of some other man.

The CHAIRMAN. I think that is all it is. Colonel Greeley did, I believe, agree that it is correct in certain parts; whether that included it all into the record, I do not know.

Mr. HALLOCK. No; it, did not.

Mr. DE NEFFE. I read these parts that I did read, and put them in the form of a question.

Mr. HALLOCK. Pardon me. I have no objection to his preparing his questions in advance; but Mr. Biggs dictated this and I object to it as substantive evidence.

The CHAIRMAN. If it is the article which Colonel Greeley had in his hand when he was testifying —

Mr. DE NEFFE (interposing). Yes. Sir. I read from it.

The CHAIRMAN. I believe he had it in his hand when he was testifying.

Mr. DE. NEFFE. Yes, Sir.

Mr. HALLOCK. Colonel Greeley has not examined it in detail or anything, except that he agreed to one or two items. We continue our objection.

The CHAIRMAN. The objection is sustained.

Mr. DE NEFFE. You mean I shall not put it in?

The CHAIRMAN. Yes; I think Mr. Hallock is right. If you want to bring it out in any other way, you will have

the opportunity to present it in another way.

Mr. DE NEFFE. I do not see any objection to it going in. It is just a bird's-eye view of this matter, showing the —

The CHAIRMAN (interposing). What is the use of burdening this record with it? It is an analysis of this paragraph of the contract, and it is the paper which Colonel Greeley had when he was testifying?

Mr. DE NEFFE. That is all it is.

The CHAIRMAN. With that understanding, there is no harm in its going into the record.

Mr. DE NEFFE. None at all. I therefore offer it for the record.

(The analysis is printed in full, as follows:)

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ANALYSIS OF HERRICK CONTRACT (PAR. 3) RELATIVE TO RATE OF CUT

Maximum cut allowed

Prior to —	Feet
June 1, 1928	150,000,000
June 1, 1931	200,000,000
June 1, 1934	450,000,000
June 1, 1937	600,000,000
June 1, 1940	750,000,000

Minimum cut required

Prior to —	Feet
June 1, 1928	60,000,000
June 31, 1931	120,000,000
June 1, 1934	220,000,000
June 1, 1937	320,000,000
June 1, 1940	420,000,000
June 1, 1943	720,000,000

If Herrick cut the maximum of 150,000,000 feet prior to June 1, 1928, he would not have to cut any more prior to June 1, 1931, because he would have already cut 30,000,000 feet more than the 120,000,000 requirement prior to June 1, 1931; so he could shut down his mill completely between June 1, 1928, and June 1, 1931, a period of three years, and if he so desired he could keep it shut down two years longer (making a five-year shutdown), because having already cut 150,000,000 feet, which is only 70,000,000 feet less than the 220,000,000 feet required to be cut prior to June 1, 1934, he could easily cut this 70,000,000 feet in the one-year period between June 1, 1933, and June 1, 1934.

If Herrick should cut the maximum of 300,000,000 feet prior to June 1, 1931 he would not have to cut any more prior to June 1, 1934, because he would have already cut 80,000,000 feet more than the minimum requirement of 220,000,000 feet prior to June 1, 1934; so be could shut down between June 1, 1931, and June 1, 1934 (three years), and could keep his plant shut down two years longer (making a five-year shutdown), until June 1, 1936, because the minimum amount required to be cut prior to June 1, 1937, is 320,000,000 feet, only 20,000,000 feet more than he has already cut. He could easily cut this 20,000,000 feet in a few months between June 1, 1936, and June 1, 1937.

If Herrick should cut the maximum of 450,000,000 feet prior to June 1, 1934, he would not have to cut any more prior to June 1, 1940, because he would have already cut 30,000,000 feet more than the minimum amount of 420,000,000 feet required to be cut prior to June 1, 1940, so he could shut down his mill for six years, from June 1, 1934, to June 1, 1940.

The above figures absolutely prove that Mr. Herrick could shut down his mill and logging operations for periods of three, five, and six years, which he certainly would do if the price of lumber was low. He would operate only when the market was good and close down when the market was poor.

There is no provision in this contract like there was in the contract shown in the prospectus, requiring him to cut at least a minimum of 100,000,000 feet in each three-year period after June 1, 1931, so as to insure continuous operation of his plant in order to give a continuous pay roll to the communities interested in his mill and logging operations.

TESTIMONY OF FRANK J. KLOBUCHER, SECRETARY AND TREASURER, FRED HERRICK LUMBER C0. AND MALHEUR RAILROAD CO., BURNS, OREG.

(The witness was dully sworn by the chairman.)

(Direct examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. What is your name?

Mr. KLOBUCHER. Frank J. Klobucher.

Mr. HALLOCK. Where do you live, Mr. Klobucher?

Mr. KLOBUCHER. At Burns, Oreg.

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Mr. HALLOCK. You are a man of family?
Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. How long have you lived at Burns?

Mr. KLOBUCHER. It will be four years next July.

Mr. HALLOCK. What is your present occupation?

Mr. KLOBUCHER. Engineer in charge of construction and surveys.

Mr. HALLOCK. Of what property?

Mr. KLOBUCHER. The Fred Herrick Lumber Co. and the Malheur Railroad Co.

Mr. HALLOCK. Will you speak a little louder, please, Mr. Klobucher? How long have you occupied that position?

Mr. KLOBUCHER. About three and a half years.

Mr. HALLOCK. Are you practicing civil engineering as the term is ordinarily employed?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. I mean, are you engaged in the general practice of civil engineering?

Mr. KLOBUCHER. I am not.

Mr. HALLOCK. Are you admitted to practice civil engineering in the State of Oregon?

Mr. KLOBUCHER. I am not.

Mr. HALLOCK. You are simply doing this engineering work in the employ of these companies, as I understand it?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. I wish you would state briefly, Mr. Klobucher, what experience you have had to qualify you to perform engineering work, and include in that, if you will, some observations with respect to your study, activities, and experience in timbering and lumbering.

Mr. KLOBUCHER. I was with the Forest Service a period of about six years, between 1911 and 1923. While there I was engaged in timber appraisals and location work in connection with the appraisals, and over a period of about three years in making detailed studies in connection with locating and construction of improvements, including railroad construction. I also —

Mr. HALLOCK (interposing). You were about —

Mr. KLOBUCHER (interposing). I also had —

Mr. HALLOCK. (interposing). Pardon me. You may go ahead.

Mr. KLOBUCHER. I also had about 20 months experience, most of the 20 months was spent in the location and construction of railroads in France during the war.

Mr. HALLOCK. What branch of the service were you in during the war?

Mr. KLOBUCHER. Engineering.

Mr. HALLOCK. How long were you in the Forest Service, Mr. Klobucher, just express it in years, round numbers, prior to the time that you left, the service to take employment with Mr. Herrick's organization.

Mr. KLOBUCHER. Between six and six and a half years; probably about six and a half years.

Mr. HALLOCK. Will you state what education you had to qualify for this work; not your experience, but college education, if any?

Mr. KLOBUCHER. I had four years at the University of Washington, and then I went through Yale.

Mr. HALLOCK. Yale?

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Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. Taking what course there?

Mr. KLOBUCHER. I took forestry there, and later on engineering at the University of Washington. I also carried additional engineering subjects at Washington.

Mr. HALLOCK. Have you participated in the preparation of any manuals, or works of that character that have become more or less standardized?

Mr. KLOBUCHER. Yes, sir; Mr. Girard and I prepared a bulletin dealing with logging-construction work. That was the result of studies that were carried on intermittently for three or four years while we were in the service.

Mr. HALLOCK. What was the first knowledge that you obtained to the effect that Mr. Herrick had acquired rights in the Bear Valley unit of the Malheur National Forest?

Mr. KLOBUCHER. From what Mr. Girard told me along in June, 1923.

Mr. HALLOCK. How did you happen to have occasion to discuss that with Mr. Girard?

Mr. KLOBUCHER. Mr. Girard came back from a trip in Oregon. I don't remember just. when it was. I believe it was in May, rather than June; and he told me about his work down there, and what he had done, just as a matter of what he thought was a matter of interest to me.

Mr. HALLOCK. Now, what work do you mean, Mr. Klobucher?
Mr. KLOBUCHER. In connection with his appraisal work in the Malheur forest.

Mr. HALLOCK. You were at that time stationed there with the Forest Service?

Mr. KLOBUCHER. At Missoula; the headquarters at Missoula.

Mr. HALLOCK. Was Mr. Girard likewise stationed there?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. Had you known Mr. Girard for a good many years?

Mr. KLOBUCHER. I had known Mr. Girard since 1916.

Mr. HALLOCK. What was the nature of your acquaintance—casual, or intimate?

Mr. KLOBUCHER. Quite intimate.

Mr. HALLOCK. I wish you would tell us, if you have no objection, what rate of pay per month you were receiving with the Forest Service when you were there at Missoula in the spring of 1923?

Mr. KLOBUCHER. I believe I was getting $220 per month and my expenses while I was away from headquarters, and I was usually away probably 80 per cent of the time.

Mr. HALLOCK. Did you look forward to finding employment in a private venture rather than with the Forest Service?

Mr. KLOBUCHER. Yes; I had.

Mr. HALLOCK. You had entertained that idea for some time, had you?

Mr. KLOBUCHER. For some time. I considered the Forest Service a very good place to get a lot of training, but I didn't think the chances of promotion were very promising.

Mr. HALLOCK. Yes. Now, will you please tell the subcommittee about your employment by Mr. Girard, the circumstances under which you were employed, and how that came about?

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Mr. KLOBUCHER. I don't remember all the details, but Mr. Girard was considering this job with Mr. Herrick and at one time asked me whether I would go with him if he did take the job, and after we discussed the matter in considerable detail I told him that I would. Now, later on—I don't just remember how long after that—he told me that he had decided to go down with Mr. Herrick, and he called me up over the telephone, I believe, and asked me whether I was ready to go; whether I would go, and I told him, "Yes, I would."

Mr. HALLOCK. What, if anything, was said regarding your compensation?

Mr. KLOBUCHER. He said he would pay me $250 per month.
Mr. HALLOCK. And what is your present salary, Mr. Klobucher?

Mr. KLOBUCHER. $450.

Mr. HALLOCK. Has that resulted from a series of increases, or has it resulted all at once?

Mr. KLOBUCHER. No; it resulted from a series of increases.

Mr. HALLOCK. You did then accept employment with Mr. Girard, did you?

Mr. KLOBUCHER. Yes; I did.

Mr. HALLOCK. On the basis you have indicated?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. And to accomplish what kind of work?

Mr. KLOBUCHER. To do the engineering work, location. I went down there primarily to engage in location work on this railroad.

Mr. HALLOCK. In connection with that employment, did Mr. Girard say to you or intimate to you in any way that you were sought in that organization because of your connection with the Forest Service, or because of any influence that you might be able to bring to bear upon the Forest Service, or anything of that sort?

Mr. KLOBUCHER. He did not.

Mr. HALLOCK. Was anything of that kind intimated in any way?

Mr. KLOBUCHER. It absolutely was not.

Mr. HALLOCK. Were you acquainted with Mr. Herrick at that time?

Mr. KLOBUCHER. I was not.

Mr. HALLOCK. Did you know anything about him?

Mr. KLOBUCHER. I had heard about him, but I had no correspondence with him; I had never met him, and had absolutely no—I didn't know him.

Mr. HALLOCK. Did you have any arrangement or understanding to the effect that you would become a stockholder or director in one of his companies?

Mr. KLOBUCHER. I did not.

Mr. HALLOCK. Did you take the matter up with the Forest Service relative to your employment?

Mr. KLOBUCHER. At the time I left the service?
Mr. HALLOCK. Yes.

Mr. KLOBUCHER. Yes; I did.

Mr. HALLOCK. And what was their reaction on the matter?

Mr. KLOBUCHER. The district forester asked me if I would not consider some other job with the Forest Service, and asked me whether I would think the matter over before I left the service and remain.

Mr. HALLOCK. Do you know whether Colonel Greeley knew anything about your plan to leave the service?

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Mr. KLOBUCHER. I have no knowledge concerning that.

Mr. HALLOCK. Did you ever discuss it with him?

Mr. KLOBUCHER. I did not.

Mr. HALLOCK. Or receive any letters from him, or write any to him?

Mr. KLOBUCHER. I did not.

Mr. HALLOCK. Or communicate with him in that regard in any way?

Mr. KLOBUCHER. I did not.

Mr. HALLOCK. When did you become acquainted with Colonel Greeley?

Mr. KLOBUCHER. I have never met Colonel Greeley.

Mr. HALLOCK. When did you first meet Mr. Herrick?

Mr. KLOBUCHER. It was in the latter part of September or October that we were gone at Burns, in 1923.

Mr. HALLOCK. That was your first meeting with him?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. When did you first meet the district forester out there at Portland?

Mr. KLOBUCHER. I believe it was in the spring of 1925, along about in February, when we had a meeting at Burns.

Mr. HALLOCK. And when did you first meet the forest engineer, Mr. Hoffman, who, I believe, assisted Mr. Girard in the appraisal?

Mr. KLOBUCHER. I believe I met him in February or March of 1924.

Mr. HALLOCK. Just generally, Mr. Klobucher, can you think of any fact or circumstance that could in any way connect you with any collusion or conspiracy or fraud in connection with any phase of this matter?

Mr. KLOBUCHER. I can not think of any; no.

Mr. HALLOCK. W hat are the facts, Mr. Klobucher, as to whether or not while you were there at Missoula you were in a position of sufficient importance to enable you to exercise any influence or to carry any particular weight with the forest organization?

Mr. KLOBUCI3ER. No; I was not in such position.

Mr. HALLOCK. So having accepted this employment, you proceeded to work out there, did you?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. And has all this construction work been performed under your personal supervision?

Mr. KLOBUCHER. It has, largely; yes, sir.

Mr. HALLOCK. Are you largely responsible for the engineering features of that work?

Mr. KLOBUCHER. Yes, sir; I am.

Mr. HALLOCK. To locate the line?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. Both lines, that from Crane to Burns, as well as from Burns to Seneca?

Mr. KLOBUCHER. Yes. Sir.

Mr. HALLOCK. You constructed those lines?

Mr. KLOBUCHER. I did.

Mr. HALLOCK. I wish you would give the subcommittee a general idea of the development of that work to date; not in too much detail, but so they will know the physical situation out there.

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Mr. KLOBUCHER. The total amount of grade constructed to date is about 96½ miles from Crane up into the timber. That consists of 30 miles of main line and some four-odd miles of sidings and loading tracks, etc., from Crane to Burns; of about 51 miles from Crane to the terminus in Bear Valley, with an additional 4 miles of sidings, passing tracks, etc., and about 8 miles of spurs and logging roads into the woods from that point. The steel to date is laid on about 48 miles of the main line.

Mr. HALLOCK. From Burns to Seneca?

Mr. KLOBUCHER. From Burns to Seneca.

Mr. HALLOCK. It, when completed, will have a total length of what?

Mr. KLOBUCHER. The main line itself?

Mr. HALLOCK. Yes.

Mr. KLOBUCHER. About 54 miles—54.6 miles, to be exact.

Mr. HALLOCK. In other words, you lack a little of 6 miles of finishing the steel on the main line?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. Just in general how many miles of railroad grade have been constructed there?

Mr. KLOBUCHER. All told?

Mr. HALLOCK. Yes.

Mr. KLOBUCHER. Around 96 miles.

Mr. HALLOCK. What is the character of the work generally, as to being of a flimsy nature or of a substantial nature?

Mr. KLOBUCHER It is built very much according to Union Pacific standards for branch-line construction.

Mr. HALLOCK. What can you say as to the grades and the width of the bridges and tunnels and things of that sort?

Mr. KLOBUCHER. Oh, I think they are fairly substantial. The grade runs from 14 to 18 feet.

Mr. HALLOCK. When you say "fairly substantial" do you mean they might get by as a logging road in the woods or otherwise?

Mr. KLOBUCHER. No; they are more substantial than that. The bridges are not of concrete. Of course, the bridges are on piles, and in some cases we have used pipes. We used a few wooden culverts.

Mr. HALLOCK. I wish you would tell us about the present situation at the mill site, what has been done down there in the way of development work?

Mr. KLOBUCHER. The mill pond has been completed with an area of about 32 acres. The concrete work on the generators and boiler houses are about 95 per cent complete. Considerable additional concreting {*sic*} has been done for the larger mill buildings. We also made a highway there of about 2-1/2 miles to avoid crossing the mill-site

property.

Mr. HALLOCK. Have you described the buildings? The construction down there?

Mr. KLOBUCHER. I don't think I have. They are of reinforced concrete.

Mr. HALLOCK. Do you know the approximate sum of money that has been spent on the mill site to date?

Mr. KLOBUCHER. Just about $76,000

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Mr. HALLOCK. We have in this room, Mr. Klobucher, a box containing 50 or 75 pounds of documents, including maps, alignment maps, profiles, sketches, and one thing and another. Were all those maps prepared under your supervision?

Mr. KLOBUCHER. Yes; they were.

Mr. HALLOCK. Did the preparation of those maps consume considerable time?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. And involves a considerable sum of money?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. I notice among these maps what purports to be a layout of the mill site, showing the situation down there. Is that what you call that site? [Showing plat to the witness.]

Mr. KLOBUCHER. It is.

Mr. HALLOCK. Was that prepared under your direction?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. And does it disclose the mill site layout and program as you have developed it?

Mr. KLOBUCHER. It does

Mr. HALLOCK. I notice that the map discloses the name of E. W. Barnes on the north of the holdings, and E. W. Barnes Investment Co. to the south. What are the facts as to whether or not the 320-acre mill site is entirely surrounded by lands owned by Mr. Barnes, or in which he has an interest?

Mr. KLOBUCHER. It is.

Mr. HALLOCK. And there has been introduced in evidence a little plat embracing some 2,000 acres of lands south of the city of Burns, and that present mill site on both sides of the highway and railroad. Is that the land that you refer to?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. Now, I can not offer this map in evidence because it is a part of the original record, is it not?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. But I do want the committee to know that the work has been done and the map is here along with much other data of that character.

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. Can you state, Mr. Klobucher, how much actual cash has been expended by Mr. Herrick in that venture to date as disclosed from the records of the First National Bank of Burns, Oreg., and supplemented with

such additional information as you may have with respect to the funds that have been deposited in the form of Liberty bonds, guaranty payments, and subsequent deposits?

Mr. KLOBUCHER. This statement shows $1,139,000 has passed through the bank. I should say that the additional amount would probably bring it up to $1,250,000. That is a rough figure.

Mr. HALLOCK. Down in the lower corner I have made some figures in pencil. Will you look at those?

Mr. KLOBUCHER. That is $1,237,174.75.

Mr. HALLOCK. How is that made up? The moneys that have gone through the bank, plus what?

Mr. KLOBUCHER. Plus $75,000 deposited to the Government —

The CHAIRMAN (interposing). Is that the $50,000 forfeiture and the $25,000 deposit?

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Mr. HALLOCK. No, we are not counting that Senator. Perhaps the witness had better explain that. Will you start with the total which had gone through the bank as of February 4, 1927, in the sum of $1,139,121.61, and then I wish you would give the other figures which make up the grand total.

Mr. KLOBUCHER. There was also on deposit a balance of $3,053.14 it that time. The $75,000 is the bond of the Forest Service, and the $25,000 deposited is with the bid.

Mr. HALLOCK. Now, will you explain that? There are $50,000 in Liberty bonds up with the Government at this time; is that correct?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. And in addition to that, the $25,000 evidenced by the check that accompanied the bid?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. Now, in addition to that, since the statement has been made, have other funds been deposited?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. If so, what were they?

Mr. KLOBUCHER. They have received $20,000 during the last 10 days.

Mr. HALLOCK. And that makes your grand total how much?

Mr. KLOBUCHER. $1,237,174.7 5.

Mr. HALLOCK. Now does that include any part of the investment of the Union Pacific system in the line from Crane to Burns? The money that the Union Pacific system has itself invested in there in steel and ties?

Mr. KLOBUCHER. It does not.

Mr. HALLOCK. This is all in addition to that?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. We offer this letter in evidence, although I do not think it has been sufficiently identified, and perhaps I had better have that identification made. This purports to be a letter on the stationery of the First National Bank of Burns, Oreg., over the signature of E. H. Conser, cashier. Is that the banking institution through which these funds are disbursed?

Mr. KLOBUCHER. It is.

Mr. HALLOCK. And Mr. Conser is the cashier?

Mr. KLOBUCHER. Yes, Sir.

Mr. HALLOCK. He gave you this letter at your request, did he?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. Just prior to your leaving for Washington?

Mr. KLOBUCHER. The day I left.

Mr. DE NEFFE. I object to it on the ground that it is not analyzed. It just gives totals. It does not state what, it was spent for. It just simply states that it was checked out of the bank. Two or three hundred thousand dollars of it might have been checked to Mr. Herrick and he may have used it up in Idaho.

Mr. HALLOCK. I am glad you mentioned that. Let me ask about that.

Mr. DE NEFFE. And it seems to me that we ought to have a little more detailed statement than the totals.

Mr. HALLOCK. Mr. Klobucher, what are the facts as to whether or not every dollar of this total of $1,139,121.61 going through that

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bank has actually been expended in that development program over there in Grant and Harney Counties?

Mr. KLOBUCHER. That has all been spent on that project.

Mr. HALLOCK. Now, if there is any question about that, Mr. Klobucher, are there here in this room at this time in response to counsel's request of a week or so ago a box containing every canceled voucher that has been issued which, when taken in the aggregate will produce this sum.?

Mr. KLOBUCHER. I believe that every one of there are here as far as I know.

Mr. HALLOCK. And they are available to counsel now?

Mr. KLOBUCHER. They are.

Mr. HALLOCK. And have been for the past 10 days?

Mr. KLOBUCHER. Yes, sir.

The CHAIRMAN. You do not mean 10 days, Mr. Hallock? It has not been 10 days. For several days.

Mr. HALLOCK. Yes. We wired for them about 10 days ago, but it took four or five days to get them here. That is correct, Senator. We wired for them the day we arrived, which was a week ago or some such matter.

The CHAIRMAN. It is immaterial. They are here.

Mr. HALLOCK. I will ask that this letter from the First National Bank of Burns, Oreg., be put in the record.

(The letter referred to is here printed in the record in full, as follows:)

THE FIRST NATIONAL BANK OF BURNS,

Burns Oreg., February 11, 1927.

MR. F. J KLOBUCHER
Fred Herrick Lumber Co., Burns, Oreg.

DEAR MR. KLOBUCHER: In accordance with your request for advice from us as to what our books show as having been deposited in this bank by Mr. Herrick for use in connection with the work and other expenses here, I wish to advise as follows:

From May 8. 1923, to Nov. 8, 1923, this money was deposited in name of James W. Girard $109, 29.3.00
From Nov. 8, 1923, to this date there has been deposited by Mr. Herrick, for the use of the Fred Herrick Lumber Co. 1,029, 828. 61

Total 1,139,121.61

The balance to the credit of the Fred Herrick Lumber Co. on this date is $3,053.14.

Very truly yours,
E. H. CONSER, *Cashier* ----------

Mr. HALLOCK. Have you secured the trial balance sheet of the Fred Herrick Lumber Co. dated January 31, 1927, which is made from the company's records, and which is certified to as correct by the company's auditor, Mr. L. C. Jewett,?

Mr. KLOBUCHER. Yes, sir; I brought this with me.

Mr. HALLOCK. That contains, does it not, certain bookkeeping entries such as stock subscriptions and matters of that sort which appear upon its face?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. And otherwise discloses the present situation as evidenced by the books of the company, both of the Fred Herrick Lumber Co. and the Malheur Railroad Co.?

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Mr. KLOBUCHER. This is a statement of the Fred Herrick Lumber Co. only.

Mr. HALLOCK. Well, I notice that it contains the obligations of the Malheur Railroad Co. to the Fred Herrick Lumber Co.

Mr. KLOBUCHER. Yes, sir; it does.

Mr. HALLOCK. So they are included there in that sense?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. And in that connection has the Fred Herrick Lumber Co. financed the Malheur Railroad Co.?

Mr. KLOBUCHER. It has.

Mr. HALLOCK. The money all being disbursed through the Fred Herrick Lumber Co.?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. We offer this in evidence.

(The balance sheet of the Fred Herrick Lumber Co., dated January 31, 1927, is here printed in the record in full, as follows:)

FRED HERRICK LUMBER CO.

Balance sheet, January 31, 1927

Assets:			
Office equipment	$1,882.29		
Land and timber	84,136.11		
Mill site, pond, and highway change		40,495.55	
National forest timber —			
(a) Cash with bid to U S Forest Service		25,000.00	
(b) Bonds with bid to U S Forest Service		50,000.00	
Automobiles	4,522.95		
			$206, 066. 90
Current assets:			
Notes receivable (M.R.R. Co.)	909,634.63		
Bills receivable (O.W.R. & N. Co.)		16,758.65	
Bills receivable (L.S.L. Co.)	385.04		
Interest receivable (M.R.R. Co.)		42,832.30	
Fred Herrick survey and R/W (O.W.R N.)		6,265.08	
Stock subscription	229,800.00		
Fred Herrick Lumber Co. —			
Logging road "A"	20,365.22		
Logging road "B"	524.14		
Sawmill general expense	2,848.02		
Sawmill lumber	3,802.35		
Sawmill power house construction	19,021, 86		
Sawmill generator building construction		9,124.14	
Stock (M.R.R.CO.)	300,000.00		
			1,561,361.43
Deferred items:			
Automobile operation	539.74		
General expense	8,817.31		
Donation account	50.00		
Office expense	637.37		
Salaries and traveling expenses		5,424.16	
Timber survey	308.52		
Logging investigation	269.19		
			16,096.29
Total assets	1,783,474.62		
Liabilities: Capital stock	500,000.00		

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Current liabilities:			
Fred Herrick —			
Advances	$702,523.73		
Special advances	75,000.00		
Interest accrued (M.R.R. Co.)		42,832.30	
Interest accrued (O.W.R.N. Co.)		10,850.06	
Interest accrued (O.S.L. Co.)		9.39	
Export Lumber Co. (ties and lumber)		39,192.31	
Milwaukee Lumber Co. (ties)		11,305.09	
M.R.R. Co. (current account)		66,420.32	
M.R.R. Co (stock certificates)		300,000.00	
Notes payable —			
First National Bank	9,400.00		
Harney County Bank	10,000.00		
James W. Girard	2,000.00		
Exchange National Bank		10,000.00	
First National Bank	189.40		
Audited vouchers	20.28		
			$1,279,742.88
Deferred items:			
Reserved for depreciation —			
(a) Office equipment	778.79		
(b) Automobiles	2,952.95		
			3,731.74
Total liabilities	1,783,474.62		

I hereby certify that the above is a true and correct statement of the assets and liabilities of the Fred Herrick Lumber Co. as at close of business on the 31st day of January, 1927.

L. JEWETT, *Auditor.*

Mr. HALLOCK. Now, what official position do you occupy at this time with the Fred Herrick Lumber Co. and the Malheur Railroad Co., Mr. Klobucher?

Mr. KLOBUCHER. Secretary and treasurer of both companies.

Mr. HALLOCK. How did you happen to occupy those positions?

Mr. KLOBUCHER. At the request of Mr. Girard.

Mr. HALLOCK. And those companies, I think, as the record shows, were incorporated in November, 1923?

Mr. KLOBUCHER. Yes.

Mr. HALLOCK. Were you one of the original incorporators?

Mr. KLOBUCHER. I was.

Mr. HALLOCK. Why did you act as such incorporator?

Mr. KLOBUCHER. Well, at the request of Mr. Girard, in order to fill a certain place on the board.

Mr. HALLOCK. Were there any persons other than Mr. Herrick, Mr. Girard, and yourself, as far as you know, who could go in there and act as incorporators, unless you employed some dummies?

Mr. KLOBUCHER. No; there were not any others.

Mr. HALLOCK. That constituted your entire official organization, did it?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. Are you a subscriber to the capital stock of these companies?

Mr. KLOBUCHER. I am.

Mr. HALLOCK. What amount of stock leave you subscribed in each company?

Mr. KLOBUCHER. Fifty shares.

Mr. HALLOCK. In each company?

Mr. KLOBUCHER. Yes, sir.

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Mr. HALLOCK. Has any of that stack been issued to you?

Mr. KLOBUCHER. Two shares in the Fred Herrick Lumber Co., for which I have paid, and one share in the Malheur Railroad Co., for which I have not paid.

Mr. HALLOCK. How much money did you pay for the two shares in the Fred Herrick Lumber Co.?

Mr. KLOBUCHER. $100 each.

Mr. HALLOCK, I would like to refer to the stock books of the two companies at this juncture and ask the reporter to copy into the record the information from the stubs of those certificates disclosing how that stock is issued. I will ask that he put that information in the record.

(Following is the information requested by Mr. Hallock to be placed in the record:)

STOCK CERTIFICATES OF THE FRED HERRICK LUMBER CO.

Certificate No. 1, for two shares, issued to James W. Girard. Certificate taken out of book.
Certificate No. 2, for two shares, issued to Frank J. Klobucher. Certificate taken out of book.
Certificate No. 3, for 1,798 shares, issued to Fred Herrick. Certificate taken out of book.
Certificate No. 4, for 450 shares, issued to Fred Herrick. Certificate taken out of book.
Certificate No. 5, for 100 shares, issued to Fred Herrick. Certificate taken out of book.
Certificate No. 6, for 200 shares, issued to Harney County National Bank. Certificate pasted back in book and canceled.
Certificate No. 7, for 200 share, issued to First National Bank of Burns, Oreg.. Certificate pasted back in book and canceled.
Certificate No. 8, for 250 shares, issued to Fred Herrick. Certificate taken out of book.
Certificate No. 9 remains in book, canceled.
Certificate No. 10, for 100 shares, issued to Fred Herrick Certificate taken out of book.

STOCK CERTIFICATES OF THE MALHEUR RAILROAD C0.

Certificate No. 1, for 1 share, issued to Fred Herrick. Certificate remains in book.
Certificate No. 2, for 1 shire issued to James W. Girard. Certificate remains in book.
Certificate No. 3, for 1 share, issued to Frank J Klobucher. Certificate remains in book.
Certificate No. 4, for 250 shares, issued to Fred Herrick Lumber Co., Burns, Oreg. Certificate taken out of book.
Certificate No. 5. for 250 shares, issued to Fred Herrick Lumber Co., Burns, Oreg. Certificate taken out of book.
Certificate No. 6, for 250 shares, issued to Fred Herrick Lumber Co., Burns, Oreg. Certificate taken out of book.
Certificate No. 7, for 250 shares, issued to Fred Herrick Lumber Co., Burns, Oreg. Certificate taken out of book.
Certificate No. 8, for 1,000 shares, issued to Fred Herrick Lumber Co., Burns, Oreg. Certificate taken out of book.
Certificate No 9, for 1,000 shares, issued to Fred Herrick Lumber Co., Burns, Oreg. Certificate

taken out of book.
Certificate No. 10, for 1.000 shares, issued to Fred Herrick. Certificate pasted back in book and canceled.
Certificate No. 11, for 1,000 shares, issued to Fred Herrick. Certificate pasted back in book and canceled.
Certificate No. 12, for 1,000 shares, issued to Fred Herrick. Certificate pasted back in book and canceled.

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Certificate No. 13, for 250 shares, issued to Fred Herrick. Certificate pasted back in book and canceled.
Certificate No. 14, for 250 shares, issued to Fred Herrick. Certificate pasted back in book and canceled.
Certificate No. 15, for 250 shares, issued to Fred Herrick. Certificate pasted back in book and canceled.
Certificate No. 16, for 250 shares, issued to Fred Herrick. Certificate pasted back in book and canceled.
Certificate No. 17, for 1,000 shares, issued to Fred Herrick. Certificate pasted back in book and canceled.
Certificate No. 18, for 1,000 shares, issued to Fred Herrick. Certificate pasted back in book and canceled.

Mr. HALLOCK. Mr. Klobucher, I notice in consulting the stock book that although you have subscribed for 50 shares in each company there have been issued to you only the 2 shares in the one company that you have paid for; is that correct?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. The other certificates are still right there in the book, are they?

Mr. KLOBUCHER. They are.

Mr. HALLOCK. Have you ever had any understanding or arrangement with Mr. Herrick to the effect that that stock would be issued to you in consideration of your assisting him with the Forest Service, or for any other reason, proper or improper?

Mr. KLOBUCHER. Not to my knowledge.

Mr. HALLOCK. Were you employed in connection with some arrangement whereby you were to get stock in these companies, or anything of that sort?

Mr. KLOBUCHER. I was not.

Mr. HALLOCK. What are the facts as to whether or not the companies have experienced difficulty in securing extensions from time to time under this contract from the Forest Service, or did those extensions come more or less voluntarily?

Mr. KLOBUCHER. They did not. We have experienced considerable difficulty in connection with every extension that we have ever got.

Mr. HALLOCK. In what way, Mr. Klobucher? Just go ahead and tell us what you mean by that?

Mr. KLOBUCHER. In the way of various stipulations which have been set up before each extension was granted; guarantees to perform certain amounts of work.

Mr. HALLOCK. You have always had to fight for those extensions, have you?

Mr. KLOBUCHER. We have.

Mr. HALLOCK. Mr. Klobucher, are you acquainted with Mr. Barnes?

Mr. KLOBUCHER. I am.

Mr. HALLOCK. How long have you known him?

Mr. KLOBUCHER. Since the time I came to Burns in July, 1923, July or August, I do not remember which.

Mr. HALLOCK. Have you had occasion to see a good deal of him during that time?

Mr. KLOBUCHER. During the first year I did; yes. Probably the first year.

Mr. HALLOCK. I wish you would tell the committee what the attitude of Mr. Barnes has been at all times since you have known him, towards Mr. Herrick and his endeavors over there?

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Mr. KLOBUCHER. Well, it has appeared to me that his attitude has always been one of obstruction, of opposition to everything we did. That he has tried to create a false sentiment, I might say.

Mr. HALLOCK. Against Mr. Herrick?

Mr. KLOBUCHER. Against Mr. Herrick.

Mr. HALLOCK. Has he been active in that program, to your knowledge?

Mr. KLOBUCHER. Well, from reports that I have received, and from the general conversation. Of course I have not received that directly from Mr. Barnes at any time.

Mr. HALLOCK. Well, have you ever talked to Mr. Barnes regarding Mr. Herrick?

Mr. KLOBUCHER. Mr. Barnes has talked to me about him.

Mr. HALLOCK. What has he said to you regarding Mr. Herrick?

Mr. KLOBUCHER. Mr. Barnes used to come in the office quite frequently along in the winter of 1923 and 1924, and attempted to dictate the manner in which we should conduct our work. That we should go ahead with the line from Burns to Seneca before the other track was laid.

Mr. DE NEFFE. When was that, Mr. Klobucher?

Mr. KLOBUCHER. Along in 1923 or 1924, during that winter. I have not seen much of him since then. And, of course, we naturally resented any intrusion on our work.

Mr. HALLOCK. Did he make any statement to you with respect to whether he would oppose or obstruct or fight Mr. Herrick?

Mr. KLOBUCHER. He did during one conversation in the office.

Mr. DE NEFFE. Just fix the date, will you, please, Mr. Klobucher.

Mr. KLOBUCHER. I don't know the date. It was some time during the winter of 1923 or 1924.

Mr. HALLOCK. What did he say to you?

Mr. KLOBUCHER. Mr. Barnes was in there telling us how to do our work, and I told him that I thought he was double-crossing Mr. Girard by taking the attitude that he was taking, the general attitude of opposition. And he told me that if he ever double-crossed Mr. Girard he hoped that somebody would cut off his right leg. He said, "It isn't Mr. Girard I'm after, but," he said, "That other old {son) of a {bitch}, I'll pursue him as long as I've got a dollar."

Mr. HALLOCK_ Did he say anything to the effect that he would fight him with every dollar he could beg, borrow, or steal?

Mr. KLOBUCHER. Yes; he has made that same statement.

Mr. HALLOCK. He used those words, did he?

Mr. KLOBUCHER. He did.

Mr. HALLOCK. And as far as you know, has he carried out that program?

Mr. KLOBUCHER. Well, he seems to be following that program pretty generally. At least that is my impression.

Mr. HALLOCK. Did Mr. Barnes ever accuse you of any collusion or conspiracy or fraud at any time?

Mr. KLOBUCHER. No; he did not.

Mr. HALLOCK. What was the first intimation that you got, Mr. Klobucher, that anybody had ever accused you of that thing?

Mr. KLOBUCHER. When I saw it in the Portland papers concerning this investigation.

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Mr. HALLOCK. Now, just one or two questions that I will have to refer to the transcription and then I am through with you. Mr. Haight testified that different operators working through there—I suppose he means on this work—had stated that you and Mr. Girard
had guaranteed the bills of certain contractors with certain merchants there in Burns, and later had repudiated those guaranties. Is that true?

Mr. KLOBUCHER. It is not. We had guaranteed different bills, and we always saw that they were paid to the extent that we guaranteed them.

Mr. HALLOCK. I did not make my question very clear. The question I am asking is, did you ever guarantee a bill and repudiate it?

Mr. KLOBUCHER. I did not.

Mr. HALLOCK. Or did Mr. Girard, to your knowledge?

Mr. KLOBUCHER. Not to my knowledge.

Mr. HALLOCK. And did you later tell Mr. Haight, or anybody else in connection with a matter of that kind, that you had repudiated certain bills that you had guaranteed, because you had paid the contractors too much, or something to that effect?

Mr. KLOBUCHER. I didn't say anything of that kind,

Mr. HALLOCK. There is something in the record to the effect that when you and Mr. Girard were coming down the line, I think with Mr. Woldenberg {*sic*}, in an automobile at one time, both of you had something to say to the effect that Mr. Herrick was going to refuse to operate that railroad as a common carrier, or something to that effect. Did you make any such a statement of that kind to anyone Mr. Klobucher, at any time?

Mr. KLOBUCHER. Absolutely I did not.

Mr. HALLOCK. You may take the witness.

(Cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Are you a registered engineer, Mr. Klobucher, in the State of Oregon?

Mr. HALLOCK. He said he was not.

Mr. DE NEFFE. Oh, I didn't get that.

Mr. HALLOCK. I think he did.

Mr. DE NEFFE. You are not a registered engineer in the State or Oregon?

Mr. KLOBUCHER. I am not.

Mr. DE NEFFE. In any State?

Mr. KLOBUCHER. In any State.

Mr. DE NEFFE. Well, are you not required to be a registered engineer before you can build a railroad?

Mr. KLOBUCHER. Not in my kind of work. Where you work for an individual in a private capacity it is my understanding that I am not.

Mr. DE NEFFE. Well, isn't this railroad a quasi public corporation?

Mr. KLOBUCHER. Yes.

Mr. DE NEFFE. You say it is a common carrier? It is going to haul passengers, isn't it?

Mr. KLOBUCHER. Yes, sir.

Mr. DE NEFFE. You say you have some bridges there?

Mr. KLOBUCHER. Yes, Sir.

Mr. DE NEFFE. How many bridges?

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Mr. KLOBUCHER. Oh, I do not remember. Something over 2,000 feet, I think.

Mr. DE NEFFE. And how high are they?

Mr. KLOBUCHER. They vary all the way from a few feet to 50 feet.

Mr. DE NEFFE. And how long is the longest one?

Mr. KLOBUCHER. Four hundred feet.

Mr. DE NEFFE. And you have a tunnel there, I understand?

Mr. KLOBUCHER. We have.

Mr. DE NEFFE. How long is it?

Mr. KLOBUCHER. Four hundred and sixty some odd feet.

Mr. DE NEFFE. Don't you think it is important that those bridges be safely built?

Mr. KLOBUCHER. I surely do.

Mr. DE NEFFE. With proper foundations?

Mr. KLOBUCHER. I surely do.

Mr. DE NEFFE. And proper superstructure?

Mr. KLOBUCHER. Yes.

Mr. DE NEFFE. That the tunnel be properly built so it would not cave in?

Mr. KLOBUCHER. Yes, Sir.

Mr. DE NEFFE. And still you don't think it is necessary that the work be done by the most competent engineers, or very competent engineers?

Mr. KLOBUCHER. I did not say that it should not be done by competent engineers.

Mr. DE NEFFE. But you say it is not necessary to have a registered engineer on work of this kind?

Mr. KLOBUCHER. We have got registered engineers on this job.

Mr. DE NEFFE. Who are they?

Mr. KLOBUCHER. We have had three of them to date—Mr. Dodge, Mr. Cohn, and Mr. Page.

Mr. DE NEFFE. And how long did they work?

Mr. KLOBUCHER. Oh, I don't know. Mr. Dodge worked a couple of years, I believe. And Mr. Page worked just a short time; I think six or eight months.

Mr. DE NEFFE. What kind of work did Mr. Dodge do?

Mr. KLOBUCHER. He did everything in connection with the location.

Mr. DE NEFFE. Surveying the line?

Mr. KLOBUCHER. All kinds of work in connection with location.

Mr. DE NEFFE. And Mr. Page did that kind of work, too?

Mr. KLOBUCHER. He did.

Mr. DE NEFFE. And Mr. Cohn did location work, too?

Mr. KLOBUCHER. Yes; he did.

Mr. DE NEFFE. All three of then did location work?

Mr. KLOBUCHER. Yes, Sir. Not at the same time.

Mr. DE NEFFE. No; at different times, of course.

Mr. KLOBUCHER. Yes, Sir.

Mr. DE NEFFE. You said that you went to work for Girard. What did you mean by working for Girard?

Mr. KLOBUCHER. I said Mr. Girard asked me to go to work for him.

Mr. DE NEFFE. But did you understand that you were working for Herrick or Girard, which?

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Mr. KLOBUCHER. For Mr. Herrick.

Mr. DE NEFFE. Oh, I see. You subscribed for $5,000 worth of stock in each of these corporations, did you not?

Mr. KLOBUCHER. Yes, Sir.

Mr. DE NEFFE. And you have only paid in how much, did you say?

Mr. KLOBUCHER. I said I had paid in $200 to the Fred Herrick Lumber Co.

Mr. DE NEFFE. And any to the railroad company?

Mr. KLOBUCHER. No, sir.

Mr. DE NEFFE. And you subscribed in the fall of 1923, didn't you?

Mr. KLOBUCHER. About then. I don't remember just when.

Mr. DE NEFFE That was the time the railroad and the lumber company were organized?

Mr. KLOBUCHER. The records would show just when I subscribed.

Mr. DE NEFFE. Yes; that is right. And has Mr. Herrick or anybody ever asked you to pay for any of that stock except what you have paid?

Mr. KLOBUCHER. No, sir.

Mr. DE NEFFE. Did Mr. Herrick ever discuss it with you?

Mr. KLOBUCHER. No, sir; he did not.
Mr. DE NEFFE. And why have you not paid for it?

Mr. KLOBUCHER. I haven't had enough money.

Mr. DE NEFFE. And the company has been very hard up a great many times, hasn't it, for sufficient funds to carry on the work? Isn't that right?

Mr. KLOBUCHER. At times, yes; we have been.

Mr. DE NEFFE. Well, most of the time?

Mr. KLOBUCHER. Well, not most of the time, No; but at tines we have been hard up for money.

Mr. DE NEFFE. Yes; and neither you or Girard have paid but a few hundred dollars on your stock subscription, isn't that right?

Mr. KLOBUCHER. I don't know anything about Mr. Girard. I told you what I paid.

Mr. DE NEFFE. Well, he so testified. You say you met Herrick first at Burns in the fall of 1923, is that right?

Mr. KLOBUCHER. Yes, Sir.

Mr. DE NEFFE. What was he doing there then?

Mr. KLOBUCHER. What was Mr. Herrick doing?

Mr. DE NEFFE. Yes; there at Burns at that time.

Mr. KLOBUCHER. Oh, I think he carne down to look over the work, see what we were doing .

Mr. De NEFFE. Did he attend any stockholders or directors' meeting of these companies?

Mr. KLOBUCHER. We had some meetings, informal meetings. I don't remember just what they were.

Mr. DE NEFFE. Do you remember whether he attended any of the meetings there to discuss policies or anything at all?

Mr. KLOBUCHER. I don't believe there were any stockholders' meeting while he was there.

Mr. DE NEFFE. No. Your annual stockholders' meeting is in the spring, isn't it?

Mr. KLOBUCHER. Yes.

Mr. DE NEFFE. But you had directors' meetings on and off right along?

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Mr. KLOBUCHER. Yes.

Mr. DE NEFFE. Did he attend a directors' meeting in the fall of 1923?

Mr. KLOBUCHER. I would have to refer to the records to find out whether he did or not.

Mr. DE NEFFE. Well, isn't it a fact that Mr. Herrick has never attended any stockholders' or directors' meeting at burns of either of these corporations?

Mr. KLOBUCHER. I don't remember. I can look that up and find out.

Mr. DE NEFFE. Well, don't you know whether he ever was there?

Mr. KLOBUCHER. I don't remember whether we had a directors' meeting while he was there or not; no.

Mr. DE NEFFE. He kept sending proxies down all the time, didn't he?

Mr. KLOBUCHER. As a general rule; yes.

Mr. DE NEFFE. And the only time he ever attended any directors' meeting was at Portland once; isn't that right?

Mr. KLOBUCHER. Yes; I believe he did attend one at Portland, if I am not mistaken.

Mr. DE NEFFE. In fact, he wasn't down there very much at all, was he?

Mr. KLOBUCHER. Mr. Herrick hasn't been down there very many times; no.

Mr. DE NEFFE. How many times?

Mr. KLOBUCHER. Oh, I suppose four or five times.

Mr. DE NEFFE. He lets you and Jim Girard run it, is that right, largely?

Mr. KLOBUCHER. A certain part of it, yes; as far the physical work down there was concerned.

Mr. DE NEFFE. Have you the cost estimates figures up on your mill?

Mr. KLOBUCHER. I believe I have. I do not know whether they are here or not, though. I haven't seen them if they are.

Mr. HALLOCK. Let's see, that is the work we figured up in November, or last fall some time. I do not know whether they are here or not. If they are not, I can get them. I do not believe they are here.

Mr. KLOBUCHER. I do not believe they are either. They were not sent in with that stuff.

Mr. DE NEFFE. This drawing that you have shown here, showing the location of the mill and the stores, and so forth, and showing some land owned by Mr. Barnes, that is merely a drawing showing the location of the different parts of the plant, isn't that it, on the ground? Isn't that all that purports to be?

Mr. KLOBUCHER. Yes, sir. I have not seen just what it is.

Mr. DE NEFFE. It is a snap showing the mill site and layout.

Mr. KLOBUCHER. Yes, sir.

Mr. DE NEFFE. Giving the scale, and so forth.

Mr. KLOBUCHER. Yes, Sir.

Mr. DL NEFFE. Now, have you any specifications of the mill structure?

Mr. KLOBUCHER. We have.

Mr. DE NEFFE. Where are they?

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Mr. K KLOBUCHER. I do not believe any of those were sent. I do not know whether they were requested or not.

Mr. DE NEFFE. Yes; they were in the subpoena, because I was very particular about that. Right at the bottom of the subpoena.

Mr. HALLOCK. Yes; they were.

Mr. KLOBUCHER. Were they requested?

Mr. HALLOCK. I wonder if they are not in Irving's hands? May I ask a moment or two to clear that up?

Mr. DE NEFFE. Yes.

Mr. HALLOCK. Who was Mr. Irving?

Mr. KLOBUCHER. He is the man who was DRAWING up the plans for this mill.

Mr. HALLOCK. Is he in Mr. Herrick's employ?

Mr. KLOBUCHER. He is.

Mr. HALLOCK. And how long has he been employed by the Fred Herrick Lumber Co.?

Mr. KLOBUCHER. I think since about last June or July. I don't remember just when.

Mr. HALLOCK. Has his work been confined exclusively to will plans and drawings?

Mr. KLOBUCHER. Yes.

Mr. HALLOCK. And mill machinery?

Mr. KLOBUCHER. Yes.

Mr. HALLOCK. The mill work, in other words?

Mr. KLOBUCHER. Yes.

Mr. DE NEFFE. Oh, I am not questioning his qualifications. I want to find out what has been done. What progress has been made.

Mr. HALLOCK. Yes. Now where is Mr. Irving at this time?

Mr. KLOBUCHER. I believe he is either on the coast or he is back at Minneapolis or Chicago. I do not know whether he has got back or not. I am not sure.

Mr. HALLOCK. Now, where was he when this proceeding started?

Mr. KLOBUCHER. Here at this time, do you mean?

Mr. HALLOCK. Yes; when this inquiry started, when we got here.

Mr. KLOBUCHER. I believe he was on the Pacific coast.

Mr. HALLOCK. You think he got home at that time?

Mr. KLOBUCHER. Yes.

Mr. HALLOCK. And went to clear up the matter?

Mr. KLOBUCHER. He was in Minneapolis.

Mr. HALLOCK. Yes. What was he doing there?

Mr. KLOBUCHER. He was taking up the details. Purchasing machinery.

Mr. HALLOCK. I want to get the record clear as to who he is and what his work is, and where the plans are, and what he has been doing in the last six or eight months, that is all.

Mr. KLOBUCHER. Well, he has been working in connection with this mill layout, the plans and the equipment, and for a while was looking after some of the construction work that was going on down there, at the same time making up some of his plans. He left Burns, I think it was in December or November, I don't remember which. And as far as I know most of the time since then he has been in the East negotiating with people that manufacture this kind of equipment.

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Mr. HALLOCK. Well, here I believe we have found what you want now, Mr. De Neffe. Here is a bundle of apparently mill plans.

Mr. DE NEFFE. Maybe he can identify them.

Mr. HALLOCK. These purport to be plans of boiler house foundations of Fred Herrick Lumber Co. and stuff of that kind. Will you look those over, please?

Mr. DE NEFFE. It is labeled on the back. I think probably he has got the label on the back.

Mr. HALLOCK. Will you please tell Mr. De Neffe what these are? That will perhaps answer this question. There is a mess of stuff here, gentlemen, maps and things. Naturally I have not become familiar with them myself.

Mr. KLOBUCHER. Yes, sir; some of the various details. This is one of the details of the boiler house. It is self-explanatory of just what it is. And so is this one. That is the power house, the foundations of the power house. This shows just some of the details.

Mr. DE NEFFE. That all applies to the power house?

Mr. KLOBUCHER. Yes. This is some of the general plans of the power house. Here are some of the boilers. That is the foundation. And there is the boiler house and generator house.

Mr. DE NEFFE None of these plans you have shown pertain to the mill proper, do they?

Mr. KLOBUCHER. I believe when I left that Mr. Irving had most of the other plans with him, if I am not mistaken.

Mr. DE NEFFE. Well, why was he carrying them around?

Mr. KLOBUCHER. Because he was working on them and interested in them. He went back here with the intention of purchasing that equipment—looking it up.

Mr. DE NEFFE. You do not know what stage of the development or completion those plans are?

Mr. KLOBUCHER. No; I do not know just exactly what stage they are in at the present time. They were pretty well along when he left Burns. I imagine they are all completed before this.

Mr. DE NEFFE. Are you prepared to swear that this $1,139,000 that is stated in this letter from the bank all went into this Herrick project?

Mr. KLOBUCHER. Every cent of it, do you mean?

Mr. DE NEFFE. Yes.

Mr. KLOBUCHER. In some way or other, yes; so far as I know every cent went into this Herrick project.

Mr. DE NEFFE. Well, you were closely identified with the expenditures and everything of that kind, were you not?

Mr. KLOBUCHER. Yes; I Was. But -what I mean is that it is possible that a few dollars here or there might have been expended for something else.

Mr. DE NEFFE. You have submitted here an itemized statement of the Fred Herrick Lumber Co. balance sheet of January 31, 1927, showing assets and liabilities, as I suppose you intend it for. Can you take that statement and show any place where it is shown that there has been $1,139,000 spent on this project?

Mr. KLOBUCHER. Well, I would have to have the other statement for the Malheur Railroad Co.

Mr. DE NEFFE. Well, I want all of the statements that you may have.

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Mr. KLOBUCHER. The other statement was not out when I left Burns.

Mr. DE NEFFE. Well, go over that statement and see what you can figure out.

Mr. KLOBUCHER. It will take me some little time to make up what you want, as this includes a good deal of other stuff.

Mr. DE NEFFE. Who prepared that statement?

Mr. KLOBUCHER. Mr. Jewett made up the statement.

Mr. DE NEFFE. Who do you mean, the auditor?

Mr. KLOBUCHER. Yes, sir.

Mr. DE NEFFE. In this statement you have listed among current assets "Notes receivable M. R. Railroad Co." I suppose that means the Malheur Railroad Co., does it?

Mr. KLOBUCHER. Yes, sir.

Mr. DE NEFFE. And it shows $909,634.63. Do you consider that an asset?

Mr. HALLOCK. May I interrupt you right there, Mr. De Neffe? That, as I explained, is a discrepancy between the actual cash statement and the greater amount shown here. Some of these items are merely bookkeeping entries. We have given you the exact cash disbursements and credits, and then we have given you the balance sheet, and the difference between them is as a bookkeeping statement, to which you are now calling the witness's attention.

Mr. DE NEFFE. Can not you give us a statement of the actual cash spent on this project?

Mr. HALLOCK. Yes.

Mr. DE NEFFE. From Crane to Burns, and Burns to Seneca, and so on.

Mr. HALLOCK. We will have to eliminate some of these bookkeeping entries, and when we get through they will give the correct amount of money represented by the bank statement.

Mr. DE NEFFE. Well, I do not mean to say that it has not been spent, and yet I would like to be sure of the situation, and I do not quite understand this statement.

Mr. HALLOCK. All of the vouchers are here, and you can add those up and you will have the total, just the same.

Mr. DE NEFFE. Oh, well, I have been working from 7 o'clock in the morning until 1 o'clock the following morning, and I do not believe that I could do that.

Was not some of that money spent, Mr. Klobucher, for timber by Mr. Herrick?

Mr. KLOBUCHER. Some money shown in the bank statement, do you mean?

Mr. DE NEFFE. Yes.

Mr. KLOBUCHER. I believe it was.

Mr. DE NEFFE. How much was spent for the purchase of timber?

Mr. KLOBUCHER. I believe that $84,000 is shown for land and timber.

Mr. DE NEFFE. Then, how much was spent from Crane to Burns on that railroad?

Mr. KLOBUCHER. I do not remember offhand how much that was.

Mr. DE NEFFE. Mr. Carter in his report says it is $170,000; is that right?

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Mr. KLOBUCHER. That is approximately correct. But I do not member and could not say without looking it up. I have not the figures at hand on that.

Mr. DE NEFFE. Mr. Herrick has gotten all that money back, has he not, from the Union Pacific Railroad?

Mr. KLOBUCHER. No; not all of it.

Mr. DE NEFFE. He has gotten $150,000, has he not?

Mr. KLOBUCHER. I believe that is correct; around that sum somewhere.

Mr. DE NEFFE. That $150,000 should be deducted from this amount of $1,139,000 shown in the bank statement; is not that right?

Mr. KLOBUCHER. Well, let me see; that does not include that, does it?
Mr. HALLOCK. No; only the difference is included.

Mr. KLOBUCHER. Yes; two items shown in here is the statement on that road. The other should not be considered at all.

Mr. DE NEFFE. Should not the $150,000 be deducted from the $1,139,000?

Mr. KLOBUCHER. Why?

Mr. DE NEFFE. Because he got that money back.

Mr. KLOBUCHER. But that is not included in here to start with.

Mr. DE NEFFE. Well, I am unable to understand this.

Mr. HALLOCK. I want to help you. Here it says, "Bills O. W. R. & N. Co., $16,758.65." That is the difference still due under that contract?

Mr. DE NEFFE. Yes; I see. I understand that you only got $150,000 when it should be upwards of $166,000.

Mr. HALLOCK. That is correct.

.Mr. DE NEFFE. I noticed in the letter from the bank that there is a statement of a deposit account from May 8, 1923, to November 8, 1923, and that that money was deposited in the name of James W. Girard, to the sum of $109,293. Do you know why that was deposited in Mr. Girard's name?

Mr. KLOBUCHER. Because there was nobody else to deposit it to the credit of.

Mr. DE NEFFE. Could not you have deposited it in Mr. Herrick's name?

Mr. KLOBUCHER. Yes; that could have been done. But I do not see any reason why it should have been done. It was necessary that Mr. Guard should draw on that money. It was before the corporations were organized.

Mr. DE NEFFE. And that money was deposited in Mr. Girard's name, was it not?

Mr. KLOBUCHER. I believe it was.

Mr. HALLOCK. At this juncture, might the record show that we have heretofore produced and there are available, and have been, the bank statements of both of these companies, with all deposit slips and statements of withdrawals, in addition to the canceled vouchers.

Mr. DE NEFFE. Do you want to introduce them in evidence?

Mr. HALLOCK. No; but I want the record to show that they are here now, and have been here all the time, and that they are available. I think I directed your attention to that fact the other day.

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Mr. DE NEFFE. What about introducing them in evidence?

Mr. HALLOCK. Well, they are the original record, and are quite voluminous, and I do not see that it is necessary to do that in bulk. You can look at them and see what, if any of them, you wish to use. They are so big that we could not put them all in evidence.

Mr. DE NEFFE. Well, if I have time between now and Monday I will try and look at them.

The CHAIRMAN. You may go along.

Mr. DE NEFFE. Mr. Klobucher, you say you had difficulty in getting extensions?

Mr. KLOBUCHER. Yes, sir.

Mr. DE NEFFE. Was not that because people protested very vigorously when they saw that Mr. Herrick was not acting in good faith?

Mr. KLOBUCHER. I suppose that had some effect on it; yes.

Mr. DE NEFFE. Do you anticipate that if people had sat supinely by and not protested that he would not have had any trouble at all?

Mr. KLOBUCHER. I do not know about that, I am sure.

Mr. DE NEFFE. But very likely he would not have had any trouble in that event.

Mr. KLOBUCHER. I do not know.

Mr. DE NEFFE. You stated that Mr. Barnes tried to obstruct the matter and create a fare sentiment against Mr. Herrick, but that was only after Mr. Herrick did not prosecute the work diligently; is not that a fact?

Mr. KLOBUCHER. Well, it was along in the winter of 1923-24. We prosecuted the work very diligently during the year 1923. We built practically all of the grade from Crane to Burns, but did not lay the steel from Crane to Burns, and we were not responsible for the time when that was laid because it was to be done by the Union Pacific system. We did lay off a little while there at that time, with the intention the first thing in the spring that the steel would be laid to Burns, and that it would save us the hauling of a lot of big material, the bridge material, pipe, powder, and all other equipment for 30 miles of railroad. That was the reason for the first layoff, as I see it, or that was my understanding.

Mr. DE NEFFE. Is that the reason why you did not do any work in the summer of 1924?

Mr. KLOBUCHER. Well, it is a pretty good reason for not doing a lot of it. We waited for the Union Pacific Railroad to get ready to lay their steel in 1924.

Mr. DE NEFFE. And that was the reason for the delay by you, was it?

Mr. KLOBUCHER. I do not know that that was the entire reason. But that was the reason as I understood at the tine.

Mr. DE NEFFE. Well, then, you did not do any work in the summer of 1924.

Mr. KLOBUCHER. Oh, yes; we did some work.

Mr. DE NEFFE. But you did not do much work?

Mr. KLOBUCHER. Well I do not know just how much. I think we graded about 15 miles of road.

Mr. DE NEFFE. When Mr. Carter, in his report of February 20, 1925, stated: "There is not now and has not been any cause for serious delays due to right-of-way matters," is he telling the truth?

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Mr. KLOBUCHER. We did have some delays on account of rights of way. We condemned a few places there.

Mr. DE NEFFE. Was there any other reason why there were any delays in this work prior to February 20, 1925?

. Mr. KLOBUCHER. Prior to that date?

Mr. DE NEFFE. Yes; is there any other reason than the ones you have mentioned?

Mr. KLOBUCHER. Than on the rights of way, or the fact that the rail had not been laid?

Mr. DE NEFFE. Yes; any other reason?

Mr. KLOBUCHER. We were held up at times on account of cash.

Mr. DE NEFFE. Mr. Carter is right when he says that the failure last summer was due to Mr. Herrick's failure or refusal to put up cash; is that right?

Mr. KLOBUCHER. To a small extent; to a small extent it is, certainly.

Mr. DE NEFFE. And would you say that Mr. Herrick had showed good intent and good faith all the way through there up to that time?

Mr. KLOBUCHER. I personally believe he did to a large extent.

Mr. DE NEFFE. Mr. Carter was wrong, was he, when he said in the judgment of the service men who are at Burns he has failed to show good intent and good faith?

Mr. KLOBUCHER. That is Mr. Carter's opinion.

Mr. DE NEFFE. You do not think it is correct, do you?
Mr. KLOBUCHER. I do not think it is absolutely correct.

Mr. DE NEFFE. And he was misrepresenting the situation?

Mr. KLOBUCHER. He probably had a different reason for thinking so.

Mr. MCGOWAN. Mr. De Neffe, do you mean that Mr. Carter was willfully misrepresenting it?

Mr. DE NEFFE. I want the witness's opinion on it.

Mr. KLOBUCHER. I do not think he was willfully representing it. I think it was just Mr. Carter's opinion.

Mr. DE NEFFE. And was Mr. Barnes at the meeting at Burns in February, 1925?

Mr. KLOBUCHER. I do not know.

Mr. DE NEFFE. Do not you know that he was not there?

Mr. KLOBUCHER. No; I do not know a thing about it.

Mr. DE NEFFE. Were you yourself there?

Mr. KLOBUCHER. No, sir.

Mr. DE NEFFE. Do you deny that he was not there?

Mr. KLOBUCHER. I do not know.

Mr. DE NEFFE. Was Mr. Girard there?

Mr. KLOBUCHER. I do not know.

Mr. HALLOCK. The witness says he was not there, and therefore I do not see how he can answer those questions.

Mr. DE NEFFE. Oh. You do not mean to say that Mr. Barnes had anything to do with Mr. Carter's report?

Mr. KLOBUCHER. No, sir; I do not think he did.

Mr. DE NEFFE. You do not accuse him of that?

Mr. KLOBUCHER. No; I do not accuse him of it at all.

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Mr. DE NEFFE. You have accused him of a good many things, but I did not know whether you had accused him of that or not.
Mr. KLOBUCHER. No.

Mr. HALLOCK. What was that statement?

Mr. DE NEFFE. I said that he had accused Mr. Barnes of a good many things, but I did not know whether he accused him of this or not.

Mr. HALLOCK. All right. I did not hear it. Go ahead.

Mr. DE NEFFE. I think you stated as to how the work progressed, that it wasn't being hurried.

Mr. KLOBUCHER. During the winter of 1923-24 I told you just what was done.

Mr. DE NEFFE. Could not you have done a good deal of work north of Burns during the winter time?

Mr. KLOBUCHER. Yes, sir; we could have done some work.

Mr. DE NEFFE. If you had really wanted to, you could have done some more work?

Mr. KLOBUCHER. It was a physical possibility to do work faster than we actually did it, if that is what you mean; yes

Mr. DE NEFFE. And the reason you did not was because Mr. Herrick did not furnish the money, is not that it?

Mr. KLOBUCHER. I told you before that to a certain extent that was responsible for it.

Mr. DE NEFFE. Do you remember when it was that Mr. Barnes, as you claim, applied to Mr. Herrick a certain epithet?

Mr. KLOBUCHER. It was some tinge during the winter of 1923-24.

Mr. DE NEFFE. That was when it was very apparent that Mr. Herrick was simply stalling on the work, delaying it, is not that right?

Mr. KLOBUCHER. No; it was not very apparent at that time. I told you that we had what we considered a pretty good reason for laying off at that time, and our lay off that winter was not due to any shortage of funds. We did lay off on our survey work ahead, and that was not done yet, at that time, and it took us some time, but we were practically ahead, in getting the survey made to Bear Valley. It was only at times that we have been interrupted on account of lack of funds; it has not been all the time by any means.

Mr. DE NEFFE. Mr. Carter is wrong, and Mr. Granger is m wrong, and Mr. Hoffman is wrong when they say otherwise, do I understand you to claim, Mr. Klobucher?

Mr. KLOBUCHER. I do not know just what you mean. They do not say that we were interrupted for money all the time, do they'?

Mr. DE NEFFE. That the delay on this work is due to the fact that Mr. Herrick is not furnishing sufficient funds to carry it forward. are they wrong about that?

Mr. KLOBUCHER. I just stated that he did not always furnish sufficient funds, but a good deal of the time the work went right on.

Mr. DE NEFFE. The most of the tine you were held up and could not push the work faster on account of lack of funds?

Mr. KLOBUCHER. Not the most of the tine. I would not say the most of the time.

Mr. DE NEFFE. These gentlemen were wrong when they reported to Colonel Greeley that that was the case.

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Mr. KLOBUCHER. I do not know that they said it was the most of the time.

Mr. DE NEFFE. If they said it, then it was wrong?

Mr. KLOBUCHER. Do you mean that they said we were short of funds the most of the time?

Mr. DE NEFFE. That the cause of delay of the work not going forward was due to the fact that Mr. Herrick did not furnish sufficient funds.

Mr. KLOBUCHER. Well, that was a cause of a part of the delay.

Mr. DE NEFFE. You say that you never repudiated any contractor's bills. Do you know of repudiating any of your own checks, either?

Mr. KLOBUCHER. Contractors' bills?

Mr. DE NEFFE. Yes; that you repudiated a guarantee of the contractors bills.

Mr. KLOBUCHER. Oh, that is something else. That is correct, I said that.

Mr. DE NEFFE. But as to your own checks, they were turned down a good many times, were they not?

Mr. KLOBUCHER. They were not.

Mr. DE NEFFE. Do you say that they were not?

Mr. KLOBUCHER. Any of our own checks?

Mr. DE NEFFE. Yes; the cheeks of the Fred Herrick Lumber Co., or of the Malheur Railroad Co.

Mr. HALLOCK. He says checks either of the Fred Herrick Lumber Co., or of the Malheur Railroad Co., were they ever turned down on account of lack of funds or were they ever repudiated?

Mr. KLOBUCHER. They were never to my knowledge.

Mr. DE NEFFE. You were in touch with the proposition all along?

Mr. KLOBUCHER. Yes; I was, all of the time.

Mr. DE NEFFE. Then Mr. Carter is not telling the truth when he says in this statement of February 20, 1925, that checks given to employees have been protested for lack of funds in bank.

Mr. KLOBUCHER. None of our checks have been protested.

Mr. DE NEFFE. Well, do you mean to say that Mr. Carter misrepresented things?

Mr. KLOBUCHER. I mean to say that none of our checks have been protested.

Mr. DE NEFFE. Have they been turned down or payment refused?

Mr. KLOBUCHER. They have not. We have not refused payment. We have had funds whenever we issued checks, we had the funds in bank to pay them.

Mr. DE NEFFE. Well, Carter was not telling the truth here, is that it; would you say that, Mr. Klobucher?

Mr. KLOBUCHER. I do not know where Mr. Carter got his information.

Mr. DE NEFFE. Why were not you at that meeting?

Mr. KLOBUCHER. Do you mean that public meeting?

Mr. DE NEFFE. Yes.

Mr. KLOBUCHER. I did not see any occasion to attend that meeting.

Mr. DE NEFFE. Was Girard there?

Mr. KLOBUCHER. I do not know.

Mr. DE NEFFE. Mr. Carter met with you and Mr. Girard after the meeting, or before the meeting, did he not?

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Mr. KLOBUCHER. He met with us at Burns, and I believe in February.

Mr. DE NEFFE. That is, at the time of the meeting, before he left and wrote up his report.

Mr. KLOBUCHER. I think it was on that same trip.

Mr. DE NEFFE. And at that time you gave him certain data and information as to expenditures.

Mr. KLOBUCHER. Yes, sir; we did.

Mr. DE NEFFE. And he made up his report from that information; is not that right?

Mr. KLOBUCHER. I presume so.

Mr. DE NEFFE. What did you say your experience consisted of before that in engineering work, what kind of work had you done?

Mr. KLOBUCHER. Railroad location, surveys, work in connection with logging railroads, and I worked on the coast surveying roads.

Mr. DE NEFFE. How long a logging railroad did you worked on before that?

Mr. KLOBUCHER. Do you mean how many miles in length?

Mr. DE NEFFE. Yes.

Mr. KLOBUCHER. I think I surveyed probably 100 miles in France, and located on it a part of the construction, and in some cases all of it. I was connected with in various ways.

Mr. DE NEFFE. Who were you working with, were you under somebody else?

Mr. KLOBUCHER. No. On a part of it I was, sure; we were working under somebody, of course, all the time.

Mr. DE NEFFE. But you have full charge of this work up there around Burns?

Mr. KLOBUCHER. Yes, sir; I had fill charge of that location over there too, and of parts of the construction I came in contact with I had full charge of.

Mr. DE NEFFE. You have full charge of this bridge work and tunnel work?

Mr. KLOBUCHER. I do not know what you mean by "full charge."

Mr. DE NEFFE. Are not you the chief engineer of that railroad

Mr. KLOBUCHER. Yes, sir.

Mr. DE NEFFE. And what you say goes; is not that right?

Mr. KLOBUCHER. Generally; but Mr. Girard and I talk all these platters over, I talk them over with him.

Mr. DE NEFFE. But, then, the men that do any of the engineering or construction work, work under you on this railroad project, do they not?

Mr. KLOBUCHER. They do.

Mr. DE NEFFE. You never had any experience along that line before, where you were the main mail, the chief engineer, had you before this?

Mr. KLOBUCHER. On bridges, do you mean?

Mr. DE NEFFE. In the whole railroad project.

Mr. KLOBUCHER. To tale charge of the whole of an operation like this?

Mr. DE NEFFE. Yes; an 80-mile railroad.

Mr. KLOBUCHER. Not in this same capacity; no.

Mr. DE NEFFE. Neither had Girard; is not that true?

Mr. KLOBUCHER. I do not know about, Mr. Girard.

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Mr. DE NEFFE. Can you tell us how it was that Mr. Herrick selected two men like you and Girard? You are not a registered engineer, and is Jim Girard a registered engineer?

Mr. KLOBUCHER. I do not know.

Mr. DE NEFFE. To develop a project or line running into millions of dollars, without your ever having had any experience along this line before?

Mr. KLOBUCHER. Mr. Herrick did not hire me for this job.

Mr. DE NEFFE. Mr. Girard did, and he was representing Mr. Herrick, and Mr. Girard hired you as I understand.

Mr. KLOBUCHER. Yes, Sir.

Mr. DE NEFFE. And so Mr. Herrick really hired you, did he not? Is it not a fact that just shortly after the railroad and the lumber company were incorporated you began borrowing money?

Mr. KLOBUCHER. Some, time afterwards; yes.

Mr. DE NEFFE. And the railroad company was incorporated in November.

Mr. KLOBUCHER. I believe so; yes.

Mr. DE NEFFE. Were they both incorporated at the same time?
Mr. KLOBUCHER. They were.

Mr. DE NEFFE. The articles of incorporation show the date as November 5, 1923; and on November 11, 1923, the board of directors passed a resolution authorizing $100,000 to be borrowed from the Ladd & Tilton Bank, of Portland.

Mr. KLOBUCHER. I do not remember the date, but it was about that time.

Mr. DE NEFFE. Well, it is in the record.

Mr. KLOBUCHER. All right.

Mr. DE NEFFE. November 16, 1923.

Mr. KLOBUCHER. All right.

Mr. DE NEFFE. That money was borrowed, was it not?

Mr. KLOBUCHER. Yes, Sir.

Mr. DE: NEFFE. Why did you have to borrow money if Mr. Herrick had plenty of money?

Mr. KLOBUCHER. Tell, we borrowed money to go ahead with the construction work.

Mr. DE NEFFE. Because Mr. Herrick had not furnished any, is that it?

Mr. KLOBUCHER. Mr. Herrick looked after the providing of those funds. I did not know any of the details concerning that transaction.

Mr. DE NEFFE. And then about a year later, November 14, 1924, the company borrowed $10,000 of the First National Bank of Burns, is that right?

Mr. KLOBUCHER. We borrowed some money several times since then, too.

Mr. DE NEFFE. You kept on borrowing?

Mr. KLOBUCHER. Yes, Sir.

Mr. DE NEFFE. December 5, 1925, a resolution was passed that the company should borrow from any person, firm or corporation, is not that right?

Mr. KLOBUCHER. I believe that is right.

Mr. DE NEFFE. Any place that you could get it?

Mr. KLOBUCHER I believe so.

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Mr. DE NEFFE. And Mr. Girard went around to different parts of the State trying to scare up some money for this enterprise?

Mr. KLOBUCHER. I do not know whether he did or not.

Mr. DE NEFFE. In the summer of 1926, which would be last summer, Mr. Girard was away, was he not, for about six weeks?

Mr. KLOBUCHER. He was.

Mr. DE NEFFE. Where was he, do you know?

Mr. KLOBUCHER. He was down in California.

Mr. DE NEFFE. And do you remember at what time that was?

Mr. KLOBUCHER. Along the middle of the summer, July or August or thereabouts.

Mr. DE NEFFE. And the weather was very good for construction work during the time that he was away, was it not?

Mr. KLOBUCHER. You bet it was.

Mr. DE NEFFE. What was he doing down there?

Mr. KLOBUCHER. He was making an appraisal of a large body of redwood timber.

Mr. DE NEFFE. It was a private job, outside of this job?

Mr. KLOBUCHER. Outside of this job?

Mr. DE NEFFE. Yes?

Mr. KLOBUCHER. It was.

Mr. DE NEFFE. I think that is all I wish to ask.

(Redirect examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank

J. Klobucher.)

Mr. HALLOCK. Were you on the job and in charge of the work during Mr. Girard's absence?

Mr. KLOBUCHER. I was.

Mr. HALLOCK. Did you neglect that work in any way in the matter of being gone for long intervals of time or anything of that sort?

Mr. KLOBUCHER. Have I done it, do you ask?

Mr. HALLOCK. Yes.

Mr. KLOBUCHER. No; this is the longest trip I have ever taken.

Mr. HALLOCK. You mean during all the years that you have been over there?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. And by this trip you mean the time devoted to this inquiry, including the trip here to Washington, which covers a period of two weeks?

Mr. KLOBUCHER. Yes. I have not been gone for more than a few days from that job since I first got there.

Mr. HALLOCK. Counsel has had a lot to say to you about the character of your work out there. Have you ever heard anybody criticize the job of construction work there, or the character of it, or the stability of it?

Mr. KLOBUCHER. Not directly to me, no.

Mr. HALLOCK. Have you heard it criticized at all?

Mr. KLOBUCHER. No; I have not.

Mr. HALLOCK. Mr. Haley was good enough to give us some of his ideas as an engineer, and he gave us some prices of certain units of that work. For instance, he told us that in working out his appraisal he priced crossties on that line at 55 cents a piece. What are the facts as to whether you could buy ties at that price for that work?

Mr. KLOBUCHER. It is absolutely impossible. Those ties cost about an average of $1 each, which was just as cheap as they are procur-

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able, from any source whatever. We cut some ties locally as long as were available, and shipped the balance in, and that was as cheap as we could get them.

Mr. HALLOCK. Those ties that you shipped in there, how much money have you had to pay for ties, including cost of ties, plus freight laid down on the work?

Mr. KLOBUCHER. At Burns it was about $1.30 on those ties.

Mr. HALLOCK. The price was $1.30 for the ties that Mr. Haley estimates at 55 cents, is that right?

Mr. KLOBUCHER. His estimate was an average of 55 cents. Those ties cost us about $1.30, and the ties that were made locally ran from about 80 cents a tie to $1.30. We got them until they ran out. So that they would average somewhat over a dollar a piece. And that difference in the cost of ties would be something like $65,000 or $70,000 alone, over and above what Mr. Haley estimated.

Mr. HALLOCK. Now, Mr. Klobucher, going in there as you had to do, and build some 100 miles of railroad, and the saw mill as far as you have got it constructed, and these different units of development there, did you have at your back an efficient and complete engineering organization such as is necessary to map out things of that sort, nor did you have to go to work with absolutely nothing and invent an organization and build all that from the ground up?

Mr. KLOBUCHER. We started with nothing at all.

Mr. HALLOCK. Did you have a good deal of relocation work to do That required time, selecting different routes?

Mr. KLOBUCHER. We did. We ran a good many different routes before we finally selected a location.

Mr. HALLOCK. And there were line changes and grade changes and things of that sort?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. Just a word on this financial statement for the benefit of Mr. De Neffe. Mr. De Neffe, I direct your attention to the fact, if you will take these items I have checked here and which I have denominated bookkeeping items, which are interest on the indebtedness of the Malheur Railroad Co. $42,832.30, stock subscription $229,800, and stock in the Malheur Railroad Co. $300,000, and subtract the aggregate of those items from the total assets of $1,783,474.62, you will have within six or seven thousand dollars of the bank total for the same items of $1,217,174.75. It does not balance to the dollar, nor within two or three thousand dollars, but I think it is close enough to give you the information that you want.

Mr. DE NEFFE. Could you prepare that statement whereby it would be separated from all those other items?

Mr. HALLOCK. I hardly feel competent to make up a bookkeeper's statement, but will be glad to assist you in any way I can.

Mr. DE NEFFE. Probably Mr. Klobucher will assist you.

Mr. HALLOCK. I will do anything along that line that you want as far as I can.

The CHAIRMAN. Proceed, gentlemen.

Mr. HALLOCK. Mr. Klobucher, what are the facts as to whether or not in 1924 Mr. Herrick required you to resurvey a portion of the routes or grades?

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Mr. KLOBUCHER. Well, I do not know whether it was entirely Mr. Herrick's requests, but we did talk it over, and we did do the work, and we changed the grade and line.

Mr. HALLOCK. That was as a result of a conference among you?

Mr. KLOBUCHER. Yes, sir; and in it Mr. Herrick was included., We decided that it would be better to change the line.

Mr. HALLOCK. Do you remember how many condemnation cases you had in connection with this railroad line, including those settled and those tried?

Mr. KLOBUCHER. The whole thing all the way up?

Mr. HALLOCK. Yes.

Mr. KLOBUCHER. I expect at least a dozen.

Mr. HALLOCK. Were there a lot of absentee landowners?

Mr. KLOBUCHER, yes, sir.

Mr. HALLOCK. Did you have the matter of right of way from the Pacific Livestock Co., where there were negotiations and exchange of letters whereby it ultimately resolved itself into contract arrangements?

Mr. KLOBUCHER. We had.

Mr. HALLOCK. Did you have to prepare and follow up with the Federal Government your maps of the location under the act of 1875?

Mr. KLOBUCHER. From Crane to Burns.

Mr. HALLOCK. You had to work out arrangements with the Oregon-Washington Railroad & Navigation Co.?

Mr. KLOBUCHER. Yes, sir.

Mr. HALLOCK. And all these things took time, I assume?

Mr. KLOBUCHER. They certainly did. And the various estates that we had to cross took us a long time.

Mr. HALLOCK. I believe that is all.

(Recross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.:)

Mr. DE NEFFE. You claim that there was considerable delay on account of right-of-way matters?

Mr. KLOBUCHER. Quite a little bit.

Mr. DE NEFFE. Mr. Carter is wrong in his report when he says there is not now, and has not been, any cause for serious delays due to right-of-way matters?

Mr. KLOBUCHER. I do not know what he means by "serious delays."

Mr. DE NEFFE. That is what he says, taken from the Government files.
Mr. KLOBUCHER. I do not know what he means by " serious delays." I do not know how long he means.

Mr. DE NEFFE. Delays that amount to anything; that is, what would naturally cover it.

Mr. KLOBUCHER. There were various claims on which we were held up several months before we could get across them.

Mr. DE NEFFE. Mr. Carter got his facts from citizens, and Mr. Girard, and yourself, and this is his report. Is it true or is it not true?

Mr. KLOBUCHER. Some of these have been since Mr. Carter's report was made.

Mr. DE NEFFE. I am talking about the delays prior to February 20, 1925.

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Mr. KLOBUCHER. The most of our delays have been since that time.

Mr. DE NEFFE. Where were they and what was the occasion for them .

Mr. KLOBUCHER. Which claims were they, do you mean?

Mr. DE NEFFE. Where were you delayed?

Mr. KLOBUCHER. Well, the first was —

Mr. HALLOCK (interposing). You might take up Mr. Barnes's situation. There is some delay that you could talk about.

Mr. KLOBUCHER. Around the mill site at two different places, right between Burns and the mill site, and at another claim belonging to Mr. Barnes about a mile below the upper terminus of the road.

Mr. DE NEFFE. When was that?

Mr. KLOBUCHER. In 1925. We were shut off on that work for, I expect, six months, if I am not mistaken.

Mr. DE NEFFE. And there was plenty of room along the line where you could have been working north of Burns, was there not?

Mr. KLOBUCHER. Well, in that particular case it held us up for some period all right.

Mr. DE NEFFE. You have not started your mill yet. So it has not interfered with the building of your mill.

Mr. KLOBUCHER. Oh, with the railroad itself up there. On the other end it has. On the mill end we were prevented from completing our grade and laying our track—or not from completing our grade, but from laying the track from Burns to the mill site, on account of the right of way that we had to perfect arrangements for. We could not get our equipment down there; we could not get our material down there to start work.

Mr. DE NEFFE. But you could not have built your mill anyway until you had your plans made?

Mr. KLOBUCHER. We had our plans made. We had enough plans at the time to go ahead and start on that mill.

Mr. DE NEFFE. As a matter of fact, you have not got your specification ready yet?

Mr. KLOBUCHER. Oh, yes, we have, and we are ready right now to go ahead without interfering with that work at all. The few there are to be got out can be gotten out as the work progresses.

Mr. DE NEFFE. Well, you can not build a mill without specifications, can you?

Mr. KLOBUCHER. We have gut the specifications.

Mr. DE NEFFE. They are not finished yet, you say?

Mr. KLOBUCHER. I do not suppose that all the details are out yet. A lot of them won't be out until the mill is three-quarters finished.

Mr. DE NEFFE. That is all.

Mr. HALLOCK. To what extent did Mr. Barnes delay you over in Grant County?

Mr. KLOBUCHER. We were shut out entirely; we could not go through his land.

Mr. HALLOCK. Did he actually tell you to take your crews and get out of there?

Mr. KLOBUCHER. He did: he ordered them off his premises and stopped the contractor from working.

Mr. HALLOCK. Was that a situation, Mr. Klobucher, where you were actually dickering with a party for the right of way and Mr. Barnes told you to condemn, and ultimately got you off of there?

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Mr. KLOBUCHER. Yes, sir. We did not know Mr. Barnes owned it until he came up and forced us off of it.

Mr. DE NEFFE. How big was that tract?

Mr. KLOBUCHER. One hundred and fifty acres.

Mr. DE NEFFE. There was a lot of other line there that you could have worked on?

Mr. KLOBUCHER. Oh, yes, but in this particular case we had a contractor up there that wanted to work on that particular part of the line. We had other work to do; yes.

Mr. DE NEFFE. Sure. Plenty of room. That is all.

The CHAIRMAN. Mr. Klobucher, if you had been adequately financed could you have the project completed in conformance with the contract yon made, up to date?

Mr. KLOBUCHER;. It would have been possible, Senator; yes. The work could have been crowded through and could have been completed. I do not know that the work could have been carried on to the best advantage and completed within that time—probably at some additional expense.

The CHAIRMAN. That is all.

Mr. DE NEFFE. By doing the heavy work in the winter, the tunnel and that heavy work, you could have speeded it up quite a lot, couldn't you?

Mr. KLOBUCHER. We could have.

Mr. DE NEFFE. That is all.

The CHAIRMAN. You will be excused, Mr. Klobucher. We will recess now until Monday at 10 o'clock.

(The letters and telegrams produced by Mr. McGowan in response to the request of Mr. De Neffe and submitted by Mr. De Neffe at the beginning of the morning session are here printed in full, as follows:)

BURNS, OREG,. *February 21, 1923.*

FRED E. AMES,
United States Forestry Office, Portland Oreg.:

We feel common-carrier clause should be retained Burns to Seneca in good faith with Bear Valley and Grant County citizens as that is part of original development plans tentative offer now in does not require elimination we earnestly urge its acceptance.

I. S. GEER,
President Burns Commercial Club.

BURNS, OREG., *February 20, 1923*.

FRED E. AMES.
United States Forestry Office, Portland, Oreg.:

Your message received. Will wire answer to-morrow. Appreciate consideration.

I. S. GEER.

BURNS, OREG., *February 16, 1923.*

FRED E. AMES.
Assistant District Forester, Portland, Oreg.:

Received your telegram. Regret outcome of advertisement. Am putting great faith in future steps toward consummation actual sale as agreed with Colonel Greeley. Please keep me posted on future events. Accept our thanks.

I. S. GEER.

{579}PORTLAND, OREG., *February 16, 1923.*

I. S. GEER, *Burns, Oreg.:*

Regret very much no bids received Bear Valley timber. Am consulting forester. This office greatly disappointed, but you may be assured further active steps will be taken to make a sale.

AMES.

FOREST SERVICE,

Portland, Oreg., February 20, 1923.

I. S. GEER, *Burns, Oreg.*:

Since common-carrier railroad clause is undesirable feature of contract to operators, it would facilitate further negotiations if we could have expression of whether would be satisfactory to community if common-carrier requirement made to apply as far as Burnt only. Immediate action desirable.

AMES.

BURNS. OREG.; *October 3, 1924.*

THE. FORESTER, *Washington, D. C.:*

In connection with obtaining right of way for our railroad from Burns to the Bear Valley timber we find that certain lands across Silvies Valley were withdrawn for reservoir purposes along about 1902. In making our survey we have concluded that no other feasible route exists except that across about 2½ miles of this withdrawal, through section 12, township 19 south; range 31 east, and section 6, township 19 south, range 32 east, giving our location over such vacant land as has been withdrawn and which, so far as we know, has not been restored.

Until recently we were under the impression that all this land had been restored, as the appraisal of this timber was made on the basis of construction and operating cost across this land in the Silvies Valley. The cost of construction above the reservoir site is prohibitive.

In order to complete as much grading as possible before winter weather sets in, we desire to secure proper authority to begin construction over and across this land as soon as possible. We are therefore requesting that you take this matter up with the Commissioner of the General Land Office, in an attempt to either have these areas restored as soon as possible, or to secure for us proper authority to start constriction pending such action on their part as will be required before right of way can be granted. We are making application for such right of way direct to the commissioner, but as your influence will do much to expedite the matter, we are requesting your assistance, which will be thoroughly appreciated.

The use of this site for reservoir purposes is very remote and improbable, as another more favorable site exists, which will undoubtedly be the one selected if the project is ever actually developed.

So far as we know no valid reason exists for continuing to hold this land for reservoir purposes. It is, however, very essential in the development of the Bear Valley timber that a railroad right of way he granted.

Very truly,

FRED HERRICK LUMBER CO.,
J.W. GIRARD,
General Manager,
By FRANK J. KLOBUCHER,
Chief Engineer.

OCTOBER 9, 1924.

FRED HERRICK LUMBER CO.,
Burns, Oreg.

GENTLEMEN: Receipt is acknowledged of Mr. Klobucher's letter of October 3, asking that this office endeavor to secure prompt action in the General Land Office on your application for authority to construct the proposed railroad across certain lands withdrawn for reservoir purposes in section 12, township 19

south, range 31 east; section 6, township 19 south, range 32 east; and sections 30 and 31, township 18 south, range 32 east, Willamette meridian. Upon receipt of Mr. Girard's wire, the matter was taken up informally with the proper officials in the Department of the Interior, with the result that

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the Acting Commissioner of the General Land Office with the approval of the First Assistant Secretary of the Interior, sent the following telegram to you at Burns on October 7:

"Government does not contemplate using upper Silvies River reservoir site for several years. Have no objection to railroad being constructed across site on condition that company will agree to remove road without expense to Government in case it is found to interfere with reservoir when that is constructed. State engineer's office has map showing topography of the site."

I do not believe there is anything I can add to the acting commissioner's telegram except to say that the Forest Service will, if possible, he glad to be of any further assistance in the matter. However, as you doubtless appreciate, the matter is entirely under the jurisdiction of the Department of Justice.

Very truly yours,

E. E. Carter, *Acting Forester.*

MR. ROBERT M. DUNCAN,
McCulloch & Duncan, Burns, Greg.

DEAR SIR: Colonel Greeley has asked me to acknowledge the receipt of your letter of October 24, with which you sent him a resolution adopted by the business and professional men of Burns and later signed by some who did not attend the informal meeting at which the resolutions were adopted. He has noted that the resolutions bear the signatures of many of the business and
professional men of Burns.

I can assure you that these resolutions will be very carefully considered by the Forester in arriving at a decision in regard to the request of the Herrick Lumber Co. for an extension of the date by which cutting must begin under the terms of that company's contract for timber on the Malheur National Forest. This request by Mr. Herrick has been referred to the district forester, at Portland, with instructions to furnish his recommendations. I am now sending to the district forester copies of your letter and of the papers which accompanied it for his consideration in preparing his recommendations.

Very truly yours,

E. E. CARTER, *Assistant Forester.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, October 16, 1924.

DISTRICT FORESTER,
Portland, Oreg.

DEAR SIR: I inclose two copies[1] of a letter dated September 30 from Mr. Fred Herrick, together with two copies of the Acting Forester's reply. This letter brings to a head the situation which has been developing during the past year as the result of complaints from various people that Mr. Herrick was not pushing his construction work and which led to Mr. Sherman's wire of September 15 to Mr. Herrick and his wire of the same date to Senator McNary, in which latter wire was included the statement "no extension will be granted without full consideration all parties interested." This is a promise which must, of course, be kept, although decision will be made by the Forest Service and not by Mr. Taylor, Mr. Barnes, or the Brooks-Scanlon Lumber Co.

Obviously Mr. Herrick is entitled to an early decision, since, according to the statements in his letter of September 30, I assume he is now incurring considerable expense in building a railroad north of Burns.

Very truly yours,

E. E. Carter, *Assistant Forester.*

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[1]The "i" form of the word is used throughout the document. Modern dictionaries prefer the "e" form.

OCTOBER 16, 1924.

MR. FRED HERRICK,
St. Maries, Idaho.

DEAR MR. HERRICK: Your letter of September 30, in which you request an extension of one year in the time by which, under the terms of your timber-sale contract on the Malheur Forest, cutting is to begin, is received.

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The district forester at Portland has been asked to submit his recommendations. When they are received I shall be glad to write you further.

Very sincerely yours,

E. E. CARTER, *Acting Forester.*

MILWAUKEE LUMBER CO.,
St. Maries, Idaho, September 30, 1924.

COL. WILLIAM GREELEY,
Washington, D. C.

DEAR SIR: Inclosed find telegram received from your office.

Will say we have the road completed to Burns, which with sidings and depot grounds amounts to 36 miles. We have 13 miles graded and bridges built beyond Burns, and Girard is going to complete 18 miles on the Seneca end within the next 90 days, and then we expect, right after the first of the year, to put in a steam shovel and push along the work as fast as reasonably possible and there need be no question but what we will get the sixty million cut prior to July 1, 1928.

I am going to ask you for one year's extension of time on this contract, and I know you will consider that this is a big proposition to work out, getting the cash by your right hand out of your left-hand pocket. Pleased to say we are building a main-line railroad; the best that can be built. We have our mill site secured at the big spring and about all rights of way for entire line to Seneca. At the present moment we have had no settlement with the Union Pacific for the 36 miles they are running trains over. President Grey has promised me he will be in position to settle the first part of October.

Yours respectfully,

Fred Herrick.

FOREST SERVICE, DISTRICT NO. 6,
Portland, Oreg., November 6, 1924.

MR. JAMES GIRARD,
Burns, Oreg.

DEAR GIRARD: After reviewing Mr. Herrick's letters of October 3, which you prepared, I notice one point which requires some additional explanation. In his letter of September 30 to the Forester, Mr. Herrick stated that up to the present time there had been no settlement made by the Union Pacific for the railroad built and that President Grey had promised it by the first part of October. It is not stated explicitly, but the implication is that this settlement world facilitate and hasten further construction.

In the above-mentioned letter, however, it is stated that the agreement with the railroad was that reimbursement would be made after the mill started to operate. These two statements do not appear to correspond.

I have just received a letter from the Forester in which he says he is very glad that we arranged to have the announcement in regard to the application for an extension of time made by your company, and it appears to him that it is much better to have the information given out in this way. I would suggest, therefore, that this be done in whatever fashion appears to you most advisable.

Sincerely yours,

FRED AMES,
Assistant District Forester.

FOREST SERVICE, DISTRICT NO. 6,
Portland, Oreg., November 26, 1924

MR. JAMES GIRARD,
Fred Herrick Lumber Co., Burns, Oreg.

DEAR MR. GIRARD: Referring to the last paragraph of my letter of November 6, I should appreciate it if you would let me know what has been done in the way of letting it be known that the application for extension of time has been made by the company, since I suppose that if you should decide that you do not care to give out this information it will be up to us to do so in some manner.

Very truly yours,

FRED AMES,
Assistant District Forester.

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DECEMBER 1, 1924

DISTRICT FORESTER,
Portland, Oreg.

DEAR MR. AMES: Reference is made to your letter of November 26. Upon my return to Burns I notified a few of the business men here of our application for one year's extension of time.

Yours very truly,

FRED HERRICK LUMBER CO.,
By JAMES W. GIRARD, *Manager.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, January 19, 1925.

DISTRICT FORESTER,
Portland, Oreg.

DEAR SIR: You have previously been sent copies of Colonel Greeley's letter of January 6 to Senator McNary, in regard to the above case. Since that time, Colonel Greeley has had one or more conferences with Senator McNary and with Representative Sinnott, at which the situation has been discussed in some detail. The greatest difficulty to following exactly the program proposed in the letter to Senator McNary is that Mr. Herrick, according to reports that reach us, has from time to time endeavored to dispose of his project on the Malheur to various people under circumstances that, taken by themselves, do not indicate as firm an intention to push construction work as his statements to the Forest Service would lead one to expect. As the thing stands at present, it seems unwise for the Forest Service to grant Mr. Herrick's request for a full year's extension with no intermediate check on his accomplishments in the way of construction which will be the acid test of his good faith. If the extension were granted in the form requested by Mr. Herrick, it would be impossible to take action to cancel the contract before April 1, 1926, even if we were fully satisfied that Mr. Herrick's efforts did not constitute a satisfactory showing of good faith, and with the present wording of the contract it is possible that he could meet technically the present requirements in a way that would prevent cancellation for still another year.

Under these circumstances, the present program is to determine, after consultation with members of your office and with representatives of the company, some definite requirements in the way of construction which the company must meet by a date in the early fall of 1925, such as September 1, and to have this requirement embodied in the contract by means of a modification; or possibly this can be done by granting an extension of the date by which cutting may begin for five months, with a statement that an additional extension will be granted if the construction work by the company meets these requirements during that period. My present feeling is that a formal modification will be desirable in order to avoid any question as to what constitutes the beginning of operations, and to substitute for that phraseology in this case a definite contractual obligation for specific construction work.

We appreciate here that Mr. E. W. Barnes is especially anxious, on account of his land-speculation activities, to have any such requirement include the construction of the sawmill. We also appreciate that completion of the sawmill ahead of the completion of the transportation facilities necessary to bring logs to that mill represents an unnecessary and uneconomic tying up of capital. Our present thought, therefore, is

that the construction requirements should be based in railroad construction rather than on sawmill construction after the discussions hereinafter referred to.

The Forester has instructed me to go to Burns on the termination of the conference at Ogden for discussion with a representative of your office (preferably Mr. Ames), the supervisor, and Mr. Herrick , or his representative, in regard to (a) the exact present situation with respect to construction activities by the company; (b) the requirement in regard to construction to be met by the company if it is to hold its contract beyond some such date as September 1, 1925; (c) the action necessary to have failure to meet this requirement indisputably recognized as sufficient grounds for cancellation. It is not intended to hold anything in the nature of public hearings in Burns, although we can not well refuse to talk with or to listen to anyone who may wish to furnish us with information. My own idea is that public announcement of our projected trip is unnecessary, since the only reason for going to Burns instead of meeting the supervisor and

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the representatives of the company elsewhere is to have available the company's records and other data which may be necessary in order to get a complete understanding of the situation.

If the Ogden meeting goes as well as I hope it will, it should be possible to hold conference at Burns on February 15. If it proves desirable to change this date Mr. Ames can notify the supervisor and the officers of the company from Ogden. Meanwhile I am depending on you to notify the company and the supervisor, and suggest that you give as much consideration as the data now available to you will permit to a preliminary consideration of the requirements which should be set up as a showing of good faith and the date which should he fixed as that
by which these requirements must be met.

Very truly yours,

E. E. CARTER, *Assistant Forester*.

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, February 27, 1925.

HON. CHAS. L. MCNARY,
United States Senate.

MY DEAR SENATOR: I have previously discussed with you in person and by letter the action which this service should take on the application of Mr. Fred Herrick for an extension of the date by which he is required, under the terms of his timber-sale contract, to begin logging on the Bear Valley unit on the Malheur National Forest. Recently I sent Assistant Forester Carter to confer with the district forester and his assistants in regard to this request. They met with representatives of Mr. Herrick at Burns and also invited any of the citizens of that region to furnish them with any pertinent facts which should be placed before me for consideration in reaching a decision on Mr. Herrick's application.

The facts as brought out at these conferences have convinced me that Mr. Herrick should have an opportunity to carry out his contract, but that any extension such as he requests should be accompanied by requirements of continuous and diligent work on a scale which will assure the completion of the necessary railroad construction and other improvements by the time cutting must begin under the terms of the contract as modified. I have, therefore, authorized the district forester to approve a modification of contract under which definite requirements in the construction of the railroad from Burns to Seneca and in the construction of the mill and its appurtenances must be met by Mr. Herrick on July 1, October 1, and December 31, 1925, and April 1, 1926, and the railroad from the mill to the timber and the sawmill must be ready for operation and operations in Government timber must begin by October 1, 1926. These requirements are reasonable and I feel that failure to meet them will be ample evidence of a lack of good faith on the part of Mr. Herrick which will justify me in terminating his contract and reoffering the timber for sale through public advertisement.

In drafting the requirements to be met by specific dates, uncertainties as to the weather and the time of year when certain work can be done most economically were given very careful consideration. Briefly, the requirements are: That at least $100,000 must have been spent on grade construction between April 1 and July 1, 1925; that by October 1, 1925, railroad grade construction must have been completed on specified sections of the route, totaling some 30 miles, and work on the sawmill foundations and log-pond excavations must have begun; that on December 31, 1925, additional specific sections of the railroad grade, totaling some 9 miles, must have been constructed and the foundations for the sawmill and the excavations of the log pond must have been completed; and by April 1, 1926, the railroad grade, including all cuts, fills, tunnels, bridges, trestles etc., shall have been completed from Burns to a specified point near Seneca. This

will leave available the summer of 1926 for the laying of steel on the railroad, the construction of the sawmill building and the installation of machinery.

Very sincerely yours,

W. B. GREELEY, *Forester*.

BURNS, OREG., *July 3, 1925*

DISTRICT FORESTER, *Portland, Oreg.*

DEAR SIR: There is inclosed confirmation copy of telegram sent you yesterday and report on the present statue of the construction work accomplished by the company from April 1 to July 1 of this year.

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Due to the advisability of saving time in this matter I have taken the liberty of direct correspondence with you, rather than through the usual proper channel of the supervisor.

Supervisor Dutton kindly gave his consent to this procedure by phone.

My wire stated that $10,000 had been promised by wire from Mr. Herrick to-day. This was an error; it should have been "after the 4th."

Although the local management has made splendid progress with the limited funds advanced, and have the work so started and laid out that it can be pushed to completion to the satisfaction of the contract, there is still the usual lag in supplying funds.

I am quite well convinced that Mr. Herrick still feels that he can delay the construction of the mill even as much as a year beyond October, 1926.

To insure the protection of the service without the granting of further modifications, it is believed that Mr. Herrick should be firmly pressed. As near as can be estimated an increase in his monthly allotments to this project to $50,000 for the July, August, and September period will be ample.

Although I have entirely avoided any indication of soliciting information or advice from local people, I have talked with two prominent men (locally) who seem to know that the required expenditure has not been made, and the general sentiment is one of anxiety for the work to be pushed more speedily. As near as I have been able to learn, very few seem to know what has actually been accomplished on the railroad, even though there has been around 100 men on the job for some time. The town developments are apparently at a standstill awaiting developments on the mill. This seems to be the only point of immediate concern and when work is started on the site or the changing of the highway between Burns and the site of the mill, or even work on the logging railroad from Burns to the mill, I think most of the anxiety will be quieted.

I have heard of no serious complaint from contractors. I have met several of them, particularly those handling the most important jobs and they are working without apparent uncertainty. I have observed that they get sufficient funds to work on. This would obviously not be true, however, if the local management were plunging ahead with larger expenses while funds are deficient. I am fully convinced that with a 25 per cent to 30 per cent increase in the labor force that the remaining construction requirements of the contract can be readily met and in view of the actual physical accomplishments made during the past three months it is my opinion that the company should be allowed to proceed, under pressure for more speed at once.

Although local residents are not frantic, they are very much concerned and curious to know what the service will do under the circumstances. In view of this I would suggest some form of statement for local publication as soon as it is believed advisable to do so.

I have attempted to state only facts in all details and hope that the information is sufficient for you to make a clear decision. Will be here on the forest for three weeks or more so that I can be readily reached if any further points need clearing up.

Very truly yours,

B. E. HOFFMAN,
Logging Engineer.

P. S. Copies of all correspondence and the report are being forwarded to Mr. Dutton for such comment or recommendations as he may wish to make.

B. E. H.

PRAIRIE CITY, OREG., *July 9, 1925*.

MR. FRED AMES, *Spokane, Wash.*

DEAR MR. AMES: In response to the district forester's wire of July 8 "Did local management endeavor secure funds in amount of contract requirement from Herrick and could additional funds have been expended with reasonable efficiency on labor prior to July 1. Send word Ames Davenport, Spokane by 12th and send copy Portland." My answer is, briefly, yes.

Statements of Mr. Girard indicate clearly that additional work has not been done previous to July 1 and a larger sum expended because he has not been able to get adequate funds from Mr. Herrick. Mr. Girard stated that he has constantly warned Mr. Herrick that unless more money was available the $100,000 July 1 requirement could not be met. He stated that Mr. Herrick told him early in the spring to be sure to spend the money as required, but contrary to this he was unable to put on a larger organization because of the scant funds actually

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made available to cover expenditures. Apparently Mr. Herrick failed to keep his promise to Girard.

The work has been so laid out and conditions have been such that I: could have been speeded up 50 to 100 per cent with reasonable efficiency and economy.

In spite of the delay caused by the bad weather of March and April, the months May and June offered ample possibility for fulfilling the July 1 requirement at least 80 per cent. In other words, it is believed reasonable to assume that the company paid for labor and materials (timbers, hardware, etc.), instead of only a little over $44,000. I have included materials actually placed in the grade and bridges as a part of "construction." It constitutes a small proportional amount, however, in relation to labor.

As has been stated in the report the local management has everything lined out ready to go ahead at top speed or at a rate sufficient to insure compliance with the contract on October 1. To go ahead at the necessary speed means that they must have at least $50,000 for July, $50,000 for August, and the same for September. Unless funds to these amounts are made available, I am quite sure that the modified contract can not be satisfied on October 1, or any of the other periodic dates (January 1, April 1, 1926, or October 1, 1926).

As things are now going it may be necessary for the local management to reduce their force on account of the lack of ready money. In this connection I believe we should not overlook the absolute necessity of beginning work on the mill site not later than August 1.

Sincerely yours,

B. E. HOFFMAN,
Logging Engineer

MILWAUKEE LUMBER CO.,
St. Maries, Idaho, August 18, 1925.

COL. W. B. GREELEY,
Chief Forester, Washington, D. C.

DEAR SIR: I inclose herewith a letter just received from Mr. Blaine Hallock, who is a very prominent attorney in Oregon, and its contents comes to me as a surprise.

While I have known in a way that Mr. Barnes has been much displeased that his people, the Brooks-Scanlon Lumber Co., were not the successful bidders on the Malheur sale, I did not know they would resort to such tactics.

Barnes had optioned considerable timber and a mill site, which he took over completely, timber options, mill site and all, giving him a new profit of between $16,000 and $20,000, which was perfectly satisfactory to Barnes at that time. Later on, he optioned and partially bought a large tract of land adjoining Burns
with the view of promoting a "Longview" addition to Burns, but lots did not sell as he had expected and Barnes found himself in financial trouble and I understand a Bend, Oreg., lumber company are now financing his program.

I am of the thought that Mr. Girard is doing most excellent work, building the best logging railroad in America, doing the work nearly all with local men, distributing the money to the best interests of the Harney County public, whom should benefit by this operation. Up to the present time, I have put over $600,000 cash into the deal and have taken this gradually out of my other operations without borrowing a dollar. This was my plan from the inception and it has been my aim to build there, a business and monument for my three little daughters to care for them during their lives.

I have at all times been of the opinion that the very essence and intention of the contract was that if by

June 1, 1928, I would have cut 60,000,000 feet of timber, the contract would be complied with to the letter.

I would ask that you personally get a report on Mr. Girard's work that has been done, also give the inclosed letter consideration and let me know your findings and wishes along all lines of the contract. Give me as liberal terms of time as you possibly can and I will complete you as practical a plant as can be built.

Yours respectfully,

FRED HERRICK.

APRIL 22, 1926.

Memorandum for files.

On receipt of the district's wire of April 22, it was discussed with Colonel Greeley, who felt that the practical certainty of court action in the form of an injunction or restraining order being applied for by Herrick and the possibility

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of charges in Congress or elsewhere that the Forest Service was arbitrary and bureaucratic in dealing with Herrick made it essential that every step be completely shown in the written record and be absolutely sound, both legally and administratively. Acting on the theory that the district forester is the administrative officer of the Forest Service handling this sale, he felt that the first thing was to have decision by the district forester, from which decision or course of action, Herrick, if he chooses, can make formal appeal to the Forester; and that, pending the receipt of such appeal and full statement of Herrick's side of the case, the Forester should not issue instructions which would take the case out of the hands of the district forester. On this basis the following telegram was prepared and sent to the district forester:

"Your Herrick wire 22d Forester wants written record our action to be complete and to show action sound legally and administratively. First step is for you as local representative Forest Service to give Herrick formal decision on his compliance with requirements. This statement must be complete as basis subsequent legal action including full recital facts. If necessary your judgment to protect interests United States have statement include formal demand for payment $50,000 liquidated damages and statement that Herrick can appeal from your decision to Forester and if appeal taken must file with you within 30 days complete statement his case for review by Forester include also specific modifications contract and stipulations which are necessary to protect interests Government and which will be acceptable in lieu of cancellation. Have assistant solicitor approve before sending Herrick. No word direct from Herrick here." Before sending this wire a copy of it was taken to the solicitor's office and discussed with Mr. Lees, and then with Mr. Lees and Mr. Williams, by Mr. Fitzwater and myself. Mr. Williams gave unqualified approval of the telegram after it had been explained to him that legal action is almost certain to follow. He also stated that he felt we had a clear case on the question of the collection of the $50,000 as liquidated damages.

E. E. CARTER, *Assistant Forester*

MAY 11, 1926.

Memorandum for files.

A conference at which Mr. Sherman, Mr. Fred Herrick, and Mr. Fitzwater were present was held in Mr. Sherman's room Saturday morning, May 8. Mr. Herrick's visit to the office was the result of District Forester Granger's formal demand upon Herrick, under date of April 26, 1926, to pay $50,000 damages within 10 days of receipt of his (Granger's) letter.

Mr. Sherman asked Mr. Herrick if his visit was for the purpose of making an appeal from Mr. Granger's formal demand, to which Mr. Herrick replied that it was, but that he desired to make his plea to Colonel Greeley in person. He was advised by Mr. Sherman that he (Sherman) had been fully authorized by Colonel Greeley to hear the appeal and take action, and that he would be glad to do so, but if Mr. Herrick desired, it could be arranged for him to meet Colonel Greeley.

Mr. Sherman went over the case briefly, but stressed particularly the modification signed September 3, 1925, by Herrick, which instrument provided for a cash bond of $50,000, the proceeds from which could be taken by the Government if certain requirements as to construction itemized in the modification were not complied with by certain specific dates. He asked Mr. Herrick if he did not sign that modification, knowing fully what it contained and with the full understanding that the Government would keep the proceeds from his bond if he did not comply with his contract. Herrick said that he did, but that he did not think that the

Government would really take his money. He maintained that he has always considered the essence of his contract to be that he cut 60,000,000 feet by June 1, 1928, and that this he intended to do without fail.

Mr. Sherman made it very plain to him that Colonel Greeley had lost faith in his promises and had come to the decision that it would require something more than mere words to convince Fred Herrick that his Government contract meant what it said. Mr. Sherman told him very plainly that from start to finish the contract has been a series of modifications and that he (Herrick) has not shown good faith: that the people of Burns have lost faith in him and this in turn has caused them to question the business integrity of the Forest Service. Mr. Sherman stated further, that Herrick's appeal to Colonel Greeley would have to furnish evidence conclusive in itself, showing that District Forester Granger's review of the case was in error and that the requirements had substantially been

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met; that very little weight could be given to the character of work done in the past, amount of investment, etc. Herrick admitted that he had not met the requirements, but had missed by a very narrow margin of some 45 days, that Jim Girard had dirt flying right now, and that the requirements would practically be met by the time he had his final conference with Colonel Greeley.

Herrick remarked that he knew that neither the business men of Burns nor the Forest Service wanted to see his contract canceled and some one else given the timer. Mr. Sherman's reply to this was to the effect that he was not so sure that Herrick was right about the attitude of the Forest Service; that if Herrick's past, dilatory action in construction was a reflection of what might be expected in the actual handling of the sale as to slash disposal, payments, etc., the Forest Service might well be justified in making a change at this time. Mr. Herrick did not concur in this, but assured us that in slash disposal at least we could find him only too willing to comply with our requirement, and referred us to D-1 supervisors as to the results they have experienced in cooperation with him in this activity.

Mr. Herrick asked Mr. Sherman to frame a reply for him to Mr. Granger. This Mr. Sherman refused to do, advising Mr. Herrick that that was his job. Neither would Mr. Sherman tell him whether he should make his appeal written or verbal but asked Mr. Herrick if he (Herrick) were in the Forester's place and had to later back up his decision and state on what grounds he based it, whether he would want to produce a written statement of facts or say Fred Herrick told me so."

Before leaving Mr. Herrick said he would make a written appeal at once to Colonel Greeley and submit it through District Forester Granger. It was further tentatively agreed that Mr. Herrick would meet Colonel Greeley in Washington May 24-25, and that we would advise Herrick definitely as to the date.

J. A. FITZWATER,
Acting Assistant Forester.

MAY 24, 1926.

Memorandum for the Forester.

I have discussed with Fred Lees informally the problem of requiring Mr. Herrick to forfeit a part of his $50,000 bond. Without going into it thoroughly, he feels that no doubt Staley was right in his advice to Granger that so far as he (Granger) was concerned his action would have to be to forfeit all or none.

Mr. Lees said that most of our timber sale contracts have a clause which permits us to forfeit the bond in whole or in part, but he was unable, with a hasty review of the case, to find any such clause in this contract. In any event it is very doubtful if it would apply to the collateral conditions which Herrick has failed to meet in this instance.

He said, however, that the Secretary of the Treasury had authority to accept a compromise, and that this case could be taken up with that department by Secretary's letter. After some discussion, however, he outlined the following as being what he believed to be the best procedure:

When Herrick presents his appeal the position you should take is that it is your job to enforce the Government's contract: that in the absence of a substantial compliance with the contract his bond is subject to forfeiture in full, you being without authority to require less than the amount specified in the contract. However, if Mr. Herrick feels that such action would be inequitable he may appeal to the Secretary of the Treasury (actually to the Solicitor of the Treasury Department), and if your recommendations are called for you will recommend that an offer of settlement from Mr. Herrick of an amount which you believe to be equitable, say $25,000, be accepted in lieu of the forfeiture of the entire bond. This would put you in the position of acquiescing in the acceptance of a small amount instead of affirmatively recommending it. In other words, place the burden of appeal upon Mr. Herrick, where it belongs.

E. A. SHERMAN,

Associate Forester.

PORTLAND, OREG., *December 7, 1926.*

FOREST SERVICE,
Washington, D. C.:

Reply wire Herrick sale. Girard reports November 30 that heavy rains prevented track laying since conference November 12. This will make track-

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laying fall very considerably short on December 15 as now stipulated therefore difficult to accept as substantial compliance. Believe would be better have prior modification executed extending date for completion of railroad and beginning of logging to February 15. Please rush reply.

FRED AMES.

DECEMBER 9, 1926,

FOREST SERVICE,
Portland, Oreg.:

Your Herrick wire 7th. Notify Herrick that we defer action on compliance with December 15 requirement until about February 1 when accomplishment of railroad and mill construction work in accordance stipulations will be considered at same time.

GREELEY.

DECEMBER 22, 1926.

HON. C. L. MCNARY,
United States Senate.

MY DEAR SENATOR: I am glad to write you in response to your request for a statement in regard to the Fred Herrick timber sale contract on the Malheur National Forest.

This contract was approved on June 15, 1923. Since then Mr. Herrick has disbursed over $1,000,000 for labor, material, and equipment. The results are;

1. Union Pacific trains are running into Burns, instead of stopping at Crane, 30 miles away.
2. The logging railroad has been graded from Burns to the timber, a distance of over 50 miles.
3. Steel has been laid on 30 miles of this grade, and if it had not been for the unusual rains during the past fall, would have been laid the entire distance by this time.
4. The mill pond has been completed, and the power house is nearing completion, with the boilers and turbines purchased.

This accomplishment is not as great as I expected when the contract was signed. Mr. Herrick has tried to finance this undertaking without borrowing money or issuing bonds, and his delays have been due chiefly to that fact. I have modified his contract three times, each time with more detailed requirements for the completion of specific construction work or the furnishing of specified sums of money for construction activities, and on his failure to complete the construction required to be finished on April 1, 1926, I enforced the collection of $50,000 liquidated damages before approving the third of these modifications last July.

I have approved these modifications of Mr. Herrick's contract instead of canceling it, because I have believed and still believe that to do so would be to the best interests of the Government and of the people of the region. Cancellation would mean a long delay in the development of the whole project while some new company, if any were ready to undertake the project, either bought or duplicated the improvement work done by Mr. Herrick. This delay might readily postpone the actual logging and milling of the timber longer than if Mr. Herrick were allowed to continue.

Mr. Herrick has not complied fully with the requirement of his contract, as modified, that the railroad from Burns to the timber be ready for operation by December 15, and it is obvious that the mill will not be completed by March 1, 1927, as the contract now stipulates. He is now planning to issue bonds to the

amount of $500,000, and to use this money for the completion of his mill and for the purchase of equipment. The bankers and bond brokers with whom he has been negotiating for this bond issue have pointed out to him the necessity for a further modification of contract if they are to underwrite the bonds. I recently told a representative of Mr. Herrick that I would approve a fourth modification if I could be assured that the mill construction and the completion of the railroad would be pushed as fast as seasonal conditions permitted. One form of assurance discussed was active participation by the bonding house in the control of the construction work, although some other more satisfactory form of assurance may be found.

What everyone wants is to have the logging and milling of the timber begin at the earliest practicable date. Apparently, Mr. Herrick is now trying to arrange for the further financing of the project in a way which will make this

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prompt action possible. I intend to give him time to carry our his plan, both because it is only fair to him to have a chance to use the large investment already made and especially because I believe this course of action offers the best prospects for the early beginning of logging and milling. Meanwhile Mr. Herrick has been notified that, by February, the Forest Service must consider with him the Status of his contract, with especial reverence to the existing requirement
that the mill be finished by March 1. The recent discussions in regard to the bond issue make me hopeful that the rapid completion of the job will be assured.

Very truly yours,

W. B. GREELEY, *Forester.*

(Whereupon, at 4:35 o'clock p. m., the committee recessed to meet Monday, February 21, 1927, at 10 o'clock a. m.)

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HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREG.

MONDAY, FEBRUARY 21, 1927

UNITED STATES SENATE,
SUBCOMMITTEE OF THE
COMMITTEE ON PUBLIC LANDS AND SURVEYS,
Washington, D. C.

The subcommittee met at 10 o'clock a. m. pursuant to the recess on Saturday, February 19, 1927, in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (chairman), Cameron, and Kendrick.

Present also: Colonel Greeley, Chief of the Forest Service, and D. F. McGowan, attorney representing United States Forest Service; Blaine Hallock, attorney representing Fred Herrick, James W. Girard and Frank J. Klobucher; Frederick M. De Neffe, attorney representing Grant County, Oreg.

The CHAIRMAN. The subcommittee will come to order.

Mr. HALLOCK. Mr. Chairman, we are in this situation: The hearing has extended over quite a considerable period of time, and only two of Mr. Herrick's witnesses have taken the stand, Mr. Girard and Mr. Herrick himself. Mr. Girard has been cross examined to some extent, but Mr. Herrick has not yet been cross examined. We have two gentlemen from Burns, Mr. Byrd and Mr. Jamieson, who have been here for many days; we also have Mr. George L. Gardner, whose testimony will be brief, and he is ill. He has been in bed several days, at the Hotel Willard, during his stay in Washington. He is up here at the committee room this morning, and is very hopeful that he may be permitted to testify at this time. Under the circumstances I feel that counsel will no doubt be willing to extend that courtesy to him.

Now, with respect to these other gentlemen, I appreciate that counsel is at some disadvantage in not being able to follow up his cross-examination immediately upon the conclusion of the direct examination of our witnesses. But in the circumstances we are going to urge, Mr. Chairman, that in view of the limited time now at our disposal that we be permitted to put not only Mr. Gardner on the stand, but also Mr. Jamieson and Mr. Byrd for a brief examination, before counsel proceeds with his cross-examination further of Mr. Girard and Mr. Herrick, which will probably consume a good deal of time.

I am making this suggestion and this request, realizing that we have already had to impose upon counsel to some extent in the matter of the order of the proof and certain privileges byway of cross-examination which he would ordinarily most certainly be entitled to.

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Mr. DE NEFFE. Mr. Chairman, I always like to be accommodating and agreeable in these matters, but the chairman and the subcommittee will remember that my cross-examination has been all split up; that before I was half through with Colonel Greeley they put on, I think, Mr. Herrick, and then before I could cross-examine Mr. Herrick they put on somebody else. And the situation that the matter is in now is, that the only one I have finished with at the present, and of course I may want to call him again, is Colonel Greeley . I have not cross-examined Mr. Herrick at all, and am only about half through with Mr. Girard. I would rather go right ahead and finish the cross-examination of these witnesses as long as their direct examination is in.

Of course, as to the matter of sickness, there is always something that ought to be considered, and I do not want to be arbitrary about Mr. Gardner, but it seems to me that in the case of Mr. Byrd and Mr. Jamieson that there is absolutely no reason to put them on now. They are just here as I see it to express the public sentiment at Burns. That has nothing to do with the meat of this case.

Mr. HALLOCK. They will cover more than that.

Mr. DE NEFFE. There is no reason why they can not wait and take their turn.

The CHAIRMAN. You have serious objection to the other two witnesses whose names have been mentioned, but do you have any objection to Mr. Hallock now putting Mr. Gardner on?

Mr. DE NEFFE. No; because he is a sick man.

The CHAIRMAN. I realize that your cross-examination has been broken in upon. Mr. Hallock, you may call Mr. Gardner at this time.

Mr. HALLOCK. Mr. Gardner.

The CHAIRMAN. Hold up your right hand. Mr. Gardner, you do solemnly swear that the evidence you are about to give in the hearing now being held by this subcommittee of the Committee on Public Lands and Surveys of the United States Senate, will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GARDNER. I do.

TESTIMONY OF GEORGE L. GARDNER, OF SPOKANE, WASH.

(Direct examination by Mr. Blaine Hallock, attorney representing Fred Herrick , James w. Girard, and Frank J. Klobucher:)

Mr. HALLOCK. Mr. Gardner, your name is George L. Gardner?

Mr. GARDNER. It is.
Mr. HALLOCK. Where do you reside?

Mr. GARDNER. At Spokane, Wash.

Mr. HALLOCK. And what is your business?

Mr. GARDNER. I am in the timber and logging business.

Mr. HALLOCK. How long have you been identified with the timber and logging business?

Mr. GARDNER. All my life.

Mr. HALLOCK. Are you an operator as well as a dealer in timber and timber lands?

Mr. GARDNER. Yes, sir.

Mr. HALLOCK. To what extent are you an operator?

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Mr. GARDNER. Well, I am interested in a pine operation in Washington, a two-band mill. And I am interested in cutting about 40,000,000 feet a year, and am interested in a logging operation on the Columbia River, cutting about a hundred and ten million to a hundred and twenty-five million feet a year.

Mr. HALLOCK. Have you had occasion during the last four or five years to deal in substantial blocks of timber?

Mr. GARDNER. I have.

Mr. HALLOCK. Running into the millions of dollars in value?

Mr. GARDNER. I have.

Mr. HALLOCK. Can you state, just generally, the approximate value of the timber holdings that you have handled and dealt in during the last four or five years, just expressed in millions of dollars?

Mr. GARDNER. In excess of $30,000,000.

Mr. HALLOCK. Did one of these deals include the sale to Mr. Herrick of what we call the St. Maries Mill Co.

Mr. GARDNER. It did.

Mr. HALLOCK. And the timber in connection with that matter.

Mr. GARDNER. Yes, sir.

Mr. HALLOCK. Involving a transaction of about how much money?
Mr. GARDNER. If I recollect aright it is around $1,850,000.

Mr. HALLOCK. You handled that sale yourself, did you?

Mr. GARDNER. I did.

Mr. HALLOCK. What are the facts as to whether or not Mr. Herrick in all respects responded to his obligation under that sale?

Mr. GARDNER. As far as he was concerned he did.

Mr. DE NEFFE. Mr. Chairman, we are not trying Mr. Herrick on any other contract or sale that he might have had in the past. We are trying him on this particular sale. I do not, see how this inquiry is material. We are wasting a lot of time.

Mr. HALLOCK. This is more or less a preliminary inquiry, and, besides, Mr. De Neffe, it has already been answered.

The CHAIRMAN. Well, go ahead.

Mr. HALLOCK. Mr. Gardner, has your work brought you in contact with timbermen, those interested in the timber and lumber industry pretty generally over the country?

Mr. GARDNER. It has.

Mr. HALLOCK. During the past several years?

Mr. GARDNER Yes, sir.

Mr. HALLOCK. Have you had occasion to learn of their attitude toward Mr. Herrick as an operator and purchaser?

Mr. GARDNER. I have.

Mr. HALLOCK. I wish you would give the subcommittee the benefit of what you know to be the fact in connection with that attitude.

Mr. GARDNER. Well, they have always looked upon Mr. Herrick as being a large operator and a responsible operator.

Mr. HALLOCK. What are the facts as to whether or not he is considered a speculator?

Mr. GARDNER. No; he never sells anything.

Mr. HALLOCK. Do you know whether or not, and I mean of your own knowledge now, he has had an opportunity to speculate in this Bear Valley timber?

Mr. GARDNER. I do.

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Mr. HALLOCK. Let us have the benefit of what you know on that subject, please.

Mr. GARDNER. Why, it was bid in, and I do not remember just no how long it was afterwards, but possibly something like a year afterwards, or within a year, I approached him on buying his contract and he laughed at me, and said, "That contract is not for sale."

Mr. HALLOCK. All right; anything else?

Mr. GARDNER. "Well," I said "you might change your mind." He said "No," and he then just changed the subject very quickly with me, and it ended right there. But then I heard all these different reports, and used to talk about them more or less, in fact, talked with Mr. Barnes, and from Mr. Barnes I got the idea that the information I had of Mr. Herrick's position might be wrong; while I could not conceived that I had got it wrong, and so told Barnes, but after another conversation with Barnes I deliberately went to Spokane and talked with Mr. Herrick again, but he told me the same thing again. And finally I said to him what I had been talking over with others, and he had heard these remarks to some extent, and he said, "you get a price on it." Well, I then tried twice, but could get nowhere with it. I then said, "Well, what would you offer?" And I was talking to the other man. He said "Well, then, we would be interested to let Mr. Herrick keep, say, a third of that business, and we have two-thirds of it, and take over the operation, and furnish the balance of the capital necessary to organize an operating concern. For instance, we would put up a million dollars, and let Mr. Herrick have in his half million dollars or thereabouts that he might have in it, whatever it amounts to, and take stock for it, and we furnish the balance of the operating money. You see what he will say to that kind of a proposition."

I went to Mr. Herrick with that proposition, and told him that the management would be the best, and that I would consider, if I had that contract and could hold my interest to the extent of a third, and somebody else would furnish the money and give me a complete organization, that it would be a good business thing to do, and I got about the same kind of an answer.

Mr. HALLOCK. But he never would discuss it at all?

Mr. GARDNER. No, sir. He told me flat-footed at least half a dozen times that it was not for sale, any part of it. At a later time I had some money to be paid to me, and I approached Herrick on this proposition. I said, "I am talking for myself personally now. I should like to have an interest in that work, and I am prepared to enter into a deal to get up a million dollar corporation, and raise the balance-or it was a million dollars or a million and a half

dollars, and I will take from $150,000 to $200,000 of stock in your company, and I am not looking for a job." I said that thinking possibly he might think I was looking for a place on the pay roll. I told him that it would be to some advantage I thought to have somebody who has had experience in the lumber business to have a small interest in his business, so in case of his death, or something of that kind, it might go on. He said, "I am never going to die." I solicited that personally. That was not for a client.

Mr. HALLOCK. So that you learned very definitely on those occasions of Mr. Herrick's attitude toward speculating with this contract?

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Mr. GARDNER. Well, he told me at the time I told him I was not looking for a job, he said there were just a few shares of stock where the case of people working in the business, employees, he would let them have a little stock, but as far as outsiders, or help was concerned, he did not need it. And then at one time he told me about the operation.

Mr. HALLOCK. What was that?

Mr. GARDNER. Well, I was familiar with the St. Maries Lumber Co. sale, and at one time we were discussing about the price of lumber. The price at that time—and I had just closed a sale to the Winton Lumber Co. of about something like $1,500,000 or $2,000,000 white pine timber, and —

Mr. DE NEFFE. (interposing). Will you fix the date of that sale?

Mr. GARDNER. I would say in 1924. I sold it for the Weyerhauser Corporation, or not for Weyerhauser but for a subsidiary company of the Weyerhauser Corporation; and we were discussing the price of white pine at that time, and the average price of white pine of that type was earning around about $45. And right after this deal was closed I bad an opportunity to discuss it to some extent with Mr. Herrick, and he stated that he thought the price of white pine if anything might stiffen; that, he did not believe it would go down very much, because it was in the hands of four or five substantial operators. And in the conversation it came out that he
had about 70,000,000 feet of white pine on hand. Then I came back to the Bear Valley proposition. He says "I am going to liquidate, that lumber," and, he says, "That lumber will build and develop the Oregon proposition "in other words, for instance, if you sell 70,000,000 feet and replace it with 70,000,000 feet, the difference between the cost, and the selling price would give, him $1,000,000 or thereabouts on liquidation. He would then put in another 70,000,000 feet or 100,000,000 feet, and that would go a long ways.

Mr. HALLOCK. As you knew the timber market and as you knew Mr. Herrick's activities, did that appear to you a reasonable arrangement?

Mr. GARDNER. Absolutely; and that was the way to do it. In other words, in all my timber experience I have never met anybody yet who carried a million dollars or $2,000,000 in the bank to buy timber with or to build a mill. They have usually financed those things as I have mentioned it here, from the different operations. That is the way all lumber men do it. No lumber men have money on hand to do things of that kind; or, if they have, they do not go into the lumber business.

Mr. HALLOCK. Do you know Mr. Herrick's approximate annual cut when his mills are running along at about a normal rate?

Mr. DE NEFFE. Mr. Chairman, what is the purpose of this testimony?

Mr. HALLOCK. Just to show whether he had taken a shrink to finance this venture.

Mr. DE NEFFE. I think it is absolutely immaterial. There is nothing in the contract by which the Government agreed to let this man finance this property in Bear Valley out of his other operations. He might as well say that he was speculating in a way, and, providing his speculations came out right then all right, and if they came out wrong, why he could not go ahead and furnish the

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money. He might just as well go on the Chicago Stock Exchange and speculate and depend upon the result of his speculations. This contract has nothing to do with any speculative profits that might have.

Mr. HALLOCK. The subcommittee knows very clearly what the evidence has been, and this goes certainly to Mr. Herrick's good faith, and as to whether or not he had adequate resources in his plan of development.

The CHAIRMAN. You may go ahead and examine the witness; but be as brief as possible, as our time is short.

Mr. HALLOCK. I certainly shall. Now, Mr. Gardner, can yon answer the question? I was asking you about Mr. Herrick's approximate yield or cut.

Mr. GARDNER. Well, aside from his southern-pine operations, which I have only become familiar with in a general way within the last year or so, I would say it is approximately 150,000,000, although I have no definite figures; I would say 150,000,000 feet a year. That is outside of what may be the anticipated production at Burns, the yellow pine.

Mr. HALLOCK. How much shrink has the pine lumber industry taken, as expressed in dollars per thousand feet, during the past two or three years?

Mr. DE NEFFE. Are you talking about the general lumber industry?

Mr. HALLOCK. I mean the western-pine market?

Mr. GARDNER. Yes; the white-pine market is what I understood.

Mr. HALLOCK. How much is it?

Mr. GARDNER. I think several million dollars in his production there.

Mr. HALLOCK. Per annum do you mean?

Mr. GARDNER. Yes, Sir.

Mr. HALLOCK. Are not at this time certain —

Mr. GARDNER (continuing). In other words, that some 70,000,000 feet of lumber brought a million dollars less than any one would have thought in an actual market proposition for the sale of it.

Mr. HALLOCK. Are you at this time engaged in liquidating Mr. Herrick's southern pine holdings?

Mr. GARDNER. I am.

Mr. HALLOCK. And without going too much into detail state whether that transaction will run into several millions of dollars.

Mr. GARDNER. It will.

Mr. HALLOCK. You are actively engaged in that at this time?

Mr. GARDNER. Yes, sir.

Mr. HALLOCK. Is that primarily the matter that brought you east on this occasion?

Mr. GARDNER. Yes, sir.

Mr. HALLOCK. When and under what circumstances did you meet Mr. Barnes?

Mr. GARDNER. The day that this timber was sold. I had heard the name Barnes but had never met him. The day that this timber was sold—and I had heard of course that he was in the timber line much to my surmise when I came back to the hotel with Arthur Rogers, of Minneapolis —

Mr. HALLOCK (interposing). Came back to what hotel?

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Mr. GARDNER. To the Portland Hotel at Portland, Oreg. It was Arthur Rogers who owned the timber at Prineville, Oreg.

Mr. HALLOCK. Just let me interrupt you there to ask: Was that on the 5th day of April, 1923?

Mr. GARDNER. Whatever was the day of this timber sale, yes.

Mr. HALLOCK. When the bids were opened?

Mr. GARDNER. Yes, sir. I came back to the hotel with Mr. Rogers, of Minneapolis, and a banker—I can not recall his name just now. We were on the Booth-Kelly deal, and we heard that Mr. Herrick has been the successful bidder on this timber. We talked about it and somebody said "That is Mr. Barnes sitting over there." Well," I remarked, "that is too darn bad, for that fellow has put in quite a lot of work on that proposition." And I thought it was a personal proposition with Mr. Barnes at the time. I did not know anything about it, except that I have heard a good deal since, and I thought I would just express my sympathy in the situation, in a friendly way, so I went over and said to him "My name is Gardner. I am in the timber line. I am sorry to know that you were not successful." I rather thought he would be glad to get my sympathy, but he was rather provoked at me apparently, and he talked about Mr. Herrick, and who he was, and everything else. I said, "Herrick is all right." We argued and talked about that, and then I left him, and that ended it.

Mr. HALLOCK. What did he say about Mr. Herrick, and what was his attitude toward Mr. Herrick at that time?

Mr. GARDNER. Well, he just, as I presume like anyone who was mad, seemed provoked at Mr. Herrick.

Mr. DE NEFFE. Do not give your impressions, but just tell us what he said. We do not want what your presumptions were.

Mr. HALLOCK. Very well, the other side wants it; state what he said and what was done.

Mr. GARDNER. Oh, he said Mr. Herrick didn't have any money, and he talked in rather a detracting way about Mr. Herrick, that he didn't know him, and never had heard of him, only about an hour before that.

Mr. HALLOCK. And that was coupled with some oaths.

Mr. GARDNER. Oh, yes; but I summed it all up that he was a rather dumb fellow for talking that way, and I have told him so since.

Mr. HALLOCK. Have you had occasion to speak to Mr. Barnes since about. Mr. Herrick?

Mr. GARDNER. Lots of times.

Mr. HALLOCK. What is Barnes's attitude toward Mr. Herrick?

Mr. GARDNER. Why, Mr. Barnes has always taken the position that he was the was the Government, and I have always criticized him about it

Mr. HALLOCK. You mean Barnes has taken the position that he was the Government?

Mr. GARDNER. Yes, sir; that he is the Government in all of the talks that I have had with him.

Mr. Has he abused Mr. Herrick in any way?

Mr. GARDNER. Yes, sir.

Mr. HALLOCK. What can you say as to his personal observations on this subject having become largely a mania, with Mr. Barnes.

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Mr. GARDNER. Yes, sir; and I have kidded him about it and called him "Mr. Herrick" when I met him.

Mr. HALLOCK. Why do you say that?

Mr. GARDNER. Well, I have kidded him. Here is the proposition: The Government has sold the timber for $700,000 more than Barnes wanted to bid for it. So what right has he to complain when the Government is in that much? I have told him that. And I have said to him "I am naturally on the other side. I want to see the Government get as much as it can, and it has got it, and this man is entitled to your protection and not your slamming."

Mr. Mr. HALLOCK. That has been the subject of your talks with Mr. Barnes?

Mr. GARDNER. Yes, sir; it has always been as if he were the Government, and this and that and the other.

Mr. HALLOCK. Did Mr. Barnes on those occasions say anything about Herrick being a man he did not want in there but that he wanted somebody else?

Mr. GARDNER. No; but he said that Herrick was this and that and the other. I asked him how did he know so much since he did not know the man?

Mr. HALLOCK. Did you hear Mr. Ed. Flood's testimony regarding the proposal that Mr. Barnes had made to him to take $25,000 and get out?

Mr. GARDNER. Yes: I heard that.

Mr. HALLOCK. Mr. Flood testified that he had told you of that circumstance and had also told it to Mr. Herrick. Do you recall whether Mr. Flood ever mentioned it to you?

Mr. GARDNER. Yes; Flood came up to me and said "That lumber business is soft picking." I said "You would find out if you go into it." He said "I just had a chance to make $25,000." I said "How?" And he said, "By throwing the old man down."

Mr. HALLOCK. When was that?

Mr. GARDNER. He was there one or two days, and I don't remember whether it was that day of the bidding or the next day.

Mr. HALLOCK. But it was right at that time of that proposal, was it?

Mr. GARDNER. Yes, Sir.

Mr. HALLOCK. In referring to the old man who did he mean?

Mr. GARDNER. Herrick.

Mr. DE NEFFE. Ask what he said and not what he may have meant.

Mr. HALLOCK. Well, he did say what he said. Mr. Gardner, have you ever heard Mr. Herrick discuss the plans for his family and for his little children, over there on that Oregon venture?

Mr. DE NEFFE. Mr. Chairman. I submit that that is immaterial.

Mr. HALLOCK. What is Mr. Herrick's attitude toward making that a permanent matter for his family?

Mr. GARDNER. I think that is his attitude.

Mr. DE NEFFE. Let us cut out this sob stuff and get down to the meat of this case.

Mr. HALLOCK. That is exactly what this is. You have introduced letters from Herrick of several years ago where he makes that very statement.

Mr. DE NEFFE. Then why go over it again?

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Mr. HALLOCK. Because I want to get his attitude as expressed to other parties. I want to know what it was in discussing it with this gentleman. Mr. Gardner, have you any personal grievance toward Mr. Barnes?

Mr. GARDNER. None at all. I thought, as I have already testified, or I felt that Mr. Barnes was on the wrong foot in talking about this whole proposition, in view of the fact that his bid was less than Mr. Herrick's. I thought his position was untenable then, and I think so now.

Mr. HALLOCK. Have you had any occasion to learn Mr. Herrick's net worth?

Mr. GARDNER. I have.

Mr. HALLOCK. If he has no objection to your stating it, can you tell us what in your opinion his net worth is?

Mr. GARDNER. Well, I had before told Mr. Barnes that I would gamble he was worth in excess of $10,000,000, and with the shrinkage that he has taken during the past two or three years I think what has been stated is practically right, that I think he is now worth in excess of $8,000,000.

Mr. HALLOCK. You may take the witness.

(Cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Do you think it was in excess of $8,000,000 when this contract was given to him?

Mr. GARDNER. Yes.

Mr. HALLOCK. One more question, if you please: Mr. Gardner, what are the facts as to whether or not this attitude of Mr. Barnes toward Mr. Herrick has hurt his credit over the country, as far as you know.

Mr. GARDNER. Well, of course, I could not give you a concrete case as to where it was, but with these continual things in the newspapers, as to the cause of it, and this talking and all, naturally it disturbs anyone, and anyone is afraid to extend credit or discuss credit with a man who is being attacked openly. Of course, that is true, but just to say that this thing or that thing did it, I do not know.

Mr. HALLOCK. That is all.

Mr. DE NEFFE. Were you subpoenaed in this case?
Mr. GARDNER. By whom do you mean?

Mr. DE NEFFE. By anybody?

Mr. GARDNER. I was asked to come here.

Mr. DE NEFFE. Who asked you to come?

Mr. GARDNER. Mr. Herrick.

Mr. DE NEFFE. When did he ask you?

Mr. GARDNER. Well, I won't say that Mr. Herrick asked me, but I think Mr. Hallock asked me to come.

Mr. HALLOCK. Mr. De Neffe, do you recall that our letter, read into the record at the opening proceedings, shows that we requested a subpoena for Mr. Gardner, that his name was contained on our list?

Mr. DE NEFFE. Who is paying your expenses on this trip?

Mr. GARDNER. I presume Mr. Herrick will, although I have paid them myself up to date.

Mr. DE NEFFE. But you expect to get them back from him.

Mr. GARDNER. Yes.

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Mr. DE NEFFE. You said you handled some large deals, running into $30,000,000?

Mr. GARDNER. Yes.

Mr. DE NEFFE. What deals were those?

Mr. GARDNER. Well, I handled the Rogers timber at Prineville, Oreg., and if I remember rightly they ran from $2,000,000 to about $2,200,000. Then the Davis-Johnson Lumber Co., of about $2,000, 000. I handled the Chapman timber, and that is about $3,000,000
or $4,000,000. I handled the Northern Pacific timber of about $2,500,000. I handled the St. Maries Lumber Co. timber, for about $1,800,000. I handled the Consolidated Railroad timber for
$1,000,000. And the Western Pine Lumber Co. timber I think was about $1,600,000 or $1,700,000. I handled the Saddle Mountain Logging Co., the railroad and the timber, and I can not recall the exact amount of it, but it was something less than $2,000,000. That was for the Consolidated Banks of Portland. I handled the Copen-Talbott {*sic*} timber, $12,000,000. I handled the Puget Mill Co ., $3,000,000 more. And then there was another one of about $7,000, 000 —

Mr. DE NEFFE (interposing). You have had a great deal of experience, have you not, in lumber operations?

Mr. GARDNER. Yes, sir.

Mr. DE NEFFE, You have operated or sold.

Mr. GARDNER. Yes; and I am operating to-day.

Mr. DE NEFFE. You have operated sawmills and logging camps?

Mr. GARDNER. Yes, Sir .

Mr. DE NEFFE. Have you ever built any railroads?

Mr. GARDNER. Yes, sir.

Mr. DE NEFFE. It is a very difficult thing under ordinary conditions to build and operate plants of that kind, is it?

Mr. GARDNER. Difficult to build them?

Mr. DE NEFFE. Well, I will withdraw that question. It usually requires experienced men to make a success of any operations of that kind, does it not?

Mr. GARDNER. Oh, yes, you could not go into a thing of that kind with inexperienced men.

Mr. DE NEFFE. Do you know of any operation during your wide experience where an operation like this involving four or five million dollars, had been turned over to inexperienced men like Mr. Girard and Mr. Klobucher?

Mr. MCGOWAN. I object to that assumption. There is nothing here to show that Jim Girard is an inexperienced man.

Mr. DE NEFFE. With a large proposition like this?

Mr. MCGOWAN. I will not argue it with you.

Mr. DE NEFFE. He started in from a ranger or a fire warden.

Mr. MCGOWAN. Of course, Mr. De Neffe, you, do not know much about the timber business, and we can not

help that.

Mr. DE NEFFE. Well, I grew up in the timber business, and while I do not know all about it, like some of your witnesses, yet I think I know quite a little about it.

Mr. MCGOWAN. I will not argue it. That is my statement.

Mr. DE NEFFE. Mr. Gardner, will you just answer my question?

Mr. GARDNER. Would I turn a timber proposition over to Klobucher and Jim Girard?

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Mr. DE NEFFE. Yes; who had never had charge of a big proposition like this?

Mr. GARDNER, I would answer that question in this way: In our own case of railroad building, and we build quite a large amount of it in our operations, all of our railroad is in the hands, not of operators, but of engineers, such as these men are.

Mr. DE NEFFE. Do you know of any railroad like this built by a man who has not even a license as an engineer in the State of Oregon, where bridges and tunnels must be built?

Mr. GARDNER. We have a man that builds all our railroads, and I do not think he is a licensed engineer. In fact, the point is this, and I will explain it in this way: If you want Porter Bros. to build a railroad for you, it would cost you $20,000 to $25,000 a mile, and yet you can go and get some Swede, who will take a shovel and so on, and lay out the right of way, and he will lay out the railroad that will answer your purposes just as good as the other man's railroad, at a very much reduced expense. If we built a logging railroad like a transcontinental railroad is built, the cost that we would have in the case of the logging railroad would be impossible. We have to pick up a man like I have mentioned in order to build our railroads at a reasonable price.

Mr. DE NEFFE. If you let a contract to somebody like Porter Bros., or Twohy Bros., or some other responsible outfit, they would go right in and build it as soon as possible.

Mr. GARDNER. I do not think you will find hardly any logging railroad in the west built by Twohy Bros. or Porter Bros. or any other railroad contractors.

Mr. DE NEFFE. That is not my question. I wish you would answer my question. Is it not a fact that if this contract had been let either to people like Twohy Bros. or Porter Bros., the railroad to Bear Valley or the Burns-to-Crane Railroad, would have been finished in quick time and would have been done long ago?

Mr. GARDNER. You could not afford to let them do it.

Mr. DE NEFFE. Why not.

Mr. GARDNER. Because, anybody who has had experience in a logging railroad, like a lumberman has, can not go in and build a railroad like that. It would cost to much money, and would put a man out of business.

Mr. DE NEFFE. If you had a contract that required the building of a railroad within two years, and you had obligated yourself to do it within that time, you would be justified in letting the contract to a big outfit that could do it within the time limit, would you not? Or would you say you would treat the contract as a scrap of paper and depend upon getting extensions and let the railroad go to the dickens?

Mr. GARDNER. No; I would build it myself.

Mr. DE NEFFE. You would build it within two years?

Mr. GARDNER. Well, I would take these things into consideration. I am not here to say that I would or would not build it within two years, but the fact is that I would not build a logging railroad by the use of any great big railroad contracting outfit, because nobody could do that. They have to add on to their price so much for overhead, and it costs too much money. You have to consider the cost of constructing that railroad, and you could not afford to hire Porter

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Bros. or any such contractors. Nobody has ever done it, and I do not think they ever will.

Mr. DE NEFFE. You stated that Mr. Herrick had a good chance to speculate on this particular contract.

Mr. GARDNER. Yes, sir; and that is as far as my knowledge goes.

Mr. DE NEFFE. Did you have a real buyer at that time?

Mr. GARDNER. Yes, sir.

Mr. DE NEFFE. Who was it?

Mr. GARDNER. The Shevlin-Hixon Lumber Co.

Mr. DE NEFFE. And Mr. Herrick thought he had too good a thing to sell, was that it?

Mr. GARDNER. Well, just in line with his way, he just was not selling anything, that is all, and he did not sell.

Mr. DE NEFFE. He buys all that he can on shoe strings and hangs on to them and operates some of theirs and lets the others drag; is that it?

Mr. GARDNER. No; I have never known him to let anything DRAG.

Mr. DE NEFFE. When did you make that offer to him?

Mr. GARDNER. Well, I will say that the first offer was made within some four or five or six months time after he bid it in. I do not know just when; it might have been 8 months or 11 months afterwards, but it was certainly 6 months after he bid for it before I made my first proposition, and it might have been a year.

Mr. DE NEFFE. When was your next one?

Mr. GARDNER. Oh, they were at intervals, and I can not remember. It was whenever I would see him.

Mr. DE NEFFE. Several years after the contract was let?

Mr. GARDNER. Oh, if I would see him within six months I would ask him "When are you going to make a proposition on that?"

Mr. DE NEFFE. And you had people with real money?

Mr. GARDNER. Yes.
Mr. DE NEFFE. To pay him the cash?

Mr. GARDNER. Oh, I don't know that they would have paid cash, but my proposition was to get a proposition from Mr. Herrick; that was my proposition.

Mr. DE NEFFE. Your proposition was not cash?

Mr. GARDNER. Mr. McCann asked me to get a proposition from Mr. Herrick.

Mr. DE NEFFE. And they were people who would have gone in there and finished that contract?

Mr. GARDNER. 1 think they would. I was with them for 20 years myself, and always thought them responsible.

Mr. DE NEFFE. You have heard something about this paragraph 3, which is the vital part of the Herrick contract, have you not.?

Mr. GARDNER. No, I have not been connected with that.

Mr. DE NEFFE. You consider that a pretty favorable contract, do you not, for an operator, in the way that Mr. Herrick bought this timber?

Mr. GARDNER. Well, I have never read the contract, Mr. De Neffe.

Mr. DE NEFFE. Under this contract as explained by Mr. Biggs when he was on the stand in analyzing paragraph 3, and that was concurred in by Mr. Greeley when he was on the stand, it would permit —

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Mr. MCGOWAN (interposing). Mr. Chairman, we object to any deduction such as Mr. De Neffe draws. Colonel Greeley's testimony is in the record, and we submit that that should speak for itself without Mr. De Neffe's comments on it, and what he construes it to be.

Mr. HALLOCK. And we object to the question, but only because it in not in any sense cross-examination. This witness has testified that he never saw the contract, and he has never been asked for an interpretation of it on the direct examination. He was not produced for that purpose at all. This is going to bring us out into the broad field if counsel is to have him on the stand to construe the contract, and a contract that he never saw in his life.

Mr. DE NEFFE. The only thing is that he says Mr. Herrick turned down all these, opportunities to sell, and it might be important to know why he turned them down; as to whether he had such and such a thing, and had so many extensions and modifications that he did not have to finish within any particular time, that it would have a lot to do with his declining to sell to anyone. But I will ask Mr. Gardner this question —

The CHAIRMAN (interposing). I think the witness has answered the question that he does not know anything about the contract. So it would seem there is no use of going into that matter with him.

Mr. GARDNER. These contracts are pretty much alike.

Mr. DE NEFFE. If Mr. Herrick had a very favorable contract, he naturally would not want to sell, would he? In other words, a man does not want to sell a good thing; is not that usually the case?

Mr. GARDNER. Well, if a man buys, in the timber business, or when you buy timber you have your price, and when you have your price out of it you usually let the other fellow go ahead and worry about the liquidation of it.

Mr. DE NEFFE. How much did you offer?

Mr. GARDNER. We never came to a price. It was never indicated to him what they would pay. Tom McCann talked to me several times, and he said, "You know Herrick pretty well. See what he will do, and what kind of trade he will make." He never went beyond that.

Mr. DE NEFFE. Herrick told you that only a few employees of his companies would get any stock. Did you know who they were?

Mr. GARDNER. No, he did not tell me, but I knew generally what that was, that that has been Mr. Herrick's attitude. Mr. Herrick's leading men have always participated to some extent, in his operations. That is a little different from some other people, and he would rather have his employees in it than to have outside capital. He reiterated that to me.

Mr. DE NEFFE. He told you he figured on selling 70,000,000 feet of white pine and using that on the Bear Valley project, was that it?

Mr. GARDNER. Yes; the natural liquidation of stuff, though, I knew about in Coeur d'Alene district.

Mr. DE NEFFE. When did he tell you that?

Mr. GARDNER. I think it was along in the summer of 1923. It was about that time that we made the Crowe Lumber Co. deal.

Mr. DE NEFFE. Did you get the impression that he intended to develop the Bear Valley project from sales or profits from other properties or from other speculations?

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Mr. GARDNER. Not necessarily from profits. He had a certain amount of liquidated assets, which ran into quite a lot of money. I would say his cash and accounts receivable, and I do not think I and {am?} far off, were about $5,000,000 at that time. Now, then, of course he could not shut those mills down and take the money out of them and still keep on operating. That is the way the Shevlin-Hixon Co. developed Bend. They took the money out of Crookston. They would take the money out of that, but the money came right out all the time, and they put it in at Bend.

Mr. DE NEFFE. If there was a slump in the lumber market then the Bear Valley project would suffer, is that it?

Mr. GARDNER. Oh, well, it might suffer temporarily, but —

Mr. DE NEFFE (interposing). But, let me ask —

Mr. HALLOCK (interposing). Let him finish his answer.

Mr. DE NEFFE. All right, go ahead.

Mr. GARDNER. But in that case he would suffer.

Mr. HALLOCK. Go ahead and finish your answer.

Mr. GARDNER. No; he had access to funds in the south, and I knew about them in a general way. I told Barnes that he had southern funds and he could pry them loose. That is about the language I used. You take a man in the lumber business and he will—or they will, all of them, from Weyerhauser, and Brooks-Scanlon, and Shevlin-Hixon, they never sell. They cut and replace, and so on. That has been the policy of the lumber business.

Mr. DE NEFFE. Then if the testimony of Mr. Herrick and other witnesses here was to the effect that his failure to furnish sufficient money to carry on the Bear Valley operations was due to the fact that he could not get money out of his operations fast enough, and if the records of the Forest Service show the same thing, would you still say that the fact he could not get money from his other mills did not delay the Bear Valley development?

Mr. HALLOCK. Mr. Chairman, we object to that question, because Mr. Herrick quoted this very matter, or this other matter I mean, and has shown the situation.

Mr. DE NEFFE. Yes; but he said it is very hard trying to get money with the right hand out of the left-hand pocket. And Mr. Carter's report goes into that in detail.

The CHAIRMAN. Well, go along.

Mr. DE NEFFE. Would you make the same answer?

Mr. GARDNER. I would say that, outside of the matter of sentiment that Mr. Herrick had as to some of his properties, whenever Mr. Herrick wanted to cast sentiment to the winds he could have gone in and gotten money at any time. From what I know about him, I know he could go and get money.

Mr. DE NEFFE. He always could have done that.

Mr. GARDNER. I would say so, but it might be at a great sacrifice. He could not go and get it at low rates and everything of that kind, and he would have to make a sacrifice, and I think he resented the sacrifice.

Mr. DE NEFFE. So ever since this contract was signed you think he was in a position to get all the money he wanted to finish it?

Mr. GARDNER. If he had been forced to do it; yes.

Mr. DE NEFFE. If the Forest Service had forced him to live up to his contract he could have gotten the money.

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Mr. GARDNER. Well, I do not think you could have broken him, but I think it would have cost him a lot of money to do it. He might have had to sacrifice more in values. You take things slipping as they have been in the last two or three years, and it was a pretty hard thing to handle the lumber business.

Mr. DE NEFFE. But you say he was worth between $8,000,000 and $9,000,000.

Mr. GARDNER. Yes, sir.

Mr. DE NEFFE. That certainly would not have broken him.

Mr. GARDNER. Well, there are times and conditions that you can use such assets and not at a great loss, but in times like these, no clatter how much assets you have it is pretty hard to handle those assets in the lumber business. And if you get into the lumber business you will see how it is. You have to take it at the times when you can. I might explain that further if you want me to.

Mr. DE NEFFE. Well, I do not care about it one way or the other.

The CHAIRMAN. Go ahead and ask your next question.

Mr. DE NEFFE. You say that Mr. Barnes took the position that he was the Government?

Mr. GARDNER. Yes.

Mr. DE NEFFE. Just what did he say that made you think that?

Mr. GARDNER. Well, he was always telling about coming down here to Washington and seeing the Senators and what they were going to do, and that they were calling in Colonel Greeley and jumping on the Portland office. I never paid very much attention to that, because I told him it was silly. I said, "You are getting yourself into deep water speaking as you are."' I said, "You are the same as I am, a citizen, and you should take the position that this property having been sold for $700,000 more than the next highest bid, and the forester has worked to get the best he can out of it for the Government, then the Forest Service can and ought to give just as much consideration as they can to help him carry this thing through."

Mr. DE NEFFE. Do you say that Mr. Barnes often complained about Mr. Herrick's delays in completing the work?

Mr. GARDNER. Oh, he was always talking. I think it is pretty well understood by everybody that Barnes's job was to just worry Herrick.

Mr. DE NEFFE. But what did he say? Did he not say that Herrick was not completing the work according to schedule?

Mr. GARDNER. Do you want me to tell you just what Barnes did say?

Mr. DE NEFFE. Yes.

Mr. GARDNER. He said, "That old— "

The CHAIRMAN (interposing). Hold on. Scratch that out of the record. We must try to hold ourselves here to orderly language.

Mr. HALLOCK. Mr. Chairman, I submit that this witness has tried to hold his testimony down to the point of not having to quote the exact language, containing oaths used by Mr. Barnes, but he has been pursued by counsel to do it.

The CHAIRMAN. Very well, it is not necessary to put that in the record.

Mr. DE NEFFE. I do not think I have pursued him. I have tried to get the situation here. What I want to know is about what Mr. Barnes said by way of complaint, that Herrick had not been living
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up to his contract, that Herrick had not been acting in good faith and had not done anything much in the matter; did he tell you that?

Mr. GARDNER. I would not say that he used that exact language, no.

Mr. DE NEFFE. Did he say that Mr. Herrick was unnecessarily delaying the work?

Mr. HALLOCK. Mr. Chairman, this witness is prepared if pursued to give the exact language used by Mr. Barnes, and it is a little rough and he has tried to avoid quoting it. Mr. De Neffe is asking him now to characterize it in different terms and the witness says he can not do it, but says he will tell what Barnes said if Mr. De Neffe insists on it.

Mr. DE NEFFE. No, I want to know what Barnes's complaint was against Herrick. I do not want any oaths or personalities, but want to know what Barnes was complaining of Herrick about. A man does not usually call another man any names unless it is connected with some complaint he has got against him. What complaint did Barnes have against Herrick?

Mr. GARDNER. Well, boiled down, I could not say that he had any, except conversation.

Mr. DE NEFFE. Well, that is not enough, Mr. Gardner. Can not you tell us what his complaint was? I think we are entitled to that much.

Mr. GARDNER. Oh, I just think he took the attitude that he had been defeated there, and I think he had figured on selling some timber to Mr. Herrick just the same as to anyone in that line of business, and he had not made as much as he figured on making and therefore he was disappointed.

Mr. DE NEFFE. You do not answer my question.

Mr. GARDNER. I think he assumed the position that when he spoke the Government spoke, and that was his general attitude at all times, not once but at all tunes.

Mr. DE NEFFE. He, then, did not complain because Mr. Herrick had not finished the railroad, or had not started the mill or any of these different things?

Mr. GARDNER. Oh, he talked about he had better get the mill going. I said "They will get it started all right." He said "He can't do it." I said "How about the mill of two bands,
built in —

Mr. DE NEFFE (interposing). Where is that?

Mr. GARDNER. Down on the Southern Pacific. That is one the White interests built.

Mr. DE NEFFE. Did not he say that at the rate Herrick was going it would probably take him four or five years to finish the railroad?

Mr. GARDNER. Well, he might have, but I never took those remarks seriously enough. I thought it was just a ridiculous position for him to take, as if acting for the Government, without any salary or position of any kind, and so told him then, and so tell him now.

Mr. DE NEFFE. Did he say he was acting for the Government?

Mr. GARDNER. He pretended to do so in all his conversations, and I kidded him about it. I said "If Herrick was smart he would probably employ a couple of good detectives and keep them on your trail and keep you picked up. You are talking about Senators, and what you are going to do to this fellow, and you think you are the Government."

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Mr. DE NEFFE. Did he tell you that he was the keeper of Colonel Greeley's conscience
in this matter?

Mr. GARDNER. No; he didn't mention Greeley very much to me. He told me that he thought there was something about Greeley, and I told him "No; no man can handle such a large amount of business without somebody picking out some technicalities about it."

Mr. DE NEFFE. Did he complain of the failure of this work, that he was against Herrick because he was not doing it and did not have the money?

Mr. GARDNER. Oh; he told me that Herrick did not have money lots of times; yes. And he told me that Herrick's checks are being thrown around Coeur d'Alene, and I told him that that was all right, that he was afraid that somebody would think he had money.

Mr. DE NEFFE. And did he tell you about the checks around the Burns country?

Mr. GARDNER. Yes; and I told him that it was just like the old time loggers, that he was afraid somebody would think he had money and would be after him.

Mr. DE NEFFE. And be after him to pay his debts?
Mr. GARDNER. Oh, No; he had money to pay his debts.

Mr. DE NEFFE. There was nothing wrong about Mr. Barnes criticizing Mr. Herrick for not pushing the work down there, was there?

Mr. GARDNER. Yes; I think so. I do not think that any man without money invested in a game has any right to impede the progress of such a development, as Mr. Barnes was doing. I think Mr. Herrick was making an important railroad development for central Oregon, and putting in his money, and I think he was just like a louse running around.

Mr. DE NEFFE. You do not think that the people of Grant and Harney Counties had any right to object to the situation?

Mr. GARDNER. I do not think that he represents the sentiment of Grant and Harney Counties, or of any of the good citizens of Oregon in this matter.

Mr. DE NEFFE. You do not?

Mr. GARDNER. No; I do not.

Mr. DE NEFFE. Well, that is interesting. I think that the people of Grant and Harney Counties would be glad to know your views alone this line.

Mr. GARDNER. Well, that is what I think. We are taxpayers in Oregon to a great extent, and I do not believe that there is another man of Mr. Herrick's age—and no young man can tackle a job like that, because he has not money to do it with—and that there is not another lumberman of Mr. Herrick's age, with finances such as he has to use, who would go and tackle that job. That job has been offered to everybody.

Mr. DE NEFFE. You state that because Herrick had overbid for the timber he was entitled to the protection of the Government, is that what you said?

Mr. GARDNER. I think that when any, man raises another man's bid 75 cents a thousand feet, that he is entitled to some consideration in tackling any such game as this.

Mr. DE NEFFE. Does not that depend upon the circumstances that might have entered into the bidding and the letting of the contract,

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which might indicate that there was some collusion between the Forest officers and Herrick?

Mr. GARDNER. I do not think so. I know in the trades that I have been in we have sometimes had difficulties in cutting contracts, and we have asked some consideration, and there are times when conditions come up in the lumber business where it is absolutely necessary to have it.

Mr. DE NEFFE. So, no matter what the circumstances were when Girard got Herrick to make that bid you would still say the contract was all right.

Mr. GARDNER. I would say that the contract was all right from the Government side of it, and from the citizens' side of it. I say they did a mighty good job, and when Mr. Girard induced Mr. Herrick bid 75 or 80 cents over the minimum fixed, he did a very good job indeed.

Mr. DE NEFFE. Did you hear Mr. Guard's testimony?

Mr. GARDNER. No, sir; not one word of it.

All'. DE NEFFE. It is to this effect, and they will correct me if I misquote it: That he found Mr. Herrick as a buyer, and talked to him for 30 minutes, and Herrick said that he would tale it at $2.80. Girard told him that the Government wanted $2.75. And before that Girard had testified that he had two other people in mind that he wanted to see, but that when Herrick told him that he would take it at $2.80, or would bid $2.80, Senator Walsh of Montana asked Mr. Girard, as I recall it, whether or not after that he had any effort to enlist the interests of those other two concerns, and to get them to bid more money and he said he did not. Now, would you think that Mr. Girard, under those circumstances, should still have continued his efforts to get the other people to make higher bids than $2.80?

Mr. GARDNER. From what I know of that situation I would say yes, because every lumberman in the United States in the pine business knew about the sale and it was discussed, for I heard it discussed in several lumber offices, and they all laughed at the price of $2.75, and said they would not tackle it on account of the great railroad expense. So it is that I think Mr. Girard had his customer when he found Mr. Herrick.

Mr. DE NEFFE. And that he was justified in quitting right there.

Mr. GARDNER. I think it would have been foolish for him to go any further and to see anybody else, for they all had a chance, and all knew about the sale. In other words, Girard could not sell to Shevlin-Hixon anything.

Mr. DE NEFFE. You are assuming something. You do not know that as a matter of fact, do you?

Mr. GARDNER. Oh, well, I know that I have handled a good deal of timber for them, and that I know their attitude.

Mr. DE NEFFE. He named two other concerns. You think he was justified in not attempting to make a sale to the other parties?

Mr. GARDNER. If I had been Girard I would have been pretty well satisfied when I got the promise to bid $2.80, and do not think I would have gone any further. I do not know what he would have said. He could have gone to see them, but I do not think he would have got anything. I think he got the highest bid that was on the market.

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Mr. DE NEFFE. Girard testified that the reason he did not go to see the others was that Herrick had put him in a hole.

Mr. GARDNER. I do not know why.
Mr. DE NEFFE. That was his statement, and that —

Mr. GARDNER (interposing). If that, was 5 cents above his appraised price of the timber, and if I had been selling it, and I had got a bid of $2.80, I would have certainly thought my job was completed. I think I would have stopped right there..

Mr. HALLOCK. Mr. Chairman, I am gong to object to this line of interrogation, only because it does not seem to me to develop any fact in any way connected with the issue within the province of the committee. I do not think that Mr. Gardner's views, although they seem sound to me, are necessarily of any benefit to the committee, unless the committee wants to go on at an interminable length and all the witnesses are to be asked to express their views along this line. But if the subcommittee, wants it, all right.

The CHAIRMAN. Really the testimony seems immaterial, but I have tried to deal quite generously with

counsel on both sides, and we have tried to allow them to bring out anything that they thought might be enlightening or material. But this does seen to me to be immaterial.

Mr. DE NEFFE. All right, Mr. Chairman, I will be as brief as I can. Mr. Gardner, you think that Mr. Girard's duty under those, circumstances was stronger to Mr. Herrick than it was to the Forest Service?

Mr. GARDNER. No; I do not think my answer implies that at all. I think that a man in this business knows when he has got his price, and that when he has got his price he has got as far as he can go. In the interest of the people he might have gone to see the other parties, just to see what might happen, but I do not think he would have gotten anything that would have come up to the price he already had.

Mr. DE NEFFE. It was not the mattes of the price, but it was his interest for the Government to get the highest price obtainable.

Mr. GARDNER. Yes.

Mr. DE NEFFE. If he could have gotten the Winton people to agree to bid $2.90, would not that have been a good thing for the Government?

Mr. GARDNER. Oh, but nobody would have done that, and they knew about the situation.

Mr. DE NEFFE. How do you mean?

Mr. GARDNER. Why, I sold a $150,000,000 proposition right off the bat, when I got my price, for I knew it was all right. There was another man sitting in the hotel that I could have talked to, but I did not. I know when I get my price in a proposition of this kind.

Mr. DE NEFFE. Do you want this committee to believe —

Mr. GARDNER (continuing). The reason I knew when I got my price was that I knew that was the place to stop. You don't need to inject another one into the proposition when you have your price. You do not need another buyer when you have one at your price.

Mr. DE NEFFE. Is that the way you want your testimony understood?

Mr. GARDNER. This is the way I do business. I know what the property is worth, and when I get my price I know that it is all right. You can not get two lumbermen to bid against each other.

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Mr. DE NEFFE. You say it was the thing to do, and that Girard was justified?

Mr. GARDNER. If I had been in Girard's position and got my price I certainly would.

Mr. DE NEFFE. Then he was not justified in his action?

Mr. GARDNER. I do not know what was in his mind, but I would have quit when I got my price.

Mr. DE NEFFE. Then he would have been justified in quitting too, would he?

Mr. GARDNER. Yes, Sir.

Mr. MCGOWAN. When you say his price you do not mean any price in a literal way?

Mr. GARDNER. No; I mean when I fix a price I know what it will stand on the market, and I know that is the limit, and I say it is not wise to snake that price public by saying "Give me a bid of $2.90." And all that kind of stuff. I knew that would spoil the sale.

Mr. MCGOWAN. The form of the question that Mr. De Neffe put was a very broad one, and one which might intimate that Mr. Girard was getting some price in another way that was not right. I want the record to be clear on that point.

Mr. GARDNER. It is very clear to me, I will say.

Mr. DE N NEFFE. You have made a good deal of money in commissions in your dealings with Mr. Herrick?

Mr. GARDNER. No.

Mr. DE NEFFE. You have not?

Mr. GARDNER. No.

Mr. DE NEFFE. Did not you sell him some timber?

Mr. GARDNER. I sold him some timber, yes; but I would say right now that I probably got less for that sale than any sale that I was ever mixed up in.

Mr. DE NEFFE. But you got something?

Mr. GARDNER. Yes, Sir.

Mr. DE NEFFE. How much?
Mr. GARDNER. Oh, I do not think it makes any difference to you.

Mr. DE NEFFE. Then you are working out his southern proposition, and you expect to make money out of that?

Mr. GARDNER. He will pay me something.

Mr. DE NEFFE. Well, it is a $2,500,000 deal, and you will get a pretty good commission out of that.

Mr. GARDNER. I do not think those things are any of your business.

Mr. HALLOCK. There is nothing of record to show that that is a $2,500,000 proposition.

Mr. DE NEFFE. It might be of some interest to the people of Grant and Harney Counties that I should bring out the facts about this proposition, and I do not know that you are justified in trying to make it personal.

Mr. HALLOCK. Mr. Chairman, I am going to object to this. It certainly is a personal matter.

The CHAIRMAN. Yes; it is a personal matter, and you will not interrogate Mr. Gardner on matters of this kind.

Mr. DE NEFFE. You are going to make some money on it.

Mr. GARDNER. That is the only way I live, by making money. But that is true of anything that I go into, that I hope to make some money.

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Mr. DE NEFFE. That is all.

(Redirect examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Gardner, counsel has commented upon the fact that Mr. Herrick apparently concluded the purchase of this timber after a very brief conference with Mr. Girard. What are the facts as to whether or not Mr. Herrick is very eccentric in matters of that kind? Can you give us an instance where you know that Mr. Herrick closed a deal in a very brief period of time and under very unusual circumstances.

Mr. GARDNER. I will answer that by making an explanation: Mr. Herrick I consider knows the timber business and he knows what he is doing and where he is going. I sold him $1,800,000 worth of property over the telephone, and —

Mr. HALLOCK (interposing). Did he stop off the train to telephone you?

Mr. GARDNER. The situation was this: I stayed in my room at the Spokane Hotel, and then asked the railroad people if they would hold the train at a place long enough for Mr. Herrick to get off and phone me. They permitted it, and Mr. Herrick went into the depot and called the room, and got my room on the phone, which we were holding as a line of course, and he said "Your price is too much," and said something, else. Then I said "You go to the devil" or something of that kind, just in a jocular way between us, and then he said "That is a deal." And that was all that was ever said between us. I do not, think I have a written paper on it. I can see Mr. Herrick buying this in the same way. He can go through a property, and he knows where he is going, and any man who knows the timber business can walk two ways through property and know whether he wants it or not.

Mr. HALLOCK. Can you say whether Mr. Herrick is one of the most eccentric men you ever knew?

Mr. GARDNER. He, thinks things over carefully, and he knows what he is doing, and I will say that.

Mr. DE NEFFE. That timber sale over the telephone amounting to $1,800,000 was what?

Mr. GARDNER. The Saint Maries Lumber Co.

Mr. DE NEFFE. He was familiar with that.

Mr. GARDNER. I do not think he had ever been through that timber himself. I think he sent Art Douglas through there, but he knew the district generally. It is like anybody who operates in timber; if you tell him the district he knows pretty well about it.

Mr. DE N NEFFE. Douglas is a cruiser?

Mr. GARDNER. I think he worked for somebody else, and that Herrick asked Art to lay off a week and look at it.

Mr. DE NEFFE. He is a timber cruiser.

Mr. GARDNER. Yes, sir. I do not think that Mr. Herrick had cruised that property, but, he knows it generally. For instance, as to any property at Bend, you know that south of Bend you will find from 17 to 19 to the acre and north of there you will find 14 to 15. And over a big timber area you might get from 10 on in there, or you might get from 14 on in there on an average. And if you are considering an area of 50,000 to 100,000 acres you will know about what you will get.

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Mr. DE NEFFE E. Then the timber was around about where he had been operating, and he was very familiar with the timber in general.

Mr. GARDNER. Taking as townships go, he knew about it generally according to the township.

Mr. DE NEFFE. That is all.

Mr. MCGOWAN. Mr. Chairman, I have a gentleman here from the National Lumber Manufacturers' Association. I should like to put him on the stand for just two simple questions in connection with the publicity that was given to the readvertisement. He is a very busy man, and would very much like to give his testimony now and get back to his work. Might I have an opportunity to put him on now?

Mr. DE NEFFE. If the chairman please, it is absolutely out of order, and I do not think it is reasonable because he lives here in Washington.

Mr. MCGOWAN. It is true that this man lives here in Washington; but can not you extend the courtesy to that extent?

Mr. DE NEFFE. I do not believe that we are called upon to do that, especially after what we have already done. You are getting this out of order, and inasmuch as he lives here in Washington you can call him over the telephone.

Mr. MCGOWAN. But he is a very busy man and it would be a great convenience to him.

The CHAIRMAN. Mr. De Neffe, are you willing that he should take the stand now?

Mr. DE NEFFE. No; I object.

The CHAIRMAN. Well, inasmuch as counsel objects, and he has already been very lenient in these spatters, we will go along with the regular order.

Mr. MCGOWAN. Then may he come on the stand?

Mr. DE NEFFE. Let us finish our cross-examination first.

The CHAIRMAN. I believe that Mr. De Neffe has permitted two witnesses to be put aside for his matter of cross-examination, and he should now be permitted to resume. You might arrange the matter, as can be properly done, no doubt, after this cross-examination is finished.

Mr. DE NEFFE. I would like to cross-examine Mr. Herrick.

TESTIMONY OF FRED HERRICK, TIMBER OPERATOR,
ST. MARIES IDAHO, AND SPOKANE; WASH.-Resumed

Mr. HALLOCK. You have already been sworn, Mr. Herrick?

Mr. HERRICK. Yes, Sir.

(Cross-examination by Mr. De Neffe, representing Grant. County, Oreg.)

Mr. DE NEFFE. Mr. Herrick, in your direct examination you said a great deal about these attacks that Mr. Barnes made on you for not going ahead with the work down there. Do you remember that?

Mr. HERRICK. Yes, Sir.

Mr. DE NEFFE. And you claim, do you, that Mr. Barnes is the cause of all your troubles down there?

Mr. HERRICK. The greater part.

Mr. DE NEFFE. And that he is the only one down there who has complained and is complaining about your delays and your failure to comply with the contract down there?

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Mr. HERRICK. Why, he is the only one that has made a personal attack.

Mr. DE NEFFE. Isn't it a fact that there are a great many citizens down there who filed protests and petitions here with our Oregon delegation and with Colonel Greeley?

Mr. HERRICK. I am aware that there have been protests made.

Mr. DE NEFFE. On one occasion, in the spring of 1925, there were about 787, the testimony showed.

Mr. HERRICK. I haven't seen that; you said it yesterday, but I don't know where they found the 787.

Mr. DE NEFFE. That came in from the testimony of your counsel here.

Mr. HERRICK. I haven't seen the names —

Mr. DE NEFFE. That is what the record showed.

Mr. HERRICK. I have only seen the list of names that were in my favor.

Mr. DE NEFFE. Well, this carne out of Colonel Greeley's files, and it shows that there were that many—787. Colonel Greeley did no produce the names, but he has got them.

Mr. HERRICK. I do not know what the names are or where they came from. There may be names—it may be they picked them out from some directory.

Mr. DE NEFFE. They were citizens from Grant and Harney Counties, it says.

Mr. HERRICK. I have never seen them, but I know it has been in the testimony here.

Mr. HALLOCK. The document purported to be a petition from Grant County only.

Mr. DE NEFFE. Grant and Harney Counties, it said at the bottom.

Mr. HALLOCK. No. They may have picked up one or two Harney County people, but the petition at the top, Mr. De Neffe—and I know that you want to be fair about it—recites that it comes from citizens of Grant County.

Mr. DE NEFFE. I was just going by the Government records. That testimony came out Saturday, and at the bottom it said Grant and Harney Counties.

Then would you say that everybody who signed a petition or protested against your delays down there was dominated by Mr. Barnes?

Mr. HERRICK. Without question.

Mr. DE NEFFE. And anybody who said you were not prosecuting the work down there was dominated by Mr. Barnes?

Mr. HERRICK. Without question.

Mr. DE NEFFE. Absolutely. Now, the reason that Mr. Barnes complained about it was that you were delaying the work—

Mr. DERRICK. His complaint was general, about everything that he could imagine. Mr. Barnes is a nervous sort of a man, and he has worked himself up to a pitch in this activity against me.

Mr. DE NEFFE. Didn't he say that there was no excuse for the delays in 1924, that he was down there that summer, and that you wasted the summer down there of 1924? Didn't he say that? That was one was one of his statements?

Mr. HERRICK. He may have said that, but he was not doing this contract; I was the one that was doing the contract.

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Mr. DE NEFFE. Isn't it true that you wasted the summer of 1924?

Mr. HERRICK. No; it is not.

Mr. DE NEFFE. Then when Mr. Cartel in his report of February 20, 1925, said that you did, was he telling the truth or not?

Mr. HERRICK. Mr. Carter was in error to a certain extent. I do not think Mr. Carter was malicious in that report at all, but there is some things that he was in error and that he emphasized more strongly than he should have. I think Mr. Canter came in contact with more people on the other side than he did people with us, and he listened to them. I think he listened to them, and he sort of overemphasized it in his report, without question.

Mr. DE NEFFE. There were only 25 citizens at that meeting of February 5, were there not?

Mr. HERRICK. I was not there.

Mr. DE NEFFE. February 15, 192—there were only 25 people there? That is what Mr. Carter says in his report.

Mr. HERRICK. I was not there.

Mr. DE NEFFE. But isn't it a fact that these people generally were not notified of that meeting?

Mr. HERRICK. I don't know anything about that meeting, except that I understood he had been there and had a meeting.

Mr. DE NEFFE. Yes; and Mr. Girard had notified his friends of this meeting.

Mr. HERRICK. You will see that Mr. Carter and I got into a discussion over the interpretation of this contract, and we did not exactly agree upon the interpretation. Now, I still take the position that I was entitled to my interpretation of that contract just as much as Mr. Carter, and Mr. Carter should have no reason for taking any stand against me because I argued my side of the contract.

Mr. DE NEFFE. Mr. Barnes also said that you did not have the money and you would not furnish the money —

Mr. HERRICK. Why, Mr. Barnes said everything that a human being could say.

Mr. DE NEFFE. And he said that your checks had been turned down down there?

Mr. HERRICK. They had not been turned down down there.

Mr. DE NEFFE. Mr. Barnes said that, didn't he?

Mr. HERRICK. Mr. Barnes said that. He said everything.

Mr. DE NEFFE. And he said that at the rate you were going it I would take five years or so to finish the road?

Mr. HERRICK. I don't know what he said about the rate I was going. He never said it to me.

Mr. DE NEFFE. Mr. Carter in his report said all of these things. Now, was Mr. Carter wrong or was he right?

Mr. HERRICK. Mr. Cartel was misinformed.

Mr. DE NEFFE. Who misinformed him? Mr. Barnes or the people —

Mr. HERRICK. Mr. Girard did not say it, would take five years.

Mr. DE NEFFE. No; Mr. Barnes did?

Mr. HERRICK. Yes.

MI'. DE NEFFE. Sure he did.

Mr. HERRICK. Yes.

Mr. DE NEFFE. And you say then he dominated this report of Mr. Carter's?
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Mr. HERRICK. He dominated the expression that Mr. Carter got in that vicinity.

Mr. DE NEFFE. Mr. Barnes was not at that meeting, was he?

Mr. HERRICK. He was not there, but he has created an influence there and has had a lot to do with the activity of the minds of those people upon the ground.

Mr. DE NEFFE. Were not most of the people at that meeting in February, 1925, friends of you and Mr. Girard and Mr. Klobucher?

Mr. HERRICK. I don't know who was there. I don't know the name of a one that was there.

Mr. DE NEFFE. And he talked with Mr. Klobucher and Mr. Guard too, didn't he, and Mr. Ames and all of them?

Mr. HERRICK. I suppose he did.

Mr. DE NEFFE. And what he wrote here was the conclusion that he had reached from hearing all sides of it?

Mr. HERRICK. I think he overemphasized his conclusions and went too far.

Mr. DE NEFFE. Then he was wrong, absolutely?

Mr. HERRICK. I do not say that he was malicious and wrong in entirety, but on some things he was misinformed.

Mr. DE NEFFE. Now, you say you interpreted the contract a certain way. You claimed that the essence of the contract was, merely that you should cut 60,000,000 feet by April 1, 1928? Wasn't that it?

Mr. HERRICK. I was within my rights when I interpreted it that way.

Mr. DE NEFFE. That was the position you took —

Mr. HERRICK. Yes.

Mr. DE NEFFE. And that they bad no right to ask for any railroad development at all?

Mr. HERRICK. I did not take the stand that they had no right to ask for railroad development.

Mr. DE NEFFE. Well, according to Mr. Granger's report of the meeting there in Spokane in July, 1926, that was what he said.

Mr. HERRICK. I said I was entitled to delay.

Mr. DE NEFFE. And you insisted on it, didn't you?
Mr. HERRICK. Why, I said that I would ask that I be given an extension of time.

Mr. DE NEFFE. Now, you remember you had a meeting there at Spokane, don't you?

Mr. HERRICK. Yes, Sir.

Mr. DE NEFFE. And you know how that came about too, don't you?

Mr. HERRICK. I was called there to meet Mr. Carter and Mr. Granger. I came from St. Maries.

Mr. DE NEFFE. You were asking for another modification, weren't you?

Mr. HERRICK. I think so.

Mr. DE NEFFE. You had had two already, hadn't you?

Mr. HERRICK. Yes, Sir.

Mr. DE NEFFE. Whom did you see there? Did you see Mr. Carter?

Mr. HERRICK. Mr. Carter and Mr. Granger, I believe.

Mr. DE NEFFE. Are you sure?

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Mr. HERRICK. Well, Mr. Carter—I guess Mr. Ames.

Mr. DE NEFFE. Mr. Ames came up, didn't he?

Mr. HERRICK. I believe it was Mr. Ames. Mr. Carter was there.

Mr. DE N NEFFE. Yes, I believe Mr. Carter was there too. And this whole thing was gone over?

Mr. HERRICK. Yes.

Mr. DE NEFFE. And you were in default, weren't you?

Mr. HERRICK. No; I was not.

Mr. DE NEFFE. But you were running an extension or modification because you knew you had been in default? Isn't that right?

Mr. HERRICK. I was wanting an extension—I am not in default.

Mr. DE NEFFE. You were not in fault?

Mr. HERRICK. No; I am not in default, and never have been in default.

Mr. DE NEFFE. The modification that was signed in March, 1925, required that you spend between April 1 and July 1, 1925, $100,000, didn't it?

Mr. HERRICK. I think so.

Mr. HALLOCK. Not the contract—the stipulation.

Mr. HERRICK. Not the contract—the stipulation that I accepted under duress; not written duress, but Mr. Ames thought it was not the proper thing for me to do and I acquiesced in it. Now, concerning the amount, of money that was expended there, it was to a certain extent expended in other ways.

Mr. DE NEFFE. You feel that whenever you can not have your own way that duress is being exercised, do you? Is that the position you take?

Mr. HERRICK. Well, that is an opinion of yours. But I am entitled to my own way half the time.

Mr. DE NEFFE. All right. Now, then, July came, and you had not spent $100,000, had you?

Mr. HERRICK. I could not tell you what I had spent.

Mr. DE NEFFE. There had only been 50 per cent, compliance?

Mr. HERRICK. I think that was the stand that Mr. Carter took.

Mr. DE NEFFE. You did not deny it, did you?

Mr. HERRICK. I did not deny it.

Mr. DE NEFFE. So there was only 50 per cent compliance?

Mr. HERRICK. I didn't say it was. I didn't deny it, because I wasn't on the ground and didn't have the figures and conditions.

Mr. DE NEFFE. You had Mr. Girard there.

Mr. HERRICK. I had Mr. Guard there, but at the time I met those gentlemen I had not been in touch with Mr. Girard and those facts.

Mr. DE NEFFE. But right after the meeting it recites here that you got in touch with Mr. Girard and came back and had another meeting, and you still took the same position.

Mr. HERRICK. Yes, sir; I have not backed up from any stand I have ever taken.

Mr. DE NEFFE. Yes, sir. You have just been running the Government here, haven't you?

Mr. HERRICK. Sir?

Mr. DE NEFFE. You have just been running the Forest Service, haven't you?
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Mr. HERRICK. No, I have not been running the Forest Service. I have been working in absolute good faith with the Forest Department.

Mr. DE NEFFE. And you have been telling them what you would do and what you would not do?

Mr. HERRICK. No, I have not been telling them what I would do; I was telling them what it was convenient for me to do.

Mr. HALLOCK. Mr. Chairman, I want the record to show that this old gentleman here, 73 years of age, is being bombarded by counsel pounding the table, and shouting at him. I want that in the record. I think he should be a little quieter in his manner.

Mr. DE NEFFE. I want the record to show that this old gentleman is a very vigorous gentleman, and that he has been shouting at me, and that he has been just as positive in his assertions as I have in my assertions to him. I would like to have the record clear on that point.

The CHAIRMAN. I think it is entirely unnecessary. We will permit it to stand in the record; but I think, gentlemen, you should refrain from any undue demonstrations.

Mr. DE NEFFE. My pounding on the table is only to emphasize

Mr. HERRICK. I have a side of the table over here equal to yours.

Mr. DE NEFFE. You can pound it all you wish, Mr. Herrick.

The CHAIRMAN. I am sure nobody is unduly excited. It is very apparent that it is being brought into the record with the idea that others who read the record will be influenced by it, and I am sure they will not be.

Mr. HERRICK. I ask, Mr. Chairman, for the privilege of emphasizing that I have not domineered the Government in this contract. I went to them as a supplicant asking for leniency and assistance in the way of extension.

Mr. DE NEFFE. You have always been begging, not commanding. Is that it?

Mr. HERRICK. Absolutely. I am not in a position to command.

Mr. DE NEFFE. Why was it here when you were in default the third time —

Mr. HERRICK. I am not in default.

Mr. DE NEFFE. Well, you were asking for the third modification —

Mr. HERRICK. Yes.

Mr. DE NEFFE. In this July meeting at Spokane?

Mr. HERRICK. Yes.

Mr. DE NEFFE. Why did you not go down to Portland where the Forest Service office is and where most of them are?

Mr. HERRICK. I met him in his routine with Colonel Greeley at Spokane.

Mr. DE NEFFE. You told them to go up there?

Mr. HERRICK. I did not; they asked me to come to Spokane.

Mr. DE NEFFE. I see. They were chasing you up? Is that it?

Mr. HERRICK. No; they were on the regular route through the country, I think. I think he was on his way to Portland. That is just a guess as to why we met there. I was asked to meet him there.

Mr. HALLOCK. Just at this juncture. At that time your home was in St. Maries, Idaho?

Mr. HERRICK. In St. Maries, Idaho.

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Mr. HALLOCK. And your Spokane residence has been acquired at a comparatively recent date?

Mr. HERRICK. Within a few months.

Mr. DE NEFFE. At that meeting you contended that all you had to do was to cut 60,000,000 feet by June 1, 1928?

Mr. HERRICK. I think that was a part of my argument.

Mr. DE NEFFE. Reading from Mr. Granger's report to the Forest Service, dated July 24, 1925, he states as follows, speaking of this meeting at Spokane:

> We endeavored to recall to Mr. Herrick's mind that even as long ago as in the spring of 1924 he was informed in this office that the terms of the contract were to be complied with; that when the contract way modified this spring the terms of the modification made it clear that noncompliance with any one of the stipulations would be cause for the cancellation of the agreement; that when the stipulations were forwarded to him it was again pointed out, and that in reply he had written that he would guarantee to get within requirements by July 1. A11 this he waved aside as immaterial, claiming that the wording of the contract, throughout implies a liberal construction, and that he had assumed a liberal interpretation of the stipulations as well.

You were the one that was directing the interpretation of this contract? Isn't that right?

Mr. HERRICK. I interpreted my side of the contract.

Mr. DE NEFFE. Yes, sir —

Mr. HERRICK. Weren't I entitled to that privilege?

Mr. DE NEFFE. That is to be decided.

Mr. HALLOCK. Does this go to the proof of conspiracy between Mr. Herrick and the Forestry Department?

Mr. DE NEFFE. We are coming to that. [Continuing reading:]

> When asked what guaranty or assurances he could give that the remaining stipulations could he complied with, he had nothing to offer. It seemed impossible for him to grasp our repeated statements that we were faced with a violation of the terms of the contract and were endeavoring to ascertain whether we must recommend cancellation or whether he was prepared to take some action in the future which would justify us in not doing so.

And then further on:

> Yesterday Mr. Herrick, Mr. Girard, and Mr. Klobucher were here and had a conference with Mr. Ames

and me.

You had talked it over with Mr. Girard and Mr. Klobucher then?

Mr. HERRICK. After this, yes.

Mr. DE NEFFE. Then Mr. Granger says:

> Mr. Herrick had actually nothing new to offer, and attempted to review the same ground that he went over in Spokane —

This letter was written in Portland.

> The situation, as you can see, is rather difficult. Here is a purchaser who has consistently refused to regard the contract stipulations seriously.

Now, at that meeting you were in default and were asking for the third modification, and you were dictating to them what you would accept and what you would not?

Mr. HERRICK. I was not. I was not in, default, only in my expectations of that contract.

Mr. DE NEFFE. Yes?

Mr. DE NEFFE. You knew that you would be in default, did you not?

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Mr. HERRICK. I knew that I was behind on the expectations of the contract, but I was acting in good faith about the thing, and good intent, doing difficult work, doing the very best that I could under the conditions, and following out the line that I had originally planned to carry this work out, hoping each day would get better and better. I was not trying to shirk the final fulfillment of that contract, but I was trying to do it in the very best possible manner that any human being could do it.

Mr. DE NEFFE. And you were acting in good faith and your intent was good?

Mr. HERRICK. Absolutely.

Mr. DE NEFFE. And when Mr. Carter says in his report of February 20, 1925, that in his judgment you had failed to show good intent and good faith —

Mr. HERRICK. Mr. Carter is absolutely in error on the question of my good faith. There has never been a moment that I have not given them good faith and done the very best I could.

Mr. DE NEFFE. And You say you were not trying to dictate, or tell them what to do?

Mr. HERRICK. No, sir. I was only arguing my side of the question, which I am entitled to do with anybody.

Mr. DE NEFFE. At that meeting didn't you refuse to accept the requirement as to the building of the mill foundations in the fall of 1925?

Mr. HERRICK. Yes, sir; because the gentleman that asked that was in a position to know what they were asking. You don't build a mill foundation until you have the plans and the specifications. That is to be a steel structure, and you can not build that until you get through with the builder. And that was good judgment on my part, because I am building a bigger plant than I intended to build when I first made that contract. I have doubled the size of the boiler house and the engine room, putting in twice the boiler capacity and power plant than I expected. I am putting in now—I have bought the boilers and the engines, and one of the turbine engines is to produce enough electrical energy to take care of the wants of 25,000 people inside of 15 years within a radius of 40 miles. That was not contemplated in the contract. I am enlarging upon the building program, and I am building the railroad better than the building program or the prospectus ever expected.

Mr. DE NEFFE. But you are building it in your own way and in your own leisurely manner?

Mr. HERRICK. Building it in the very best way, and building it just as fast as I have been able to get money. But the time has come—the lumber business has gone down and down to such an extent that I am going out to do what I dislike very much to do, I am going out to gather in the money and push that work to the utmost. If that is not good faith I don't know what good faith is.

Mr. DE NEFFE. You had over two years prior to this July meeting in 1925 to get the plans of your mill out, hadn't, you?

–

Mr. HERRICK. The mill was not in this contract. I think the mill were the last item. I have had a man working on the mill, and working on the mill now, remodeling the machinery for the mill, and assembling the material for the frame of the mill.

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Mr. DE NEFFE. But you are getting away from my question, Mr. Herrick.

Mr. HERRICK. I have had all the time that I have taken, yes.

Mr. DE NEFFE. Let me ask you a question and see if you can not answer it. Prior to this meeting in July, 1925, you had had over two years in which to prepare the plans and specifications, etc., for your mill? Is that right?

Mr. HERRICK. Yes, Sir,

Mr. DE NEFFE. And you had not done a thing on that?

Mr. HERRICK. Yes, I had. I had them on a piece of yellow paper, and in my head, and on my desk at home.

Mr. DE NEFFE. Then you could have told in two years' time just what kind of mill you were going to build, couldn't you?

Mr. HERRICK. Well, I could have got—I always had an idea of the kind of mill I wanted, the best mill that money would build for that operation, and I have changed those plans or ideas in many instances.

Mr. DE NEFFE. Then you could have gone ahead and built your mill foundations in the fall, couldn't you?

Mr. HERRICK. No, sir; not until your master mechanic and builder had got the blue prints and where the pedestals for everything should stand, and your foundations for your niggers, your foundations for your band mills, your foundations for your edgers, your foundations for your trimmers.

Mr. DE NEFFE. And two years was not enough to work that out? Was that it?

Mr. HERRICK: Thaw was not essential at that time. I had a plan on that to work enough on that to perfect it. He has been around to other plants to see what other people were doing.

Mr. DE NEFFE. The contract did not require the building of a mill originally, did it?`

Mr. HERRICK. I think not.

Mr. DE NEFFE. But the first modification did?

Mr. HERRICK. I think so, yes.

Mr. DE NEFFE. And you intended to build a mill?

Mr. HERRICK. Why, certainly. I am building a mill now. I have never drawn out of any intentions. The reason I have not got along further with the mill is because this man, Mr. Barnes, has gone all over the world, or all over that country, and proclaimed that I did not have any money, that they were going to break me over there. I would go to a bank where in years prior I could go to the bank and say, "Here, Mr. President, I want $500,000 for 90 days or

so, and then I want to get it provided that in 90 days or so I can extend it." The time has been in the past that I could extend those loans for five years. They would say, "Mr. Herrick, that is all right; we will let you have the money, with this understanding, that you consider it as a demand note, and when the 90 days is up you must pay. We understand that there is an effort being made over in Burns, Oreg., to tie up a lot of your property, and if they do, or if they bring up anything that your contract is canceled with the Government we have got a piece of frozen paper," and when I would go out and get $100,000 to put into that operation I have had to put that $100,000 up and go to another bank and get it, just on account of the attitude that Mr. Barnes has developed in that country.

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Mr. DE NEFFE. The cause of the whole delay there was —

Mr. HERRICK. I want to explain further. When I wanted to get my $150,000 from the railroad they wanted me to give them a bond, and I had to go clear to San Francisco, and when I got to San Francisco they says, "Why, Mr. Herrick, is there any possibility of their canceling your contract and your having this property idle there and you going to be tied up?" And I had to go to work and impress upon them and convince them that there was no possibility of it.

Mr. HALLOCK. Pardon me. You are referring to the repayment of this $150,000 to the Union Pacific Railroad Company on the line from Crane to Burns?

Mr. HERRICK. On the line from Crane to Burns.

Mr. DE NEFFE. You got that

Mr. HERRICK. 1 was putting up a bond that cost me $2,250 a year, and got back $150,000 that they were paying me 5 per cent on. But I had to make a trip to San Francisco, on account of Mr. Barnes's activity.

Mr. DE NEFFE. What do you mean by his activity?

Mr. HERRICK. Talking in Portland—everybody that he met.

Mr. DE N NEFFE. He was just telling the truth, wasn't he?

Mr. HERRICK. What?

Mr. DE NEFFE. That you were delaying on account of lack of funds.

Mr. HERRICK. Well, doing everything that he could think of to break me.

Mr. DE NEFFE. But what he was telling was the truth?

Mr. HERRICK. He told people that he would beg, borrow, or steal money to break me.

Mr. DE NEFFE. He simply told them that you had not prosecuted the work?

Mr. HERRICK. No; he was prosecuting me.
Mr. DE NEFFE. Isn't that what he said—because you were not prosecuting the work?

Mr. HERRICK. No, sir; his idea of what I must do in my duty to him.

Mr. DE NEFFE. And not Mr. Carter's idea?

Mr. HERRICK. Mr. Carter made the expression there that I think was a little overemphasized. I must say, in fairness to myself and in fairness to Colonel Greeley and the public, that he emphasized that a little too strongly.

Mr. DE NEFFE. Mr. Herrick, I want to ask you this. Isn't it a fact that when you made this bid and the contract there was an understanding between you and Mr. Girard and some of the officials of the Forest Service that you could have all the extensions you wanted?

Mr. HERRICK. Oh, No; nothing of the kind. But the Forest Service Department, I suppose, or the Indian

Department—I have had contracts with them—are always very lenient on extensions or accommodations in times of suppression of the market or an off market.

Mr. DE NEFFE. And isn't it a fact that on account of that understanding you —

Mr. MCGOWAN. Mr. Chairman, I must object, He has specifically stated that there was no such understanding, and yet Mr.

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De Neffe, right over the answer, frames his question on the assumption that Mr. Herrick had answered in the affirmative, whereas the record shows that specifically he did not. We submit that is unfair question.

Mr. DE NEFFE. He can answer yes or no.

Mr. DERRICK. Put your question.

Mr. DE N NEFFE. Isn't it a fact that because you had gotten the Forestry Service in a hole here by not complying with the contract originally and then getting a modification and not complying with the modification, you figured you had a strangle hold on then?

Mr. DERRICK. Nothing of the kind.

Mr. DE NEFFE. You thought they were tarred with the same stick you were and you would force them to do whatever you wanted on the matter of extensions?

Mr. HERRICK. Now you are just insinuating —

Mr. DE NEFFE. I am just asking whether that was so or not?

Mr. DERRICK. No, Sir.

Mr. HALLOCK. I know, gentlemen, it is extremely hard for the reporter when both of you interrupt each other, as you do. If Mr. Herrick will just wait until the answer is finished I am sure it will help the reporter a little.

Mr. HERRICK. I will try.

Mr. DE NEFFE. You had had a lot of dealing's with Mr. Jim Girard, hadn't you, then?

Mr. HERRICK. A lot of dealings? Very little.

Mr. DE NEFFE. He was with the Forest Service at Missoula, wasn't he?

Mr. HERRICK. Yes.

Mr. DE NEFFE. And you had bought Government timber there that he had had something to do with?

Mr. DERRICK. Well, he had very little to do with any timber I had ever bought from the Forest Service.

Mr. DE NEFFE. You mentioned here, I think—I may be mistaken—that you had bought some from the Forest Service, didn't you?

Mr. HERRICK. Oh, yes, a little.

Mr. DE NEFFE. And then you bought some from the Largey estate, I believe it was?

Mr. HERRICK. Yes, Sir. I think I gave the history of that the other day, didn't I, Mr. Chairman, about the Largey estate? Shall I go over it again?

The CHAIRMAN. Just answer the questions, please.

Mr. DE NEFFE. Mr. Girard, when you bought the Largey timber was not with the Forest Service?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. Had he been working for the Largey people?

Mr. HERRICK. He worked for the Largey people and put that property, as you call it, on the map. That is, he went over it and he estimated it, and he prepared the estimates and gave the lands that were timbered and the lands that were not, timbered—some information that Mr. Largey did not leave the estate —

Mr. DE NEFFE. At that time you were negotiating to buy the Largey timber?

Mr. HERRICK. No, not at the time he was putting it on the map.

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Mr. HALLOCK. Won't you please not interrupt him so much? And I know he will try to do the same with you.

Mr. DE NEFFE. I thought he was through.

Mr. HERRICK. I was not trying to buy that property when he was putting it on the map, but after that they listed the property and there were other people that were right on the ground at the Davenport Hotel to buy it, and I bought it in five minutes.

Mr. DE NEFFE. And when you became interested in it they had it cruised then?

Mr. HERRICK. They had it cruised then. They had it cruised, and I verified from Mr. Girard that on those lands there were 120,000,000 feet. Now, I had had—this land was mixed in. These were the odd sections. I might as well go on and tell this. These were Northern pacific grant lands. These were the odd sections. The Milwaukee Railroad and myself—say, there is a 6-mile square there, 6 miles wide and 8 miles long. That is in the forest reserve. Now, I owned 54 per cent of those lands in there with the Largey Estate. The Milwaukee Railroad owned 75 per cent of the balance of those lands, and those lands begin within a mile of my house. I was familiar with those lands. But I said to Jim, "Your estimate shows 120,000,000 feet of white pine. Will it cut 120,000,000?" And he said "yes." That is all I asked him about the property. That gave me to doubly understand that the report that Mr. McDonald, son-in-law- of Mr. Largey, gave me was the actual estimate that Mr. Girard had made and put on that list.

Mr. DE NEFFE. Mr. Guard had cruised it for the Largey Estate?

Mr. DERRICK. For the Largey estate, not for me, and I didn't buy it for some years afterwards.

Mr. DE NEFFE. You did not send your own cruiser in there before you bought it?

Mr. HERRICK. Yes; they checked up on certain phase and compared it as to the estimate, but we didn't go over all of the small items ourselves. We checked it up enough to see that Mr. Guard's estimate was all right.

Mr. DE NEFFE . You were buying Government timber right in there at the time, too?

Mr. HERRICK. There was no Government timber right in there. The Government timber was farther up the river on a different tract. There was no forest reserve in that particular holding of the Largey estate.

Mr. DE NEFFE. You were buying some of that, were you—some of that Government timber farther up?

Mr. HERRICK. Why, I have always been buying Government timber.

Mr. DE NEFFE. Did you at that time? Were you buying Government timber then?

Mr. HERRICK. Yes; off and on. I was not operating—at the time of that purchase I was not operating on any Government timber. I have only bought Government timber in that country as the Government timber has been trespassed by fire.

Mr. DE NEFFE. You heard Mr. Guard's testimony about how he and you bid on this timber, didn't you?

Mr. HERRICK. Yes; I heard that.

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Mr. DE NEFFE. And you say that he stated it correctly, do you?

Mr. HERRICK. That he came to Coeur d'Alene?

Mr. DE NEFFE. Yes.

Mr. HERRICK. Yes, Sir.

Mr. DE NEFFE. He was running after you, wasn't he.?

Mr. HERRICK. Why, I think it was within his routine business. I don't think he made a special trip to see me. There was another forestry officer at Coeur d'Alene, on the St. Joe National Forest, who was just on the same position as the Missoula forester. I think Mr. Girard passed from one to the other.

Mr. DE NEFFE. I See. You never owned any timber in Oregon before this, did you?

Mr. HERRICK. No, Sir.

Mr. DE NEFFE. This was advertised six months before then?

Mr. HERRICK. Yes, Sir.

Mr. DE NEFFE. And the prospectuses were sent out to all the big operators all over the country, weren't they? It was probably the most widely advertised timber the Forest Service ever put on, wasn't it?

Mr. HERRICK. Yes, Sir.

Mr. DE NEFFE. And you got one of those, of course, with the others?

Mr. HERRICK. If I did—it may be they came to me before, but I didn't give it any particular attention.

Mr. DE NEFFE. You remember seeing it and seeing about the location?

Mr. HERRICK. Oh, I think I saw it and read it in the trade journals.

Mr. DE NEFFE. Didn't it impress you then that it made a very good proposition?

Mr. HERRICK. No: it didn't impress me at all until Mr. McHarg, the supervisor of the St. Joe National Forest, met me on the street and said he had something he wanted to present to me, and he handed me that prospectus.

Mr. DE N NEFFE. Why didn't it impress you then when it was being advertised the first time?

Mr. HERRICK. Because I was engaged in other properties. I was busy at that time. It was out of my own State.

Mr. DE NEFFE. Was it because there was so much railroad to build?

Mr. HERRICK. Oh, that had nothing to do with it, until I took the prospectus home and went over it, and it was a very interesting prospect. It just appealed to me as something I would like to take hold of and handle.

Mr. DE NEFFE. But when it was advertised six months you read it through and decided you were not ready for that king of operation?

Mr. HERRICK. At first?

Mr. DE NEFFE. Yes.

Mr. HERRICK. I don't think I paid any attention to the prospectus. It possibly came into some of my mill offices just the same as the lumber trade journals do and other prospectuses, prospectuses of machinery and such

things as that. they have a great accumulation of those things. But I had never went into it, and I paid no attention to it. In fact, it was never brought to my attention that there was anything that would interest me.

Mr. DE NEFFE. You knew it wits being advertised though?

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Mr. HERRICK. I think without question I did. I read the trade journals.

Mr. DE NEFFE. And then after it was advertised the second time—that is, beginning around the early part of March, I think about the 4th of March, the 30-day ad. That was the ad on which you bid?

Mr. HERRICK. After Mr. McHarg had given me this prospectus.

Mr. DE NEFFE. Then before he gave you the prospectus you did not know anything about it being readvertised again, did you?

Mr. HERRICK. I hadn't paid any attention to it; if I did I didn't pay any attention to it. I think he gave that to me shortly after the-date of the readvertisernent.

Mr. DE NEFFE. You had no notice of it being readvertised at all?

Mr. HERRICK. No, sir.

Mr. DE N NEFFE. How did you happen to go to Mr. McHarg?

Mr. HERRICK. I did not go to Mr. McHarg. He met me on the street, and he said, "I have got something, Mr. Herrick, that I think will fit you." I didn't go to Mr. McHarg and ask for the prospectus.

Mr. DE NEFFE. I do not want to misquote you. He brought it to you?

Mr. HERRICK. Yes. I think that was within his line of duty.

Mr. DE NEFFE. Oh, sure; I am not criticizing him at all. Do you remember about what time that was?

Mr. HERRICK. What time?

Mr. DE N NEFFE. That Mr. McHarg brought the prospectus to you.

Mr. HERRICK. Oh, I should say 20 days before the sale—15 or 20 days before the date of the sale.

Mr. DE NEFFE. Mr. Girard said about a week or 10 clays before the sale. Was that right.

Mr. HERRICK. I met him before then, because I went home—took the prospectus with me on the boat and went to St. Maries and read the prospectus over and got in touch with Mr. Douglas. Mr. Douglas is employed yearly by the Milwaukee Railroad, and whenever I want him to do a big piece of business for me the Milwaukee releases him if it is convenient to them to do that. I had him get onto the train and go over to Burns and to the Malheur and Bear Valley and look this timber over. I said, "Mr. Douglas, you just look around as to the quality of the timber and the prospects of logging it and getting it down to where the prospectus says the mill site ought to be." He went over and came back with a most glowing report.

Mr. DE NEFFE. And Mr. Guard's statement would be about right, wouldn't it, that it was about a week or 10 days before the bids were opened?

Mr. HERRICK. Oh, I couldn't tell you. As near as anybody would state from the recollection his statement would be right.

Mr. DE NEFFE. Then he told you, I suppose, that Brook-Scanlon had made an offer of $2, which was the basis of the readvertisement, didn't he?

Mr. HERRICK. Yes.

Mr. DE NEFFE. And he told you they would bid, of course? Didn't he tell you that?

Mr. HERRICK. I don't know as he said anything about who would bid.

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Mr. DE NEFFE. But you thought they probably would, didn't you?

Mr. HERRICK. The main talk with him was that it had been put up for a dollar and a half and there were no bids, and he understood it was going to be put up again on a minimum of $2.

Mr. DE NEFFE. That is, it had been put up at a minimum of $1.50?

Mr. HERRICK. Yes; and there were no bids, and now they were putting it up at a minimum of $2.

Mr. HALLOCK. I want to correct one statement that Mr. De Neffe made, and I think the witness, too, that it was first put up and advertised at a minimum of $1.50

Mr. DE NEFFE. Oh, $2.75. You are right.

Mr. HERRICK. $2.75; yes. I misspoke {*sic*} there—$2.75 and no bid given.

Mr. DE NEFFE. And you thought that since Brooks-Scanlon had made an offer of $2 they would bid more than $2, didn't you, Mr. Herrick?

Mr. HERRICK. Well, if there were no bid on the timber when it was first put up it didn't look as if there were going to be many bidders. But I had figured if they had asked to have it put up for $2, and it was put up at a minimum of $2, that there was a probability that they might go to $2.75, and I just decided to give 5 cents to be above the $2.75.

Mr. DE NEFFE. You thought that maybe Shevlin-Hixon might bid pretty high too, didn't you?

Mr. HERRICK. I didn't know who would bid. I knew this fact, that there was not any bid on the first advertisement.

Mr. DE NEFFE. At that time you told Mr. Girard that you would bid $2.80 you had not seen the timber at all, had you?

Mr. HERRICK. No; but I had read over the prospectus, and it looked so glowing that I was willing to bid $2.80.

Mr. DE NEFFE. Mr. Girard told you that he has prepared the data which went into the prospectus? Isn't that true?

Mr. HERRICK. That he had prepared the price and the principal part of the prospectus, but he had not made the estimate. There wasn't any question in my mind about the estimate, because from all the history of the Government their estimates—and all estimators, if you get estimates from them, actually made and not enlarged in the office of the seller, why, they are always comparatively close, where they are made by a corps of men that are in that business.

Mr. DE NEFFE. Now, in undertaking a project of this magnitude, building 80 miles of railroad, wouldn't ordinary business precaution demand that you make a pretty thorough investigation in regard to the logging conditions and everything of that kind?

Mr. HERRICK. Yes, sir. I sent a man there to determine that.

Mr. DE NEFFE. Well, did you send him after you told him that you had bid $2.80?

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Mr. HERRICK. No, sir; he was on the way—he was there when I told him I would bid $2.80.

Mr. DE NEFFE. But you had not heard from him?

Mr. HERRICK. I just took that from the prospectus. I took it upon the ground that the prospectus was correct and honestly made, and I had sent a man there to verify it. My bid had not been put in. If Mr. Douglas had come back and said that the prospectus was unfair and things were not asserted in that prospectus I never would have made that bid, probably.

Mr. DE NEFFE. Well, let us see. He had 10 days to make the trip? It takes a couple of days to get in there, doesn't it?

Mr. HERRICK He had time enough to make the trip and get back. I don't think there, is any question in the chairman's mind about his having the time, or that I sent, him there. The time is confined simply from the time Mr. McHarg gave me that prospectus until the bid was made. I can not tell you the exact date, but it was a sufficient number of days for me to look over the prospectus and send Mr. Douglas there, and he got back before I made the bid.

Mr. DE NEFFE. But I am not taking your statement, I am taking Mr. Girard's. He said it was from a week to 10 days before the bids were opened.

Mr. HERRICK. Well, a week or 10 days is a very —

Mr. DE NEFFE. That allowed 10 days?

Mr. HERRICK. Why don't you slip it over and say 15?

Mr. DE NEFFE. Because Mr. Girard did not say so. I was giving you the benefit of the minimum amount of time.

Mr. HERRICK. You are taking advantage of the maximum.

Mr. DE NEFFE. No, he said a week or 10 days.

Mr. HERRICK. I think this argument is all uncalled for.

Mr. DE NEFFE. So he would have about six days in there?

Mr. HERRICK. He could go there in two days and get back in two days. The chairman knows that to be a fact.

Mr. DE NEFFE. And at that time of the year, the latter part of March, there is a good deal of snow in that country, isn't there? It is a high country, snow and ice?

Mr. HALLOCK. Do you mean the trees were covered?

Mr. HERRICK. What has that got to do with the case? When Mr. Douglas don't go in his caulked shoes he can go in his snowshoes.

Mr. DE NEFFE. Oh, he has to go there in snowshoes?

Mr. HERRICK. Well, he got there.

Mr. DE NEFFE. Surely, he got there.

Mr. HERRICK. He had ample time, and he went over there and made an investigation that was finally approved by me, and I considered that it was sufficient. And he got back and told me about it before I touched a pen to the bid.

Mr. De NEFFE. He could look over 67,000,000 acres of land then In that time, in the winter?

Mr. HERRICK. I did not ask him to look over 67,000,000 acres. I had a prospectus, made out by the Forestry Department, that was supposed to be accurate. I had that before me. He was to look over the quality of the timber and the logging.

Mr. DE NEFFE. Were you interested in knowing the logging conditions of only a few acres or of 67,000,000?

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Mr. HERRICK. The prospectus gives me the conditions of the logging, and shows me the picture there, all the conditions of the ground.

Mr. DE NEFFE. Yes, but you did not seem to be satisfied with the prospectus. You sent Mr. Douglas to verify it.

Mr. HERRICK. Certainly that was within my rights and it was my duty.

Mr. DE NEFFE. I am not criticizing you, but I am asking whether Mr. Douglas could look over the logging conditions of 67,000,000 acres of land in that short tune.

Mr. HERRICK. He sufficiently observed it, to satisfy me to make that bid.

Mr. DE NEFFE. And be could also go and check up possible economical routes for a logging railroad in that time?

Mr. HERRICK. Well, he went down the route that was proposed in the prospectus and we found a better one.

Mr. DE NEFFE. That is, on that trip?

Mr. HERRICK. Yes, on that trip.

Mr. DE NEFFE. You say that, traveling on snowshoes —

Mr. HALLOCK. He did not say he was traveling on snow shoes.

The CHAIRMAN. No; he has not said that. You said that there might be ice and snow and he said that if there was Mr. Douglas may have gone on snow shoes.

Mr. DE NEFFE. But you don't know how he did travel?
Mr. HERRICK. I don't care how he traveled.

Mr. DE NEFFE. And he had time during that time to go to Crane and Burns also and back again, and to look at the mill site too?

Mr. HERRICK. Why, when he was at Burns he could look at the mill—there were two mill sites. He could look at the ground. He didn't settle the question as to the mill site. I took it for granted that there was a mill site. He looked at the ground.

Mr. DE NEFFE. Have you Mr. Douglas's report with you as to what he found?

Mr. HERRICK. No, sir; I have not. He just came back and told me the conditions. There was not any report made at the time. He said "Herrick, bid high enough to get that, property; it is a bargain ."

Mr. DE NEFFE. When did he come back.? Do you remember? About how long before the bids were opened?

Mr. HERRICK. Oh, I don't know.

Mr. MCGOWAN. Mr. Chairman, I do not like to object here, but this is repetition and repetition. Our time is limited. I know there is a disposition on the part of the chairman to close these hearing but we have several more witnesses that we want to put on, but they will be shut off unless this examination is brought within a reasonable length.

Mr. DE NEFFE. Well, I am making a little headway. I am going to another phase, Mr. McGowan.

You then went to Spokane, didn't you, Mr. Herrick?

Mr. HERRICK. Yes, sir.

Mr. DE NEFFE. To see Mr. Flood?

Mr. HERRICK. Yes, sir.

Mr. DE NEFFE. Do you remember the date that you were there?

Mr. HERRICK. Oh, it was two or three days before the bid.

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Mr. DE NEFFE. Did you have to borrow the money to get the $25,000?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. Where did you get that?

Mr. HERRICK. My right hand got it out of my left-hand pocket.

Mr. DE NEFFE. You did not get it from the bank in Spokane?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. And then you gave Mr. Flood the $25,000 to make the bid on? Is that right?

Mr. HERRICK. Yes, sir.

Mr. DE NEFFE. Do you remember what day you gave it to him?

Mr. HERRICK. Oh, I don't know —

Mr. DE NEFFE. Was it the day that he wont down to Portland; or was it the day before he went there?

Mr. HERRICK. No; I can't confine myself down to one or two days there.

Mr. DE NEFFE. Why did you send Mr. Flood down there?

Mr. HERRICK. Why did I?

Mr. DE NEFFE. Yes.

Mr. HERRICK. Because I had a right to.

Mr. DE NEFFE. Is that your only answer?

Mr. HERRICK. Because I thought it was good business, that he could get the certified check from the bank and that he was not a lumberman and that he would be unknown, and if I went my self why, everybody would know that Fred Herrick was in Portland and why he was there. It was good judgment on my part, I think, to send a banker to do that bidding. I made out the bid; he didn't make out the bid.

Mr. DE NEFFE. No; I know that. You could have sent a certified check from Spokane, couldn't you?

Mr. HERRICK. Well, that was my way of doing it. That was my privilege, to send it by Mr. Flood or anybody, or to make it as I saw fit. I was within my rights, and what I could have done has no bearing on this.

Mr. DE NEFFE. There are Federal reserve banks in Spokane, aren't there?

Mr. HERRICK. Yes; there are Federal reserve banks in all good-sized cities.

Mr. DE NEFFE. Couldn't You have got a certified check or drafter there for $25,000 and mailed it?

Mr. HERRICK. Yes. That was my business, how I wanted to do that, and none of yours.

Mr. DE NEFFE. Well, Senator Walsh asked the question; it seemed to excite his curiosity. Reading from the testimony of Mr. Flood:

> Senator WALSH of Montana. I am really very curious to know what occasion there was for you to go to Portland at the time these bids were opened. Why could not Mr. Herrick have just simply put his bid in the mail with a properly certified check and mailed it to Portland? Why take you away from your important business and go down to Portland?
> Mr. Flood. That is what I thought. I don't know.

Now, you say it is not any of my business. It seems to be a question that was running in the mind of at least one member of this committee. Has the committee a right to know?

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Mr. HERRICK. Why, I have answered any questions that they have asked.

Mr. HALLOCK. Mr. Herrick, in that connection, inasmuch as Senator Walsh asked the question and appeared to have some interest in it, if you have any reasons in your mind or care to make a little fuller statement we will be glad to have you do it.

Mr. HERRICK. I think Senator Walsh did not really understand the method pursued in making these bids, keeping under cover as much as you can. Each lumberman keeps away from the other and keeps hidden just as much as he can.

Mr. DE NEFFE. You would have been hidden if you had registered mail?

Mr. HERRICK. It was my privilege. I thought that was the surest way, to take no chances and have it there.

Mr. DE NEFFE. Senator Walsh also asked:

> You were apparently acting as a messenger boy —
> Mr. FLOOD. An Agent.
> Senator WALSH of Montana. A mail man, to take that bid down there?
> Mr. FLOOD. Yes, Sir.

Mr. HERRICK. Wasn't that within my rights?

Mr. DE NEFFE. I am just making the inquiry.

Mr. HERRICK. I fail to see where there was anything underhanded or anything to cover up, only to cover up, to keep my identity away from the other lumbermen that might bid.

Mr. DE NEFFE. And you told Mr. Flood not to say anything about it, didn't you?

Mr. HERRICK. Yes.

Mr. DE NEFFE. And Mr. Flood says, "He"—meaning you—"said it was a confidential job." You could have gone down to Portland yourself and gotten a draft or any kind of proper means of transferring the money, and mailed it down there without Mr. Flood, couldn't you?

Mr. HERRICK. I think I have explained that to the chairman here, why I sent that in that way. And I was within my rights. There was nothing underhanded and nothing malicious, nothing to defraud the Government in that.

Mr. DE NEFFE. Does the fact that you appear in any town in the West excite a great deal of suspicion or speculation?

Mr. HERRICK. Oh, no. Every large lumber man knows who Fred Herrick is.

Mr. HALLOCK. Mr. Herrick, right in that connection, when you were discussing it with me the other day you mentioned the possibility of a train wreck or something that would preclude your getting the bid in there. I wonder if

you would care to give the committee the benefit of your ideas along that line.

The CHAIRMAN. I think we ought to follow the proper order.

Mr. DE NEFFE. Can't you ask these questions on redirect, Mr. Hallock? I want to follow this up and try to make headway if you will let me.

The bids, as I understand the Forest Service to say, were opened on the 5th of April, 1923? Is that right?

Mr. MCGOWAN. The 5th of April, 1923.

Mr. DE NEFFE. According to Mr. Flood's testimony—well, I can not find it right now, but I think there was some difference. Mr. Flood does a great deal of your banking, doesn't he?

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Mr. HERRICK. Why, my different concerns have banked with him for some number of years, and I have sometimes borrowed money there and it is always paid back.

Mr. DE NEFFE. And he is interested with you in a good many of your enterprises?

Mr. HERRICK. No; he is not in any.

Mr. DE NEFFE. In none of them?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. The banks he is interested in do business with you?

Mr. HERRICK. Oh, yes; but his banks were not interested in these propositions. He has some stock in a defunct steamship line on Coeur d'Alene Lake—that is, with a bank that got hung up with that proposition—but I am working it out for him. I have bought that property, and he retained about 250 shares.

Mr. DE NEFFE. You testified on direct examination that when you entered into this contract you expected to make $500,000 on a timber deal where you put in $850,000? Was that it?

Mr. HERRICK. $1,850,000.

Mr. DE NEFFE. And you expected to make $500,000 out of that?

Mr. HERRICK. In the next three years.

Mr. DE NEFFE. Yes; and if the price of pine had stayed where it was you would have made $500,000?

Mr. HERRICK. Yes, sir. And that is just one of my individual operations.

Mr. DE NEFFE. You were relying simply on that deal going through successfully when you entered into this contract, were you not?

Mr. HERRICK. I was relying on all of my operations being successful, with a profit.

Mr. DE NEFFE. That was somewhat speculative, was it not? You are making that $500,000?

Mr. HERRICK. Why, not in the average business man's mind.

Mr. DE NEFFE. But as far as your fulfilling this Bear Valley contract, that was dependent on this and other speculative matters and your being successful, was it not?

Mr. HERRICK. That was the basis of my starting out to operate this and complete it, that I had expected by the profits from these plants and the conversion of a little piece of property here, getting some money in from the Mississippi deal, which they had been talking that they were going to pay up, and then the conversions that I could

make, with the profits from the lumber that I would make and the money that would come out of the properties that I already owned, that that would go on and this would go right along smoothly. And also the probability that any time I wanted a half million dollars I could go to a bank and get it without a mortgage or anything like that. And I would have been in a position to do that if Mr. Barnes had not attacked me as viciously as he did.

Mr. DE NEFFE. Mr. Barnes is the cause of all your troubles then?

Mr. HERRICK. He is the cause of all the troubles over there.

Mr. DE NEFFE. Was he the cause of the pine market going down?

Mr. HERRICK. Oh, no.

Mr. DE NEFFE. You do not blame him for that?

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Mr. HERRICK. Well, I believe he feels in his heart that if he could slump the market and break me he would do it.

Mr. DE NEFFE. I think you have a sort of obsession too, in regard to Mr. Barnes, haven't you?

Mr. HERRICK. No, sir; he has piled it upon me. Mine is only resistant. I never premeditated any fight with Mr. Barnes.

Mr. DE NEFFE. And he never started any fight on you until did not comply with this contract, as Mr. Carter says, did he?

Mr. Barnes never complained about you until you did not keep faith with the Government on this contract?

Mr. HERRICK. Why, sure. He was kicking about Herrick when he was on my pay roll and DRAWING money. Yes, sir—outside. He was right along then working for Doctor Brooks when he was taking money from me.

Mr. DE NEFFE. What was he doing when he was on your pay roll?

Mr. HERRICK. He was going out with Mr. Girard to negotiate for rights of way, and he was running—if I think right he was running a compass with them, to a certain extent, with Mr. Girard's surveyor estimating his holdings. I complied with his request to take over his timber that he owned at that time, bought his timber and paid him for it, bought his timber and his mill site and his rights of way that we used, and paid him for it, and he had a margin of about $20,000.

Mr. DE NEFFE. You paid all expenses of that work, didn't you?

. Mr. HERRICK. When he was working for me I paid the expenses, yes.

Mr. DE NEFFE. And is not that all you paid him?

Mr. HERRICK. No, sir; he was on the pay roll.

Mr. DE NEFFE. That was shortly after the contract was signed, wasn't it?

Mr. HERRICK. Shortly after the—well, I don't know as it was after the contract was signed. I think it was—yes.

Mr. DE NEFFE. Now, at the time you signed this contract, did you tell Mr. Ames or Colonel Greeley or anybody connected with the Forest Service that you had these expectations, that if this deal went through you would make a half a million dollars? Did you tell them that?

Mr. HERRICK. Oh, no. I did not take those matters up with the Forestry Department at all.

Mr. DE NEFFE. Did they ask about them?

Mr. HERRICK. No, sir. I made a bona fide report that they required that I was worth "to exceed." Now, I have

been a man all through life that has never divulged all of the properties that I have, and I have not divulged the last one yet. I have been adverse to making statements. That was an error of mine, probably, all through life, not setting out a big financial brief to the public.

Mr. DE NEFFE. Well, as far as the Government was concerned then, there has always been somewhat of a speculation on the part of the Government as to whether you would comply with this contract, because it depended on your other operations being successful,

Mr. HERRICK. No; it did not.

Mr. DE NEFFE. It has not proven that way?

Mr. HERRICK. No.

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Mr. DE NEFFE. Because you say on account of these contingencies that did happen, that was the occasion of your not getting any money? And so the Government has been subjected to this speculation?

Mr. HERRICK. They get $700,000 more out of this bid of mine than out of the other bid. The speculation has been on my side, not on the Government's side.

Mr. DE NEFFE. But when you can get extension after extension, continuously, and others promised, don't you think that is worth something even though you were paying more for the timber?

Mr. HERRICK. That does not add to the value here nor there. Those extensions have been granted to follow in line with the conditions that are before me to-day, the same as any lumberman. They are consistent with good consideration to any contractor.

Mr. DE NEFFE. If you had bought 890,000,000 feet of timber from a private party on a contract you would during all this time have been paying taxes and interest on that, wouldn't you? Isn't that right? If you did not pay for it all?

Mr. HERRICK. If I had bought it, yes.

Mr. DE NEFFE. But now you do not have to pay any taxes or interest on this Government land?

Mr. HERRICK. There has never been any taxes or interest on this property. That is one of the good features of the proposition.

Mr. DE NEFFE. So it is a very nice thing to keep getting extensions and extensions?

Mr. HERRICK. But I have got to cut all that timber within a limit of so many years. There is a date of expiration of the contract.

Mr. DE NEFFE. Well, you got a very favorable contract?

Mr. HERRICK. Not any more than was offered to everybody else.

Mr. DE NEFFE. You stated that it would have hurt the market all over if you had operated the Bear Valley proposition —

Mr. HERRICK. I didn't state that.

Mr. DE NEFFE. All right. I put it down just the way —

Mr. HERRICK. I think I said if all my mills had been running to their full capacity it would have had an effect upon the market and there would have been a greater depression than there is now. But I was not alone in this. There were a great many other things to curtail operations.

Mr. DE NEFFE. So if you had started to operate this Bear Valley unit within two years as the contract provided, it would have thrown a lot more lumber on the market and it would have affected your Idaho operations, wouldn't it?

Mr. HERRICK. My Idaho operations are largely white pine. It would have affected the western pine operator. They are all holding back on the operations.

Mr. DE NEFFE. Are you operating any western pine any place?

Mr. HERRICK. Some small lots in the Inland Empire.

Mr. DE NEFFE. So it would have affected them?

Mr. HERRICK. Oh, yes.

Mr. DE NEFFE. So you were not very anxious to get this Bear Valley timber on the market, were you?

Mr. HERRICK. I was anxious to get it just as fast as I could act out of my business money to do it.

Mr. DE NEFFE. You say the lumbermen do not want any more lumber put on the market? Is that your attitude?

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Mr. HERRICK. That is the attitude to-day, and has been for some two or three years. There has been too much lumber on hand and too much lumber on the market. Now, when there is more lumber cut than is consumed the consumer does not get any part of the profit. It does not help him a particle. It goes to the wholesaler, the retailer, and the jobber. The cars are put in transit and it is eaten up through bills of lading and such things as that, through the banks and through the profits of the wholesaler. Prior to this a commission man's commission was from $5 to $10 for selling a car of lumber, and now it is from $50 to $200.

Mr. DE NEFFE. Have a good many of the western pine operators of the Northwest been taking quite an interest in this matter?

Mr. HERRICK. Why, no, sir.

Mr. DE NEFFE. They would rather that this would not be put on the market right away, wouldn't they?

Mr. HERRICK. Why, I think that is the unanimous view of the lumbermen, that is a crime for these operations—especially this one and others—to follow bad prices, and that it would be the very best of judgment by the Forestry Department to extend that time as long as it was within reason.

Mr. DE NEFFE. That would be from a selfish standpoint?

Mr. HERRICK. No; for the benefit of the business at large; for the benefit of the Government's stumpage; for the benefit of the individual stumpage; and for the benefit of everybody. It is no good to anybody to cut a $10 tree down and get $5 for it. It does not help the consumer, it does not help the laborer, it does not help anybody.

Mr. DE NEFFE. How about the people of Grant and Harney Counties?

Mr. HERRICK. Grant and Harney Counties have got just what they have had. They have got the stumpage standing there —

Mr. DE NEFFE. There is no —

Mr. HALLOCK. Just a minute, please.

Mr. HERRICK. They have got the stumpage standing there, and when 100,000,000 feet is cut they get pay for it, if 400,000,000 feet was cut, they would have pay for it, but they would not have the 400,000,000 feet standing there. Now, they have got their trees there. They have not lost a thing.

Mr. DE NEFFE. Well, the timber is standing here, but they do not get any income.

Mr. HERRICK. No, but they have not lost anything. There has not been anything lost.

Mr. DE NEFFE. The reason they wanted this put on the market was so that each of the counties could get a

certain amount of money every year, from $36,000 to $40,000 to help pay their bond issue.

Mr. HERRICK. That is natural. They were anxious for a railroad in there. I was talking there, Mr. Chairman, within a year with a woman well along past 20, who was taken in there in the winter as a child, to beat the railroad in there, and they have been living on that expectancy ever since. If they have been there for 20 years or 30 years to beat the railroad what is a year or two to them?

Mr. DE NEFFE. That has been your attitude, hasn't it?

Mr. HERRICK. Well, I say, what is it?

Mr. DE NEFFE. Even though your contract says they are entitled to certain things you say they are not entitled to them? Is that your attitude?

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Mr. HERRICK. They are entitled to it within reason. I am not going to see that they never get a railroad.

Mr. DE NEFFE. You want to construe the contract to suit yourself? Isn't that it?

Mr. HERRICK. To suit the conditions that I am confronted with.
Mr. DE NEFFE. And they were all caused by Mr. Barnes?

Mr. HERRICK. No; he was not the cause of the slump in lumber, but he is the cause of the agitation, the persecution, and he has prosecuted it vigorously.

Mr. DE NEFFE. No; the fact that those trees are still standing up there and that the people of the counties still have them, how does that help the people at Burns who were entitled under your contract to a saw mill to begin operating on the 12th of April, 1925?

Mr. HERRICK. Since I started in there there has been a great deal of work done and Burns has had the benefit of over $2,000,000 of money expended right there.

Mr. HALLOCK. At that juncture I want to call attention to the fact that the contract does not require a mill at Burns or anywhere else. It is discretionary with Mr. Herrick to put it at Burns, at Crane, at Bear Valley, or at Portland.

Mr. DE NEFFE. But the modification said he must have a sawmill within a certain time. Of course you said you intended to build a sawmill?

Mr. HERRICK. But the contract did not say I should build that sawmill. Of course that was the intention of the Government.

Mr. DE NEFFE. Well, did you ever deny that you were going to build the sawmill at Burns?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. You know Mr. Cornwall in Portland, do you not, George Cornwall?

Mr. HERRICK. Yes.

Mr. DE NEFFE. He publishes The Timberman?

Mr. HERRICK. He publishes some lumber paper. I do not know the name of it.

Mr. DE NEFFE. And he reflects in a way the sentiment of the big operators out there, does he not?

Mr. HERRICK. Oh, he is supposed to.

Mr. DE NEFFE. He carries all their advertisements and everything, does he not?

Mr. HERRICK. Yes.

Mr. DE NEFFE. And when this thing was getting pretty hot here last July Colonel Greeley was in a great deal of difficulty over this matter, and he probably needed a little —

Mr. MCGOWAN. We object to the introduction of remarks of that sort, Mr. Chairman, into the record.

Mr. DE NEFFE. I will withdraw them, Mr. McGowan.
Mr. MCGOWAN. That is police court stuff, you know.

Mr. DE NEFFE. I will withdraw it. Mr. Girard went to Mr. Cornwall, did he not?

Mr. HERRICK. Not to my knowledge.

Mr. DE NEFFE. You do not know anything about it?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. Mr. Cornwall wrote to Colonel Greeley, did he not?

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Mr. HERRICK. Not to my knowledge.

Mr. DE NEFFE. You do not know? Stating that on account of —

Mr. HALLOCK. Pardon me, Mr. De Neffe. He says he does not know anything about it.

Mr. DE NEFFE. All right, then I will show that some other place. You said, in 1923, you expected to liquidate the Mississippi property, but they did not pay up?

Mr. HERRICK. The people down there had suggested that they would want to pay up.

Mr. DE NEFFE. So that was another speculative contingency on your being able to —

Mr. HERRICK (interposing). No, sir; that was not speculative. That was an actual asset. $601,000 due me there yet.

Mr. DE NEFFE. But you did not get the money, did you?

Mr. HERRICK. No; I did not get the money.

Mr. DE NEFFE. Did you get any part of it?

Mr. HERRICK. They have been a little behind on their contract payments.

Mr. DE NEFFE. How much have you gotten from that deal?

Mr. HERRICK. Since that time?

Mr. DE NEFFE. Yes; since the contract.

Mr. HERRICK. The proportions due upon the contract.

Mr. DE NEFFE. What was the total that you got since you signed this Government contract?

Mr. HERRICK. I could not tell you without having the figures, and I haven't them with me here.
Mr. DE NEFFE. Three or four hundred thousand dollars, you suppose?

Mr. HERRICK. Whatever I have gotten has gone into the Malheur proposition.

Mr. DE NEFFE. And the fact that it did not come as expected held up your Malheur proposition, too, did it not?

Mr. HERRICK. Why, it has it has made me hard up for money. That is one of the things that has helped make me hard up.

Mr. DE NEFFE. So that was a speculative feature?

Mr. HERRICK. No; it was not speculative. It was an actual, bona fide asset..

Mr. DE NEFFE, I know it was bona fide; but there was some question as to whether it would come in as per schedule?

Mr. HERRICK. All deals are speculative when you come down to the word "speculative."

Mr. DE NEFFE. I believe in response to a question asked by Senator Walsh of Montana as to when was the first time you made any effort to get any bond issue, you said in October of 1926?

Mr. HERRICK. Well, that is in connection with this big bond.

Mr. DE NEFFE. Yes.

Mr. HERRICK. A little prior to that, I think 10 months or maybe a year from now I had taken up the question that I might get $500,000.

The CHAIRMAN. A year from this time?

Mr. HERRICK. About this time, I think earlier in the year, October.

The CHAIRMAN. Or about six months previous?

Mr. HERRICK. Yes.

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DE NEFFE. But prior to that time you were just kind of shoestringing it along?

Mr. HERRICK. Now, the "shoestringing " it must be that you are fed up on shoestring potatoes, as you keep referring to that "shoestring."

Mr. DE NEFFE. I am very fond of them.

Mr. HERRICK. I believe it.

Mr. DE NEFFE. But at the same time you had to borrow money immediately after your corporations were incorporated, didn't you?

Mr. HERRICK. I keep borrowing money. I have been borrowing money all my life, gone to the banks and pushed the pen and got the money. But from his agitation and his activities bankers would go, "Why, we have got enough frozen assets in our bank now. You can have $100,000 if you will pay it in 90 days, and we want the assurance from you, Mr. Herrick, that you will pay it, " and I had to pay it.

Mr. DE NEFFE. What became of that $1,200,000 net assets that Mr. Flood said you had?

Mr. HERRICK. They are still standing now in mills and timber. They have not been depleted. Mr. Flood assured you that I had that for a good many years. And at the time I made that assertion I had about as much money as I have got now. In the last two or three years there have been very few lumbermen that have been compelled to pay any income taxes.

Mr. DE NEFFE. But if you had that much, $1,200,000, at the time the contract was signed and could use it, you could have rushed that work and finished it in a hurry, could you not, Mr. Herrick?

Mr. HERRICK. If I had had it in cash and used it there, but I did not say in that report that I had that much cash.

Mr. DE NEFFE. It was the same as cash; it was convertible?

Mr. HERRICK. Why, it is the equivalent of cash.

Mr. DE NEFFE. Yes.

Mr. HERRICK. If you went out and sold it at a loss. It was not my intention, and that was not the purpose of the contract, and that would not be the wishes or good form of business for the Government to ask me to sacrifice a $10 tree for $5. It would not be reasonable.

Mr. DE NEFFE. Now you say you have made an agreement with the Continental—what is that?

Mr. HERRICK. Continental & Commercial National Bank of Chicago.

Mr. DE NEFFE. For a two and a half million dollar bond issue on this property?

Mr. HERRICK. Yes, sir.

Mr. DE NEFFE. And I believe there has been that agreement introduced here. Have you it, Mr. Hallock? I have not bad time to read it.

Mr. HALLOCK. No; I do not want to introduce it.

Mr. DE NEFFE. No, I do not want you to.

Mr. HERRICK. No, I do not want it to go into the records.

Mr. DE NEFFE. No. Are there any conditions in there about modifications in this contract?

Mr. HERRICK. I do not know whether there are or not, but it is understood that that bond issue is dependent upon the Forestry

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Department giving me an extension, and if the Government does not give me an extension I will not need the money.

Mr. DE NEFFE. Well, do they want any modifications in the contract besides just an extension of time?

Mr. HERRICK. Just an extension of time.

Mr. DE NEFFE. Is that the only thing they ask?

Mr. HERRICK. Why, that has not been completed yet. That has not been gone into as far as I am concerned. I have not taken it up with the Forestry Department myself personally.

Mr. DE NEFFE. But I mean this Continental Bank, you do not know just what other modifications they want besides an extension of time?

Mr. HALLOCK. Well, I can assure you, Mr. De Neffe, they do not want any.

Mr. HERRICK. They do not want any, only an extension of time given ample time to fulfill my contract.

Mr. DE NEFFE. You said you told Barnes that you would not haul a log out of there for him? He was the only one that you were going to discriminate against?

Mr. HERRICK. I did that to checkmate Mr. Barnes for his activities against me. I did that just for what he had said and done. I knew that if Mr. Barnes would want to ride on that railroad or wanted a log hauled I would have to haul it for him, but I got back at him that way just the same as you would under those conditions.

Mr. DE NEFFE. That was the way you were going to get even with him; is that right?

Mr. HERRICK. No; that was the way I was getting even with him, by asserting myself.

Mr. DE NEFFE. You know there are a lot of people in Grant County that have been agitating this just as long and as strong as Mr. Barnes?

Mr. HERRICK. No; I do not.

Mr. DE NE FEE. You do not?

Mr. HERRICK. No.

Mr. DE NEFFE. Mr. Woldenberg and Mr. Haight are here representing the people of Grant County.

Mr. HERRICK. Mr. Woldenberg is an automobile man, and Mr. —

Mr. HALLOCK. Haight.

Mr. HERRICK. And Mr. Height is a newspaper man, who is what you would class as the last one of the Mohicans {*sic*} sitting over there in a little bit of a hole, and he is living upon a paper. Now what Mr. Height and Mr. Woldenberg or demagogues would do I had no knowledge of until they came here.

Mr. DE NEFFE. Well, then, there was a resolution introduced here first by the county court and read into the record a resolution by the county court, Judge Patterson, and two of the commissioners there, in which they —

Mr. Herrick (interposing). What county court is that?

Mr. DE NEFFE. Of Grant County.

Mr. HERRICK. Well, that is the cattlemen

Mr. DL NEFFE. And they don't amount to anything?

Mr. HERRICK. All the agitation in Grant County, to the best of my knowledge, is from the cattle people.

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Mr. DE NEFFE. I thought it was just from Barnes.

Mr. HERRICK. Well, that he has created with them. He has worked upon those fellows over on the hill. His biggest effort has to get the cattlemen, the grazing men there in Grant County, to be active in this.

Mr. DE NEFFE. He is the master mind, then, that sways the sentiment?

Mr. HERRICK. He is the master mind of all the disturbance of that county.

Mr. DE NEFFE. He is the one that swayed the Oregon Legislature, a distance of 3,000 miles?

Mr. HERRICK. Well, a partner of his, a man who is interested in Doctor Brooks's operation at Bend, is counsel for Doctor Brooks, and he has persuaded the Bend people to come over and invest in lands over at Burns on a new town-site proposition, and I think that Doctor Brooks's attorney is the chief man that put that over with the council.

Mr. HALLOCK. Now you are referring to Mr. Ralph Hamilton?

Mr. HERRICK. I am referring to Mr. Ralph Hamilton.

Mr. HALLOCK. Who spoke for the resolution in the House of Representatives in the Oregon Legislature?

Mr. HERRICK. Yes, sir.

Mr. DE NEFFE. Well, then, all of the livestock men in there who signed the resolution in evidence here haven't any right to speak on this matter; is that your attitude, too?

Mr. HERRICK. Why, they have the right to speak if they want to, but the operation over there—you are referring to the railroad?

Mr. DE NEFFE. Yes.

Mr. HERRICK. Well, there will not be two trainloads of cattle a year pulled over that railroad.

Mr. DE NEFFE. And they have a right to speak about those delays, haven't they?

Mr. HERRICK. They have the right to speak, yes, but it would be better if they were unbiased and had not been worked upon when they do speak. They haven't met me, they haven't taken it up with me, they have not consulted me. They have just gone out from what Mr. Barnes has said to them.

Mr. DE NEFFE. You never consulted them either?

Mr. HERRICK. No.

Mr. DE NEFFE. You never consulted them when you were asking for modification and extension of the contract, did you?

Mr. HERRICK. No; I was not dealing with those people.

Mr. DE NEFFE. No; that has been your attitude, that they have no rights.

Mr. HERRICK. No; I haven't any business to go and deal with them.

Mr. DE NEFFE. You have never consulted them?

Mr. HERRICK. Why should I? Answer that question; why should I go there and consult with them?

Mr. DE NEFFE. Are they not beneficiaries under this contract?

Mr. HERRICK. Why the Government, the forest reserve, is the beneficiary. The United States, all of the people of the United States, are the beneficiaries. Then the Government, under some rules and regulations of Congress, distributes money in different ways.

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Mr. DE NEFFE. You mean that the Forest Service really owns this timber and has
the right —

Mr. HERRICK (interposing). No, No; the people of the United States, you and every man in this room is a party to the ownership of that umber.

Mr. DE NEFFE. Well, but the people of Grant and Harvey Counties have a greater interest than I have, because in the distribution oaf the money coming from this —

Mr. HERRICK (Interposing). They haven't any more to say about the selling of that timber than the man that lives in Washington or lives in New York.

Mr. DE NEFFE. But they have an interest in the money coming from the sale of this timber to you?

Mr. HERRICK. Of course, there were certain interests that Mr. Barnes was associated with that would like to get that money to put into roads.

Mr. DE NEFFE. No; each county would get a certain substantial amount each year?

Mr. HERRICK. Yes.

Mr. DE NEFFE. And each county would get a substantial pay roll each year, would it not?

Mr. HERRICK. Yes.

Mr. DE NEFFE. And naturally they have an interest to that extent?

Mr. HERRICK. Yes.

Mr. DE NEFFE. Then as long as these people of Grant County were remonstrating and protesting here you would naturally feel resentful toward them the same as against Barnes, wouldn't you?

Mr. HERRICK. No.

Mr. DE NEFFE. Or would you just consider them as children that have been misled by Mr. Barnes?

Mr. HERRICK. They have been misled by Mr. Barnes. They are interested people as a fact. Outside of being influenced by each individual's personal interest in some operation that he is in. The newspaperman in a newspaper. The automobile man in automobiles. The lawyer in his cases. Those are individual interests.

Mr. DE NEFFE. The livestock man who has a lot of cattle to ship and could get a cheaper rate by shipping it over your road, he has no interest?

Mr. HERRICK. Yes, ho has interests, but they have been shipping cattle out of there for more than 60 years.

Mr. DE NEFFE. So let them wait a few years more, a few years longer, just like the people of Burns, is that your attitude?

Mr. HERRICK. No; let me get to them the best I can and as soon as I can in the best of good faith.

Mr. DE NEFFE. Can you explain why you were so late in filing this bid, getting in touch with Flood and sending him down?

Mr. HERRICK. So late?

Mr. DE NEFFE. Yes. He just got in under the wire, did he not?

Mr. HERRICK. Why, he went over there the day before the bid was made.

Mr. DE NEFFE. Why did you wait so long? Why did you wait and just get in under the wire? He testified that he got in just under the wire the last day that the bids could be received.

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Mr. HERRICK. What of your business is that?

Mr. DE NEFFE. Well, if you want to answer it that way, all right.

Mr. MCGOWAN. Go ahead and answer it, Mr. Herrick. We want that in the record.

Mr. HERRICK. What was the question?

The CHAIRMAN. Read the question.

(Thereupon the question was read by the reporter as above recorded, as follows)

> Can you explain why you were so late in filing this bid, getting in touch with Flood and sending him down?

Mr. HERRICK. I was not late. The bid was in within due time. I sent him on time.

Mr. DE NEFFE. How soon after your bid had been found to be the highest bid did you talk with Mr. Ames of the Portland office?

Mr. HERRICK. I can't say.

Mr. DE NEFFE. Can you tell approximately?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. Was Mr. Guard there with you?

Mr. HERRICK. I can't say.

Mr. DE NEFFE. Do you know whether Mr. Girard recommended you to Mr. Ames as to your financial responsibility?

Mr. HERRICK. No, Sir.

Mr. DE NEFFE. You do not know whether he did?

Mr. HERRICK. No. I rendered a statement as to my financial responsibility the same as they asked for.

Mr. DE NEFFE. Did you give Ames any bank references?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. Do you know what inquiries he made?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. Did Mr. Ames make personal inquiry of you for a financial statement?

Mr. MCGOWAN. We submit, if the chairman please, that Mr. Ames's testimony would be the best evidence on that, as to what Mr. Ames did, and he is here in the room, and we will put him on the stand on that if you want to.

The CHAIRMAN. I think the question is a proper question to answer.

Mr. HERRICK. What is the question?

The CHAIRMAN. He is asking if Mr. Ames did not inquire of you for a financial statement.

Mr. HALLOCK. Would it not be better first to ask him if he knows whether Ames did any of these things?

Mr. DE NEFFE. I am trying to get them, Mr. Hallock, in the order that the questions are written here. I am trying to ask them in order.

Mr. HALLOCK. But I am trying to ask him if he knows anything about what Ames did and said, and if he does not, that settles it. Otherwise it takes a lot of time.

The CHAIRMAN. Read the question.

(Thereupon the question was read by the reporter, as above recorded, as follows:)

Did Mr. Ames make personal inquiry of you for a financial statement?

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Mr. HERRICK. I do not know who made that request for it. Whether it was Cecil or Ames or who it was. But that was one of the requirements of the contract, of the prospectus.

Mr. DE NEFFE. You went down to Portland shortly after the bids were opened and talked with them, didn't

you?

Mr. HERRICK. I think I did.

Mr. DE NEFFE. Do you know about when?

Mr. HERRICK. Oh, I can't tell you the date. Between the time of the bids and the time of the contract being signed.

Mr. DE NEFFE. Now is it not a fact that the only financial statement you furnished Mr. Ames was on a sheet or two of pager, in pencil?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. Did you keep a copy of it?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. You did not?

Mr. HERRICK. No, sir. Made it out in the Exchange National Bank.

Mr. MCGOWAN. Mr. De Neffe, you have the copy of the financial statement that Mr. Herrick furnished. I handed it to you the other day and you examined it.

Mr. HALLOCK. It is in the record.

Mr. MCGOWAN. And it is in the record now.

Mr. DE NEFFE. Well, I have the right to ask him about it just the same, Mr. McGowan.

Mr. MCGOWAN. Well, if the question is contrary to the fact, as you know the fact to be —

Mr. DE NEFFE. Well, you do not expect me to take all the testimony that your witness has given as facts, do you?

Do you remember when you signed the contract?

Mr. HERRICK. Do I remember?

Mr. DE NEFFE. Yes; when it was actually signed?

Mr. HERRICK. Why, I can not tell you the date.

Mr. DE NEFFE. Well, you know the date of the contract, do you not?

Mr. HERRICK. Will you show me the contract, and I can tell you when I signed it.

Mr. DE NEFFE. Well, it was June 15, 1923; is that not right?

Mr. HERRICK. I think from evidence that has been given here and that I have listened to, that is right.

Mr. DE NEFFE. There is no question about that, is there?

Mr. HERRICK. I guess there is no question. June 15.

Mr. DE NEFFE. Yes. Now prior to the time that the contract was signed there was probably some talk or negotiations, were there not, as to its terms?

Mr. HERRICK. Of the contract?

Mr. DE NEFFE. Yes.

Mr. HERRICK. NO, sir.

Mr. DE NEFFE. Well, this paragraph 3 was drafted, was it not?

Mr. HERRICK. That was in the contract. They DRAFTED the contract and I signed on the dotted line.

Mr. DE NEFFE. Who prepared it?

Mr. HERRICK. The Forestry Department.

Mr. DE NEFFE. Do you know what particular party?

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Mr. HERRICK. Why, No; I do not know who wrote the contract.

Mr. DE NEFFE. Well, did they send it to you at St. Maries?

Mr. HERRICK. Well, I am under the impression that a copy was sent to me.

Mr. DE NEFFE. At St. Maries?

Mr. HERRICK. I signed the contract at Portland.

Mr. DE NEFFE. But they previously had sent you a copy?

Mr. HERRICK. Oh, I would not say yes or no, but that would be in the regular course of business that they would.

Mr. DE NEFFE. You think they did?

Mr. HERRICK. I think probably.

Mr. DE NEFFE. And then you came down to Portland on the 15th of June, 1923?

Mr. HERRICK. Well, I came and signed it on the 15th of June.

Mr. DE NEFFE. I see.

Mr. HERRICK. That is, if the date of the contract is the 15th of June, that is the date I signed it.

Mr. DE NEFFE. Did you sign it just as they had prepared it?

Mr. HERRICK. Yes, sir.

Mr. DE NEFFE. Did you ask for any changes?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. And who was there when it was signed?

Mr. HERRICK. Whose signature is on there? Let me see the contract. Who has witnessed it?

Mr. DE NEFFE. Fred Ames and John H. Wertz.

Mr. HERRICK. Well, they were there at that time. George H. Cecil, isn't it?

Mr. DE NEFFE. Yes.

Mr. HERRICK. Yes, Mr. Cecil.

Mr. DE NEFFE. And was Girard there?

Mr. HERRICK. Oh, I do not believe he was, when I signed the contract. I am not positive.

Mr. DE NEFFE. You will not deny that he was there?

Mr. HERRICK. I won't deny that he was there.

Mr. MCGOWAN. We will admit that he was there, if you are going into that.

Mr. DE NEFFE. And you were not consulted then as to those terms at all, as I understand?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. You were in St. Maries all the time after the bids were opened? I mean you were not in Portland at the time?

Mr. HERRICK. No, I did not dictate the making of the contract, or have anything to do with the making of the contract, or make any suggestions as to the making of the contract.

Mr. DE NEFFE. The DRAFT as it was sent up was satisfactory to you?

Mr. HERRICK. Yes, sir.

Mr. DE NEFFE. Do you know why such a long time elapsed between the date of the opening of the bids, which was April 7, and the time the contract was signed?'

Mr. MCGOWAN. No, April 5 was the date of the opening of the bids, Mr. De Neffe.

Mr. DE NEFFE. April 5. Why did such a long time elapse between that time and the making of the contract?

Mr. HERRICK. Well, I have no knowledge of that now.

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Mr. DE NEFFE. Were you not having trouble getting the $50,000 bond?

Mr. HERRICK. No. No, I had thought at first that I would give a surety bond. Then I concluded that I would put up a cash bond and the moment I decided to put up the cash bond I had no trouble getting the Liberty bonds.

Mr. DE NEFFE. You knew that the people down in Grant and Harney counties had begun to get restive, did you not?

Mr. HERRICK. No, I did not know anything of the kind.

Mr. DE NEFFE. Because the signing of the contract was delayed so long? You knew that, did you not?

Mr. HERRICK. No, sir.

Mr. DE NEFFE. What did Mr. Girard tell you about how much timber he thought was in that unit when you talked to him?

Mr. HERRICK. Well, he did not say. There was sixty some thousand acres, more or less.

Mr. DE NEFFE. Yes, I see.

Mr. HERRICK. More or less millions; 870,000,000, more or less.

Mr. DE NEFFE. This is a very favorable contract, would you not say, this paragraph 3, Mr. Herrick?

Mr. HERRICK. What do you mean about paragraph 3?

Mr. DE NEFFE. Well, that contains the rate of cut, the maximum and minimum cut.

Mr. HERRICK. No, not any more favorable than any part of the contract.

'Mr. DE NEFFE. Well, it is not very desirable to have a contract of this kind which enables you to shut down for periods of time from three, five, to six years?

Mr. HERRICK. It does not enable you to shut down.
Mr. DE NEFFE. It does not?

Mr. HERRICK. You could, but you would not.

Mr. DE NEFFE. Well, I am asking you if it does not enable you to shut down?

Mr. HERRICK. No, it does not.

Mr. DE NEFFE. Well, then, Colonel Greeley is wrong when he says it does enable you to shut down?

Mr. HERRICK. Well, it enables you to take advantage —

Mr. DE NEFFE. Yes.

Mr. HERRICK. It enables you to take advantage if you want to take advantage of the privilege of shutting down, but you put in an operation of that kind and you are not going to shut down completely for a number of years. Your first duty is to your laborers. Your next duty is to your investment. Your next duty would be to the timber. If you cut the timber they had to pay for it. If you did not cut it you still had the timber. But your first duty is to the poor man that helps you run your plants and make your money. Your next duty is to your investment. And you can not shut those plants down there, they are never shut down for years unless the concerns that are running them go through bankruptcy or something like that. It is not possible.

Mr. DE NEFFE. Well, if your first duty is to your laborers, why didn't you pay your men down there instead of having your checks protested?

Mr. HERRICK. My checks were not protested.

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Mr. DE NEFFE. Well, Mr. Carter said they were.

Mr. HERRICK. Well, Mr. Carter was misinformed. There has never been a check of the Fred Herrick Lumber Co. or the Malheur Railroad Co. ever protested. And they have been paid, and they are all paid to date.

Mr. DE NEFFE. You stated that it would not pay to cut a $10 log at a $5 price; is that right? Is that what you stated?

Mr. HERRICK. Yes.

Mr. DE NEFFE. Well, suppose that situation should develop down here in the Burns country, wouldn't it pay you to shut down?

Mr. HERRICK. You would have to keep on going and keep your organization together if you did lose a little money. On as big an investment as that the small amount of money that you would lose here is the unfortunate thing of a depression. You have to economize on every corner. You have to cut labor. No man in the world ever made a dollar off of cheap labor. You make your money when your labor is high and you pay prices for it.
Mr. DE NEFFE. Well, it is very desirable to have the right to have a big maximum cut, is it not? That is always desirable?

Mr. HERRICK. No; if you eat your pie on the start, you would not have it when you come on the farther end.

Now I believe that the hundred and ten million would be more favorable to any contractor and the larger cut on the back end than to have a bigger cut on the first start. But the difference of thirteen and a half million a year on the first three years does not cut any figure in the magnitude of that contract. The buyer or the seller would not give it any consideration.

Mr. DE NEFFE. Now, when the time for the first extension came up who made application for that? You or Mr. Guard?

Mr. HERRICK. Oh, I think—I am not sure about that. If it was made it was made through my requisition, my order.

Mr. DE NEFFE. And who did the negotiating for it down at Portland with Mr. Ames or the officials there?

Mr. HERRICK. Oh, I can't say.

Mr. DE NEFFE. Girard?

Mr. HERRICK. May I answer why these extensions are asked for?

Mr. DE NEFFE. Yes.

Mr. HERRICK. And explain some of the reasons why they were asked for?

Mr. GIRARD. Yes, sure.

Mr. HERRICK. After I had gotten that contract and got in there I concluded to make some arrangements with the O. R. & N. or the Union Pacific for them to build from Crane to Burns, as was anticipated in the original prospectus and the original contract.

Mr. DE NEFFE. In the original contract?

Mr. HERRICK. Yes.

Mr. DE NEFFE. Where do you find anything in the original contract?

Mr. HALLOCK. Prospectus.

Mr. HERRICK. In the original prospectus, yes.

Mr. DE NEFFE. Yes.

Mr. HERRICK. When I took that up with the Union Pacific Railroad, Mr. Gray, president of the road, agreed on the conditions and facts about as our contract would run. Mr. Gray had to go to New

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York City and have a board meeting at New York City with the board of the Union Pacific before he could enter into that contract. And they didn't get around to get that contract signed until the 8th of October.

Mr. HALLOCK. 1923.

Mr. HERRICK. 1923. And I started in right shortly after that building road, or may be before that, or started in to start with grade. Now, before the Union Pacific could put a dollar into that proposition, even a tenpenny nail, they had to have their papers of public necessity and convenience, and along in the spring—those papers did not come—Mr. Spencer, chief counsel for the 0. R. & N., couldn't understand why they were not returned from Washington. In the fore part of March, Mr. Spencer wired me to get in touch with Colonel Greeley, to get in touch with the Forestry Department and have them impress upon the Interstate Commerce Commission the necessity of their papers of public necessity and convenience being approved. On a Friday, if I remember rightly, I got a telegram from Spencer and I wired—I think I wired Colonel Greeley to impress upon the Interstate Commerce Commission the responsibility of giving us those papers, and I think three days afterwards I got word from Colonel Greeley that the papers were on the way. I think they notified the Union Pacific, the 0. R. & N., and I think they notified me that they

were signed.

Now we had shipped in stringers and piling. We had shipped in the fence posts and the wire fence for that road. The stringers were shipped in, and we shipped in the untreated stringers and piling, and Mr. Armstrong of the O. S. L., that superintended that work, would not accept them. We had to DRAW them 35 miles on and put them into our own railroad. Under the law they couldn't put in anything until those papers were there. We had built the fence to keep the cattle off of the right of way. We had done a lot of grading, and we were held back there. Now they could not send in any rail. They could not send in any ties. And then they were dilatory in each organization together.

When they came to let the job for laying the steel—the O. S. L. operates that line and the O. R. & N. owns it—the O. S. L. insisted that could not be done with our common engines, with our own engine, but that the contractor would have to use O. S. L. equipment and O. S. L. men to handle these work trains, because if they did not that would complicate matters between the railroad and the labor. So this hung on and the ties and the rails did not get in so they did not get the steel laid to Burns until some time in September.

And then after we had got started on this the O. S. L. man, Mr. Armstrong, came in and insisted that that track should be graveled, and my contract with the O. R. & N. was that that track was to be ballasted with the material the same as the grade, and he insisted upon putting on—I don't know—sixteen or seventeen thousand dollars of gravel that was not in my contract. That delayed the work on the road.

And that is the bill that you had reference to that the railroad was tied up. That you insinuated on me account it was tied up. That was a matter entirely between the contractor and the O. S. L. and the O. R. & N. to thresh out. It went to this extent, that neither road would acquiesce in paying that, and Mr. Spencer went to the

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Ladd & Tilton Bank with the contractor and borrowed the money, said to the Ladd & Tilton Bank, "Mr. Bank, we will pay that when this thing is settled between the two the two roads, but these people have done that, and who have the money, but my hands are tied."

Now when we undertook to get our charter from the State for extension from Burns to Seneca we were delayed. And in my contract with the Union Pacific Railroad, where they agreed to furnish the rail for that road from Burns to Seneca, they never came across and made the price on that rail until 1926, and they monkeyed along with it until Mr. O'Brien wired to Calvin, the vice president the Union Pacific, in substance that he would like to know when the Union Pacific was going to show their good faith in the furnishing of the price of rail and the delivery of rail on that Fred Herrick contract. And Mr. Calvin wired back "Mr. O'Brien, you make the price and the delivery." And that was in the spring of 1926.

Now you lay all these things to me. You do not give me credit for any of these things that have held us back.

Mr. DE NEFFE. Well, I was going largely by the Government file here. I could not see anything in the files there —

Mr. HERRICK. Yes; I am expressing to this committee the many things, that held back this work. Now since the rail commenced to come in in the spring of 1926 we have laid 50 miles of track.

Mr. DE NEFFE. Well, you could finish the grading without the rails, couldn't you?

Mr. HERRICK. Why should you finish the grading any faster than it is reasonable? Now from the inception of that deal, beginning at Crane, going to Seneca, it has been my orders to Mr. Girard to give every dollar of that work possible to the local people, which he has done. And that vicinity has had the benefit of an investment of over two million dollars. Now is that bad faith with the people there?

Mr. DE NEFFE. Well, I am going by what Mr. Carter says in his report, and Mr. Granger. They made a thorough investigation. They said you were not acting in good faith and good intent.

Mr. HERRICK. At the time they made that I do not think that they were aware that the Union Pacific had not complied with the contract in the rail.

Mr. DE NEFFE. And lack of funds, that seems to have extended all down the line, lack of funds.

Mr. HERRICK. And lack of rails. There were tunas when I was pressed for money and did not send money over there as fast as I would like to.

Mr. DE NEFFE. I do not remember any of the letters that you wrote Colonel Greeley where you claimed the lack of rails had anything to do with the delays.

Mr. HERRICK. But I am giving you the facts, and I can prove that.

Mr. DE NEFFE. Mr. Guard was employed at a good deal larger salary than he had been getting, was he not?

Mr. HERRICK. At some larger.

Mr. DE NEFFE. I notice in the minute books of both of these corporations it does not specify the amount of the salary. It says

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that he shall get such salary as shall be agreed upon between him and you.

Mr. HERRICK. We had a written contract of what his salary would be for five years.

Mr. DE NEFFE. And that is what the corporation has adopted, was that it?

Mr. HERRICK. Why, I do not think the intention of the corporation there was to establish the salary. That that was a question with me.

Mr. DE NEFFE. Mr. Girard had never had any experience in handling a big operation of this kind, had he, before?

Mr. HERRICK. Why, he lead been sent by the forest reserve all over the country to check up big operations.

Mr. DE NEFFE. Yes.

Mr. HERRICK. He came to our mills. Came to all the mills. He went to the Missoula mills, the Blackfoot people[1], the Anaconda people. He was a general log superintendent that was very familiar and saw what other people did and took data on their operations.

Mr. DE NEFFE. But he never had the responsibility of such a big operation, had he, before?

Mr. HERRICK. He had the responsibility under the Forestry Department of investigating and looking and gaining knowledge, observing how you log, observing how you sawed lumber, observing how you marketed it. Made minutes on those.

Mr. DE NEFFE. The Union Pacific furnished the rails and ties, didn't they, on the Crane to Burns line?

Mr. HERRICK. Yes, sir; furnished everything.

Mr. DE NEFFE. And you furnished the grade?

Mr. HERRICK. I delivered the grade, built the grade.

Mr. DE NEFFE. That is all you furnished?

Mr. HERRICK. Yes; but I had to start in on the start and furnish what they were under contract to furnish.

Mr. DE NEFFE. Well, at the beginning there wasn't it understood that this should be an interstate carrier, that the people in Grant and Harvey Counties would have the benefit of through shipments?

Mr. HERRICK. A common carrier?

Mr. DE NEFFE. A common carrier.

Mr. HERRICK. Yes, sir.

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[1]This is incorrect. The correct word is Blackfeet. Blackfoot is a white man's error. Even when speaking of one Indian the correct word is Blackfeet. I've learned this from a Montana university professor who happens to also be a member of the Blackfeet Tribe.

Mr. DE NEFFE. But I mean, you would carry interstate commerce?

Mr. HERRICK, Yes, sir.

Mr. DE NEFFE. And you made application to the Interstate Commerce Commission and the State public service commission to be allowed to carry interstate commerce, did you not?

Mr. HALLOCK. No, No; there isn't any such thing known to the law, Mr. De Neffe.

Mr. DE NEFFE. Well, I don't, know about interstate commerce., Mr. Herrick, but —

Mr. HERRICK. There has not been any change in the original intention of that railroad.

Mr. DE NEFFE. Yes; but anyway, you were going to get a certificate of convenience and necessity to be allowed to make through shipments from Seneca to Kansas City?

Mr. HALLOCK. Pardon me, I am going to object to that question. It does not concern through shipments at all. We found we could

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construct that railroad without getting a certificate of necessity and convenience from the Interstate Commerce Commission if it were in fact a road owned and operated at that juncture during the construction period under the State laws of Oregon, as distinguished from the Interstate Commerce Commission and its jurisdiction, had nothing to do with rates.

Mr. DE NEFFE. Then you withdrew your application, as I understand, Mr. Hallock?

Mr. HALLOCK. Yes; otherwise we could not have sold a bond or issued a share of stock or made a move, Mr. De Neffe, to build that load, or toward financing it.

Mr. DE NEFFE. And the effect of that would be that the rancher in Grant County who wants to ship a carload of cattle to Kansas City could not bill through to Kansas City, isn't that right?

Mr. HALLOCK. I am not sure what the through-billing arrangement is going to be.

Mr. HERRICK. Why, there is no reason in the common carrier —

Mr. DE NEFFE (interposing). I am not talking about common carrier now.

Mr. HERRICK. If the common carrier, which we are in Oregon, would enter into a tariff with the Union Pacific Railroad, the major road would naturally issue the tariff, and if the common carrier, the branch line, entered into that, which would be the natural thing to do, it would cover from Seneca out.

One of the ideas of keeping away from an Interstate Commerce Commission command is the red tape. There would be just as much time spent looking over the road in the operation of the road from Seneca to Burns as there would be the entire Union Pacific line, and it would cost thousands of dollars a year to make out the statements and the tariff and the things that they would want. And if you bring it within the State, why you avoid all of that duplication and all of that extra labor, which is a burden.

Mr. DE NEFFE. Well, one effect would be, though, that the rancher in Grant County would have to pay a higher rate to Kansas City the way you —

Mr. HERRICK (interposing). There isn't any evidence that he would have to pay a higher rate.

Mr. DE NEFFE. Just a minute until I finish, Mr. Herrick. He would have to pay a higher rate on a load of stock from Seneca, for instance, to Canyon City, because it appears on page 41 of the minute book of the Malheur Railroad Co., page 3 of a resolution, that the application to do interstate business be withdrawn, and that you do only local business. In other words, that you bill only from Burns to Seneca and points between Burns and Seneca?

Mr. HERRICK. Well, that has never been my intention of the way of operation.

Mr. DE NEFFE. That is the way the resolution says.

Mr. HERRICK. Well, the lawyer made that resolution.

Mr. DE NEFFE. Well, you blame the lawyer, do you?

Mr. HERRICK. Well. I have to.

MR. HALLOCK. I am going to object to that for this reason, Mr. Chairman. It presupposes that when you are operating under interstate jurisdiction that in some mysterious manner the blanket rate is going to be extended up to the terminus of the local carrier and

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the local carrier received no compensation. A wholly impossible situation. That is the trouble with his question.

Mr. DE NEFFE. Well, the poor rancher up there would have to pay a great deal more in freight on a shipment of that kind where he ships to Burns and just bills to Burns, because he has to pay in addition to the rate from Burns to Kansas City the haul back to Seneca. In addition to the rate from Burns to Kansas City he has to pay the haul back to Seneca.

Mr. HALLOCK. That is just why I object. Your question presupposes that we are going to haul that for nothing.

Mr. DE NEFFE. Well, we have several lawyers on the committee. They can settle that. But I am glad Mr. Herrick blames that on the attorney.

Just a few more questions. Girard has looked after the matter of getting these extensions, generally, hasn't he? You have left these things generally to Girard have you not, down there?

Mr. HERRICK. Well, Girard is the nearest man on the ground, the most convenient to get to Portland.

Mr. DE NEFFE. You have not been in there to Burns very often, have you, Mr. Herrick.

Mr. HERRICK. Oh, I have been in there. I have been at Burns at least six times, five or six times. I would say six.

Mr. DE NEFFE. You never have attended a stockholders' or directors' meeting there at Burns, have you?

Mr. HERRICK. Not at Burns. I have at Portland.

Mr. DE NEFFE. At Portland?

Mr. HERRICK. Yes.

Mr. DE NEFFE. Just one at Portland?

Mr. HERRICK. Yes, I think that is right.

Mr. DE NEFFE. In the second and third modifications why was the clause providing that m addition to this railroad carrying logs that it also carry passengers eliminated? Why was the passenger portion of it eliminated? Do you know?

Mr. HERRICK. It never was eliminated from the intention of the road.

Mr. DE NEFFE. Well, it says so.

Mr. HERRICK. Well, I will explain that to you, which is a very common expression. If you build a road into a coal field the larger part of your freight is coal and they call that a coal road. If you build it into an iron ore country the larger part of your freight is iron ore, and they call it an iron road. If you build it into a lumber district they call it a lumber road. If you build it into a livestock district they call it a livestock road. Now that change in expression there was not intentional to differ in any way with the common carrier clause. That is a common carrier railroad yet.

And my intention was that it should be a common carrier.

Mr. HALLOCK. Did you have anything to do with adopting that terminology?

Mr. HERRICK. No, sir. Mr. Chairman, may I say one more word as to that log clause?

The CHAIRMAN. You may, Mr. Herrick.

Mr. HERRICK. Now I have never taken any advantage of that nor intended to. The only person that has taken any advantage of that expression is Mr. De Neffe.
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Mr. DE NEFFE. I think that is all I have.

(Redirect examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Herrick, you have been on the stand a long time, and I am going to ask you just one or two question and let you go. Do you recall Mr. Barnes's trip to Saint Maries, Idaho, to interview you shortly after it was learned that you were the successful bidder?

Mr. HERRICK. Yes, sir.

Mr. HALLOCK. Did you have a conversation with him at that time relative to his plans with respect to town site development?

Mr. HERRICK. That was after I had taken over his timber. It was not right shortly. It was after I had taken over Mr. Barnes's timber. Yes; I remember the conversation.

Mr. HALLOCK. I wish you would give us the benefit of your statement on that feature.

Mr. HERRICK. He came to Saint Maries to see me about his proposed town site. He said that he was going to buy some land, put what little money he had into some land and enlarge the city of Burns by putting on a town site plan. I said to Mr. Barnes, "I don't believe you are adapted to that. I would not advise you to go into the townsite business. You are a lumberjack. You are not a townsite man. You can't sit down and sell lots. And then further, it is an injustice to the city of Burns to go to promoting outside of the limits of the city. The thing for Burns to do is to build in there and build up."
Now, am I entitled, Mr. Chairman, to repeat what he said to me?

The CHAIRMAN. You may go ahead.

Mr. HERRICK. He said, "The hell with Burns." They have got out of him all that they could, and now they had dumped him. And I talked against his putting a town site. I advised him and I said, "Why don't you go off somewhere else in some of these other forests, Ochoco or some place and promote another operation for Doctor Brooks? Well, he said he might do that, but he was going into the town site.

Mr. HALLOCK. Now what are the facts as to whether or not a great deal of difficulty occurred through Mr. Barnes's effort to secure the location of the depot there at Burns, way down south of town on his town-site holdings?

Mr. HERRICK. Yes; he said he was going to insist that the depot be put down in among his proposed town-site land, on his lands. That would give him some advantage over the main part of the city. And I went to Burns. The Union Pacific man, Mr. Armstrong, had in his mind set a stake where he wanted the depot, and I went over there and went to our office, and some of the head officials of the city of Burns, I should say some of the committee of ten, met there, and they got into a wordy jangle about where that town site should be built.

Mr. HALLOCK. You mean where the depot should be located, do you not, Mr. Herrick?
Mr. HERRICK. I mean where the depot should be located. And it went so far that Mr. Barnes called some of those men a liar, and I said, "Now, if you are going to have a fight, get out on the street and fight." So after this terminated we went down with the railroad official

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and some of the people in the town and decided at or about where the depot should be, and they took up the proposition:, "Now, if you want the depot here what is the matter with the city of Burns donating the ground for that?" And the city of Burns did, and, they gave 10 acres, I believe. Was it 10 or 8 acres, or something like that?

Mr. HALLOCK. I do not recall the acreage.

Mr. HERRICK. And then I said to the people, "Now, Mr. Barnes is very insistent about this depot," and I got them to put this depot over on the other side of the road just to please Mr. Barnes. So that the people from Burns have to cross the railroad to get around in the front of the depot. I finally interceded with the town people that inasmuch as Mr. Barnes felt disturbed about this, what was the matter of having a little legislation to help him on his streets and get some water down into it. He had begun to set out stakes then.

Mr. HALLOCK. So you assisted him all you could on that, Mr. Herrick?

Mr. HERRICK. I assisted him all I could on that with the people.

Mr. HALLOCK. Now just a word about your attitude toward Mr. Barnes about the matter of the purchase of the timber that he held under option and which options I think it is disclosed were going to expire along later that summer. Your attitude toward the matter of giving Mr. Barnes a profit, and any statement that you made to any one in that connection.

Mr. HERRICK. When we were at Portland the day of the signing of the contract, the conversation I had with him, he said that Doctor Brooks has agreed to pay him $2 for that timber, and that he thought he ought to have $2, and he was very insistent upon my making out a contract. "Now," I said, "Mr. Barnes, I will make no contract out with you here, but Mr. Girard will go upon the ground with you and go over that matter, and I want Mr. Girard to be liberal with you, and we will take your timber over at a price so that it will give you a reasonable profit."

Mr. HALLOCK. Now Mr. Herrick, a word about your statement with respect to Mr. Barnes's proposal to Mr. Flood where he wanted to pay him $25,000. You characterized that as a bribe. Just tell us why you used that term, and whether or not it was possible that that could have been an attempt upon Mr. Barnes's part to purchase any contract rights at that juncture?

Mr. HERRICK. Why, I had no contract at that time, no contract, nothing to sell. That was in my opinion, looking at it man to man, an actual intended bribe to beat Fred Herrick.

Mr. HALLOCK. Did that proposal contemplate his taking over that $2.80 bid?

Mr. DE NEFFE. Well, I object.

Mr. HERRICK. That contemplated —
Mr. DE NEFFE. Just a minute. He is trying to construe a statement. The statement is the thing. That is in evidence. It is for the committee to decide what the statement was and what it meant.

Mr. HALLOCK. I was only asking him why he ever characterized as a bribe as distinguished from the purchase of something that could have been sold.

Mr. HERRICK. He contemplated that if my bid was withdrawn to drop right back to Doctor Brooks's bid and beat the Government out of $700,000, and beat me out of a contract.

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Mr. HALLOCK. Now just one more word, Mr. Herrick, and I am through. Counsel directed your attention to the fact that Senator Walsh appeared to be interested in the reasons why you sent Mr. flood down to Portland in person rather than to put your bid in the mail. Now was the time quite brief that was available to you in which to get that bid to Portland?

Mr. HERRICK. Oh, it was two days or more. Two or three days.

Mr. HALLOCK. Did you feel disposed to entrust it to the mail in a matter of that sort, in that situation?

Mr. HERRICK. No, I felt that that was the better way and the to do. May I say another word, Mr. Chairman?

The CHAIRMAN. Go ahead.

Mr. HERRICK. I think from Senator Walsh's inquiry on that subject that he really did not understand how we keep away from one another in making these bids.

Mr. HALLOCK. Mr. Herrick, you have used the expression a time or two, both in your letters and in your testimony, that you were getting money out of your left-hand pocket with your right hand. What do you mean by that?

Mr. HERRICK. I mean that I would be taking it out of my different companies. That is just a short-handed way of expressing it.

Mr. HALLOCK. What has been your intention over all of these years and your express intention with respect to whether or not you intended to make that venture down in Oregon a monument to yourself?

Mr. DE NEFFE. You asked that once. Now you are asking it again, Mr. Hallock.

Mr. HALLOCK. Well, let him answer it.

Mr. DE NEFFE. I think he answered it. He said it was for his family.

Mr. HALLOCK. I wanted to get his real idea, his purpose.

The CHAIRMAN. I think that is already in the record.
Mr. DE NEFFE. Yes, he said that distinctly.

Mr. HALLOCK. All right. I will not pursue that any further. That is all, Mr. Herrick.

(Recross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Just one question and then I am done. At the time of this alleged statement of Barnes to Flood about $25,000, you knew that you were going to get the contract, or it was known, was it not, when you were shown to be the highest bidder? Was there any question about your getting the contract after that?

Mr. HERRICK. Why, naturally not.

Mr. DE NEFFE. No. So you had a prospective contract there, in view of which you could have sold your interest?

Mr. HERRICK. I had nothing to sell.

Mr. DE NEFFE. No, not until the contract was signed up. Now, then, Mr. Barnes could have had in mind that after the contract was signed up that he or somebody might buy the contract?

Mr. HERRICK. No, No; he said, "Young man, take your money and get the hell out of here. And I will give you another $25,000."
Now, when Mr. Barnes came tome at the Portland Hotel and I showed him the contract, which he read over, and I showed him the

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coupons off of the Liberty bonds, it was perfectly legitimate to offer me $50,000 for that contract, but it was not to tell Mr. Flood to get the hell out of there, he would give him $25,000 in money.

Mr. HALLOCK. And DRAW down the bid?

Mr. HERRICK. Yes.

Mr. DE NEFFE. Well, didn't you know that your $25,000 deposit was there in good faith, and that you would

have lost that $25,000 in that case?

Mr. HERRICK. How?

Mr. DE NEFFE. The Government could have forfeited the $25,000?

Mr. HERRICK. Yes; but he wanted him to pull it down, withdraw the bid, and the profit to him would give $25,000 to stick in his jeans and go home with and say "Well, some miscue in the bid."

Mr. DE NEFFE. Well, the Government then could have rejected that $2 bid of Brooks, couldn't they?
Mr. HERRICK. They could have.

Mr. DE NEFFE. Sure.

Mr. HERRICK. But if there had not been any other bid it would be natural for them to take the $2.

Mr. DE NEFFE. Not necessarily natural or necessary for them to take it.

Mr. HERRICK. Now I want to explain to the chairman about making those bids. There are sometimes bids put in that we call John Doe bids. Now, Smith will bid $2.40, say, and Jones will bid $2.60, and Anderson will bid $2.65, and he will put up his deposit check. Now Anderson is an ally of —

Mr. DE NEFFE. Of the first two bidders?

Mr. HERRICK. Of the first two bidders.

Mr. MCGOWAN. You are talking now about State timber?

Mr. HERRICK. I am talking now about State timber.

Mr. MCGOWAN. Not national forest timber.

Mr. HERRICK. Yes; not forest timber, but State timber, or in any public bids. And they pull down the higher bid. But if somebody else came up to that, why they would still take up the lieutenant's bid and take the timber.

The CHAIRMAN. Do you understand, Mr. Herrick, that Mr. Flood could have taken your bid down after it had been offered and the bids opened?

Mr. HERRICK. Why, I think he could have. But whether he could or not, Senator, Mr. Barnes wanted him to, asked him to, and offered to give him $25,000 if he would do it. Now it didn't look to me that that is within the lines of honesty.

Mr. DE NEFFE. In the case of those three bidders you suppose, in the bidding on Government timber, the first two bidders would have had $25,000 apiece up as a good faith deposit, wouldn't they?

Mr. HERRICK. Well, I am giving an illustration, not of Government bids, but other bids.

Mr. DE NEFFE. Of State bids?

Mr. HERRICK. Yes.

Mr. DE NEFFE. But on the Government timber those two first men would have lost their $25,000 deposit money, wouldn't they?

Mr. HERRICK. Yes.

Mr. DE NEFFE. ,That money would have been lost if the high one had taken his down?

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Mr. HERRICK. Yes. It is a different thing in bidding on Government stuff.

Mr. DE NEFFE. I have nothing further.

Mr. HALLOCK. That is all.

The CHAIRMAN. You will be excused, Mr. Herrick.

(Witness excused.)

The CHAIRMAN. Will you call your next witness.

Mr. HALLOCK. What is your pleasure, Mr. Chairman? We are prepared to go ahead with other witnesses, but Mr. De Neffe showed a disposition to cross-examine Mr. Girard.

Mr. DE NEFFE. Yes.

Mr. HALLOCK. Very well, he may go ahead and cross-examine Mr. Girard at this time.

Mr. DE NEFFE. I think that would be the orderly way to proceed.

The CHAIRMAN. Very well, we will call Mr. Girard.

TESTIMONY OF JAMES W. GIRARD-(Resumed)

(The witness had previously been duly sworn by the chairman.)

(Cross-examination resumed by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.).

Mr. MCGOWAN. Mr. Chairman, I would like to make one request in the way of a suggestion. In view of the limited time that is available now I would ask Mr. De Neffe please not to have any repetition in the cross examination, if that is proper at this time, because we are anxious to get our testimony in, and if we are going to be shut off, why we will be at that very decided disadvantage.

Mr. DE NEFFE. We are, too, and there is no intention on our part to delay it unnecessarily. I have a certain number of questions here which I desire to propound to Mr. Girard, and which I consider material.

The CHAIRMAN. Very well.

Mr. DE NEFFE. Just a word or two, Mr. Girard, in regard to the way you got in touch with Mr. Herrick at the time you took up the matter of his bidding on this timber. As I understood, you went down to St. Maries from Missoula to see him; is that right?

Mr. GIRARD. I said that he called me up.

Mr. DE NEFFE. Yes, he called you up, and then you went down?

Mr. GIRARD. Yes.

Mr. DE NEFFE. But before he called you up you were ready to go down to see him anyhow, were you not?

Mr. GIRARD. I had figured on going down and trying to sell this timber.

Mr. DE NEFFE. So if he had not called you up you would have found him anyhow, would you not?

Mr. GIRARD. I think I would.

Mr. DE NEFFE. Yes. You also, I believe, dwelt at length on Mr. Barnes being responsible for all of these troubles of Herrick's down there in the delay m building this road, and you still feel that he was the cause of all the trouble?

Mr. HALLOCK. Pardon me, Mr. De Neffe, Mr. Girard did not say all the trouble.

Mr. DE NEFFE. Well, largely.

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Mr. GIRARD. No, I did not say that Mr. Barnes was responsible for all the trouble. I said that Mr. Barnes after a certain period of time, so far as I know, has used all of his influence and energy to do everything he could to discredit Mr. Herrick, and Mr. Barnes told me at one time that he would use every dollar that he could beg, borrow, or steal to beat Mr. Herrick, and that was in the Pilot Butte Inn at Bend, Oreg.

Mr. DE NEFFE. When was that?

Mr. GIRARD. That was last fall, I think, some time. I don't, know the exact date. And I think Mr. Barnes ought to be able to remember that. He said "You have got that man Klobucher running around that plant. He doesn't know anything about railroads."

Mr. DE NEFFE. To do what to Mr. Herrick? To use all the money he could borrow, beg, or steal to do what?

Mr. GIRARD. To get Mr. Herrick out of there.

Mr. DE NEFFE. Well, his complaint against Mr. Herrick was that he had not complied with his contract, or the modifications of the contract, and had been delaying the work and had not shown good faith, is that right?

Mr. GIRARD. That is not the entire complaint he made.

Mr. DE NEFFE. What else did he say?

Mr. GIRARD. He has told me many times that Mr. Herrick could not go through on that thing. That he had checked up on his financial condition. That he did not intend to go through with it when he did it, and he never could go through. That all he was doing was stringing along there and trying to speculate on it.

Mr. DE NEFFE. Well, that was true, wasn't it?

Mr. GIRARD. No, it was not true.

Mr. DE NEFFE. Well, then, what Mr. Carter says in his report of February 20, 1925, is not true, is it?

Mr. GIRARD. Well, please tell me exactly what you are talking about and I will tell you whether it is or not.

Mr. DE NEFFE (reading)

> In the judgment of all of the service men who were at Burns he has failed to show good intent and good faith to an extent that justifies prompt cancellation of the contract.

Now, that is exactly what Mr. Barnes says, too; isn't that right?

Mr. GIRARD. That was their opinion. That was their judgment.

Mr. DE NEFFE. They talked with you and Klobucher?

Mr. GIRARD. Mr. Barnes started out in 1924 and started to discredit us. He said we would not lay any steel from Crane to Burns. He made a bet with our bookkeeper and lost that bet. I don't whether he paid it or not.

Mr. DE NEFFE. That was when you were wasting the summer of 1924 there, was it not?

Mr. GIRARD. I would not say we were wasting the summer when we ere laying steel.

Mr. DE NEFFE. Mr. Carter said you did.

Mr. MCGOWAN. You don't want to quote only that from Mr. Carter. There is something more to it than that. Now the part that you read from is as follows:

In the judgment of all of the service men who are at Burns he has failed to show good intent and good faith to an extent that justifies prompt cancellation

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the contract unless there is an immediate and sustained reversal of his previous practices.

Mr. DE NEFFE. Well, up to that time —

Mr. MCGOWAN. You do not read the whole thing. You should be fair to Mr. Carter.

Mr. DE NEFFE. Up to that time he had said that there was a justification for cancellation of that contract.

Mr. MCGOWAN. I am not going to argue what Mr. Carter said. I am going to ask you when you quote from Mr. Carter, to read the whole purport of these statements.

Mr. DE NEFFE. Well, you say the summer of 1924 was not wasted then, Mr. Guard?

Mr. GIRARD. No; it was not wasted. We laid 30 miles of rail. We surfaced the track and ballasted it and built something like 12 or 15 miles of railroad. I would say it was not entirely wasted. I do not know just what he means by saying it was wasted. If he meant that we wasted a large portion of the summer because we did not push the work on the grade from Burns to

Seneca, why, that is true. Mr. Carter and all the other forest officials that came in there, like anybody else would on anything else, in making up their minds, would be governed by the strongest impression that was made on them, and I realize that they used a lot of talk that Mr. Herrick would never go through with it. Mr. Barnes commenced that in 1924, and said that Herrick couldn't get an extension of time, and would see that he couldn't get it. He got out and worked against it. Naturally coming into that kind of an atmosphere, I could see where it would be very easy for one to get that impression and be sincere in what they expressed.

Mr. DE NEFFE. Where was that meeting held at Burns that Mr. Carter was at?

Mr. GIRARD. It was at the courthouse probably.

Mr. DE NEFFE. That was on February 15, 1925, was it not, Mr. Girard?

Mr. GIRARD. I do not know the exact date.

Mr. MCGOWAN. And, Mr. Chairman, may I just for the purpose of having this record clear on what Mr. Carter said, read just a short paragraph?

The CHAIRMAN. Mr. Carter's report has been made a part of the record, and I wish, gentlemen, that you would get away from this interminable repetition. It is in the record several times, different parts of it, and it has all been made a part of the record. I scarcely see the necessity for repeating it in the record again.

Mr. MCGOWAN. But it is far away from this portion of the record, Mr. Chairman, and the present reading of it will permit the significance of it to be apparent at this point.

The CHAIRMAN. The committee has it all in the record where they can see it.

Mr. MCGOWAN. It is just about four lines, Mr. Chairman. I would like to read it now.

The CHAIRMAN. Go ahead.

Mr. DE NEFFE. Where are you reading?

Mr. MCGOWAN. I am reading from Mr. Carter's recommendation to Colonel Greeley following that examination.

Mr. DE NEFFE. Yes.

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Mr. MCGOWAN (reading):

> Action recommended. The district forester and I join in recommending that you approve the foregoing requirements as reasonable, and that the district be instructed to prepare, have executed by Mr. Herrick, and approve a formal modification of the contract which will embody them. We further join in recommending that unless these requirements are met in every particular, the contract with Mr. Herrick be canceled.
>
> E. E. CARTER,
>
> Approved:
>
> W. B. GREELEY, *Forester*.

In ink below that appears the following:

> Put these requirements in form of stipulations attached to and made part of the modified contract.

Then the stipulations that were DRAWN by Mr. Carter were incorporated in the first modification, under the instructions of Colonel Greeley.

Mr. DE NEFFE. And reading the last few lines of Mr. Carter's recommendation:

We further join in recommending that unless these requirements are met in every particular the contract with Mr. Herrick be canceled.

Now then, I wanted to point out that Colonel Greeley did not follow the recommendation, because when July 1 came and it was shown that there was only 50 per cent compliance and the requirements had not been met, that Colonel Greeley did not follow the recommendation and cancel the contract.

Mr. MCGOWAN. Yes; and following that there was the action with respect to Mr. Herrick of the $50,000 that was collected and put into the Treasury of the United States.

Mr. DE NEFFE. Not until a year after, was it?

Before you accepted employment with Herrick after he was the successful bidder you had an offer from Baird & Harper Lumber Co.?

Mr. GIRARD. Yes, sir.

Mr. HALLOCK. Now pardon me, Mr. Chairman, but I am just looking at the cross-examination of this witness by Mr. De Neffe, which is 89 pages long. I have it in the record here. That matter was gone into thoroughly.

Mr. DE NEFFE. No; I did not ask him the question I am going to ask, though.

Mr. HALLOCK, I am afraid we are going to have a lot of repetition and duplication. We have had 89 pages of cross-examination of this witness already.

The CHAIRMAN. I think we would save time if the counsel on the other side would permit the counsel to cross-examine the witness in his own way, and if he seems to repeat too much the chair will call his attention to it.

Mr. DE NEFFE. I wish the chair would call my attention to it if I am repeating questions. I do not mean to do so, because I am as anxious to get through as anybody. Were they operating any Government timber then, buying Government timber?

Mr. GIRARD. Both Government and private.

Mr. DE NEFFE. Both Government and private?
Mr. GIRARD. Yes.

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Mr. DE NEFFE. And these big companies always like to employ Government men, don't they, where they can get them?

Mr. GIRARD. If a Government man measures up in the same degree of efficiency and ability it would be an advantage in having him because he is thoroughly familiar with the Forest Service regulations, and he can put over that stuff among the crew, the loggers, the sawyers, and the skidders. It is certainly to his advantage. That is what I would want if I was cutting Government timber. I would want a Government man, assuming that he was fully as efficient in every other way.

Mr. DE NEFFE. And he would probably be on friendly terms with the Forest Service officials; is that right?

Mr. GIRARD. I would certainly hope that he would; yes, sir.

Mr. DE NEFFE. Yes.

Mr. GIRARD. That would be fine.

Mr. DE NEFFE. That would be a whole lot better for the lumber companies than if they would hire somebody who was not on good terms with the Government?

Mr. GIRARD. That is the only way that the Government can conduct its Government sale of timber; that is, being on friendly terms with the operators.

Mr. DE NEFFE. Now you and Ames discussed this timber sale down here, did you not, before the bids were submitted and opened?

Mr. GIRARD. I don't remember whether I discussed that thing with Mr. Ames. I probably did discuss the proposal report with him.

Mr. DE NEFFE. Well, after the six months' advertisement had expired you talked it over with him, did you not?

Mr. GIRARD. I might have. I don't remember whether I did or not.

Mr. DE NEFFE. You do not deny that you talked it over with him, do you?

Mr. GIRARD. No, sir, I do not, no sir.

Mr. DE NEFFE. And along the early part of March you talked it over with him, did you not?

Mr. GIRARD. What year?

Mr. DE NEFFE. Of 1923.

Mr. GIRARD. The early part of March, 1923?

Mr. DE NEFFE. Yes, just before or soon after the 30-day advertisement started to run.

Mr. GIRARD. I do not remember. I would not say that.

Mr. DE NEFFE. Don't you remember you were down there talking it over with him, Mr. Girard?

Mr. GIRARD. No, I do not.

Mr. DE NEFFE. Before you saw Mr. Herrick?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. You absolutely swear positively that you never talked it over with him?

Mr. GIRARD. No, sir, I do not say that at all. I said I do not remember it if I did.

Mr. DE NEFFE. But you would not deny it that you did, would you?

Mr. GIRARD. I would not deny it if Mr. Ames said I did.

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Mr. DE NEFFE. Well, if somebody else said you did, would yon deny it?

Mr. GIRARD. That would depend on who it was.

Mr. DE NEFFE. Then I understand that you do not deny that you discussed this timber sale with Mr. Ames?

Mr. GIRARD. No; I do not deny it. I do not remember of ever having discussed it.

Mr. DE NEFFE. You knew that Doctor Brooks had made an offer of $2, did you not, minimum offer?

Mr. GIRARD. As I remember it now, that was in the correspondence that was on my desk in Missoula, that Mr. Barnes had secured an offer of $2. Now I am not positive about that. I knew it was being readvertised for $2.

Mr. DE NEFFE. How soon after the bids were opened then did you see Mr. Ames or anybody at the Portland office?

Mr. GIRARD. I don't remember the exact date when I first saw them. I believe it was in June.

Mr. DE NEFFE. Was that the first time you saw them?

Mr. GIRARD. I say I believe it was.

Mr. DE NEFFE. Did you not give Mr. Ames Herrick's financial statement?

Mr. GIRARD. Mr. Ames never asked for Mr. Herrick's financial statement.

Mr. DE NEFFE. Did anybody in the Portland office ever ask you for it?

Mr. GIRARD. Not that I remember.

Mr. DE NEFFE. Are you sure of that?

Mr. GIRARD. I am sure of that.

Mr. DE NEFFE. Did they make any inquiries of you, anybody there?

Mr. GIRARD. Not of me.

Mr. DE NEFFE. Not of you?

Mr. GIRARD. No, sir; I have no recollection of it.

Mr. DE NEFFE. Did they ask you anything about whether he as a competent, reliable operator?

Mr. GIRARD. I believe that they wrote the Missoula office about that. I think I saw some correspondence about that. I went over to the Missoula Mercantile Co. with W. W. White to look Mr. Herrick up in Bradstreet's and Dun before I ever had any idea that I would ever be connected with him.

Mr. DE NEFFE. Who looked him up?

Mr. GIRARD. W. W. White and myself.

Mr. DE NEFFE. And yourself?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. And then did you write to Mr. Ames or somebody in the Portland office what you found?

Mr. GIRARD. I might have. I don't remember it.

Mr. DE NEFFE. Do you know any other inquiry that the Portland office made?

Mr. GIRARD. No; I do not.

Mr. DE NEFFE. About Herrick's financial standing?

Mr. GIRARD. I do not.

Mr. DE NEFFE. Do you know whether the Portland office or anybody connected with it ever made any objections to Herrick's financial statement?

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Mr. GIRARD. No; I do not remember that they did.

Mr. DE NEFFE. Now, were you in Portland when the contract which Mr. Herrick now has was signed?

Mr. GIRARD. As I remember it I was down there. I think I was. I think that is the time that he put up the Liberty bonds.

Mr. DE NEFFE. Well, you were there before that, were you not, Mr. Girard?

Mr. GIRARD. I say I do not remember.

Mr. DE NEFFE. But weren't you there before that in conference with Mr. Ames or somebody in the Forest Service office on the drafting of this contract?

Mr. GIRARD. No; I do not remember anything about that.

Mr. DE NEFFE. You are absolutely sure you were not there., Mr. Girard?

Mr. GIRARD. I do not say that at all. I said I did not remember, didn't I?

Mr. DE NEFFE. But if you were consulted about this paragraph 3 in the contract you would know it, would you not?

Mr. GIRARD. I was not consulted about paragraph 3.

Mr. HALLOCK. Pardon me, Mr. Girard. To make it clear I wish you would indicate to Mr. De Neffe, what your best recollection is on all those things. You leave it rather hazy. Give what your best recollection is of everything that he is asking about.

Mr. GIRARD. I am doing that, I think. I do not remember anything definite about that. I know that I assumed that the contract would be along the general line of other Forest Service contracts.

Mr. DE NEFFE. Do you know of any other Forest Service contract that contains the same paragraph 3 with the same provisions as the Herrick contract does?

Mr. GIRARD. There may not be another one in existence. I do mot know about that.

Mr. DE NEFFE. And there never was one, was there?

Mr. GIRARD. I could not say about that. But I see absolutely nothing wrong about that particular contract, and as far as I am concerned personally I would just practically as soon operate under the prospectus, the original prospectus. I see no particular advantage in that clause.

Mr. DE NEFFE. You see nothing wrong about not trying to find higher bidders than this after getting Herrick's bid?

Mr. GIRARD. I do not see anything wrong about that, either; no.

Mr. DE NEFFE. Then do I understand you, Mr. Girard, that neither you nor Mr. Herrick sat in conference when this paragraph 3 in the contract was DRAFTED?

Mr. GIRARD. That is the way I want you to understand me; yes, sir. So far as I know we did not.

Mr. DE NEFFE. And nobody representing you or Mr. Herrick was present when it was DRAFTED, is that right?

Mr. GIRARD. I have no knowledge of it that it was.

Mr. DE NEFFE. Do you know who DRAFTED this paragraph 3?

Mr. GIRARD. I presume the Forestry Department DRAFTED it. They DRAFT all their contracts.

Mr. DE NEFFE. Yes. Did they send you a copy before June 15, 1923, when it was signed?

Mr. GIRARD. No; I do not remember receiving a copy before that date; no sir.

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Mr. DE NEFFE. But you were in the office of the Forest Service at Portland the day the contract was signed, were you not?

Mr. GIRARD. I said I believe I was there that date. That is my recollection of it.

Mr. DE NEFFE. You came in from Bend with Mr. Barnes, did you not?

Mr. GIRARD. I do not know who I went in with.

Mr. DE NEFFE. And Mr. Herrick came down from Spokane, and your car was switched onto the Spokane train at Fall Bridge, and you came into Portland then together, did you not?

Mr. GIRARD. I do not remember that. I believe there was a Mr. Green, from Coeur d'Alene, there, too.

Mr. DE NEFFE. And Colonel Greeley was there, too, that day, wasn't he?

Mr. GIRARD. I believe that Colonel Greeley was there; yes, that is my recollection.

Mr. DE NEFFE. And on the morning of that day, June 15, 1923, you and Colonel Greeley were down at the Forest Service office in Portland and were discussing this contract, were you not?

Mr. GIRARD. We may have been.

Mr. DE NEFFE. And the contract was not signed in the forenoon; was it?

Mr. GIRARD. I do not remember when it was signed, whether the forenoon or afternoon.

Mr. DE NEFFE. And Colonel Greeley spoke at some meeting during the lunch hour there, did he not?

Mr. GIRARD. I believe he did, and I think I went to hear him.

Mr. DE NEFFE. And in the afternoon you went back to the Forest Service office, did you not?

Mr. GIRARD. I don't remember the details about that, Mr. De Neffe.

Mr. DE NEFFE. And conferred again on this contract, wasn't that it?

Mr. GIRARD. I don't remember. I probably did.

Mr. DE NEFFE. Did you ask to have this paragraph 3 inserted there?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. Did Mr. Herrick ask?

Mr. GIRARD. Not that I know of.

Mr. DE NEFFE. Neither one of you requested that be put in there, is that right?

Mr. GIRARD. No, sir. I didn't know that there was that difference between that prospectus and the contract until I came here to Washington on this investigation.

Mr. DE NEFFE. I see. You don't know what the cause was, do you, in the long time elapsing between the opening of bids and the signing of this contract?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. You don't know anything about that?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. And after the bids were opened how soon did you start working for Mr. Herrick?

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Mr. GIRARD. I told you the other day I did not remember the exact date that I started working for him. Started DRAWING pay from him on the 1st day of May.

Mr. DE NEFFE. Oh, yes, I believe you said you made the contract in April, the last day of April.

Mr. GIRARD. All our monthly vouchers are here. If you want me to look it up for you I will.

Mr. DE NEFFE. I believe you testified the other day—I think Senator Walsh asked you some question on that, and you said you bad agreed verbally in April.

Mr. GIRARD. Yes.

Mr. DE NEFFE. Some time in April, to enter his employ?

Mr. GIRARD. Yes.

Mr. DE NEFFE. And the agreement was not actually embodied in the contract until the 1st of May, 1923, that was it, wasn't it?

Mr. GIRARD. That was it. And I do not remember whether that contract was signed on the first day of May or not either. That is the date it bears. The date it became effective.

Mr. DE NEFFE. Well, then, you signed a contract with Mr. Herrick on May 1, 1923, and resigned on May 4, 1923, from the Forest Service, and the Herrick contract had not been signed yet, had it?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. And had not been DRAFTED?

Mr. GIRARD. I do not know as to that.

Mr. DE NEFFE. And he had not qualified by putting up a bond?

Mr. GIRARD. Not that I know of.

Mr. DE NEFFE. Were you absolutely sure and positive that he was going to qualify and that he would finally get the contract?

Mr. GIRARD. I never questioned it at all.

Mr. DE NEFFE. You were so positive that you were willing to resign your position and sign a contract with him, is that right?

Mr. GIRARD. That is it. I figured that there would be no question but what he would go through with it.

Mr. DE NEFFE. You had never had any experience with handling big project like this before?

Mr. GIRARD. Not as large as this. I had made detailed analyses of several operations almost as large. I operated myself down south before I ever came west.

Mr. DE NEFFE. I believe you testified before that soon after these companies were incorporated they began borrowing money, is that it?

Mr. GIRARD. No; I did not testify to that effect at all.

Mr. DE NEFFE. Well, your minute book shows that soon after they were incorporated they borrowed $100,000 from the Ladd & Tilton Bank.

Mr. GIRARD. I do not know what that shows, but I said that we borrowed $50,000 from the Ladd & Tilton Bank sometime in November.

Mr. DE NEFFE. You were authorized to borrow $100,000.

Mr. GIRARD. I believe that is correct.

Mr. DE NEFFE. And did the Fred Herrick Lumber Co. borrow $10,000 from the Burns Bank?

Mr. GIRARD. We borrowed to the limit at Burns several times.

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Mr. DE_ NEFFE. A good many times?

Mr. GIRARD. Yes, sir. And I borrowed $10,000 from the Exchange National Bank in Spokane once, too.

Mr. HALLOCK. To clear that up, let me add: Were those current loans that were immediately repaid?

Mr. GIRARD. Those were current loans that were paid within 30 days, or 15 days, and some within 10 days, and some of them were longer.

Mr. DE NEFFE. I do not believe I asked you about the purpose of this resolution, appearing on page 41 of the minute book of the Malheur Railroad Co.; that is where you decided to do only a local business between Seneca and Burns, was it?

Mr. GIRARD. No; you have not asked me about that.

Mr. DE NEFFE. Was it not the intention originally that the people in Bear Valley should have the benefit of a through rate east?

Mr. GIRARD. I could not tell you about that.

Mr. DE NEFFE. You do not know anything about that?

Mr. GIRARD. No, sir.

Mr. DE NEFFE. You do not know whether it would make the freight rate higher for people in Grant County on their shipments east by reason of your withdrawing your application before the Interstate Commerce Commission?

Mr. GIRARD. I would like to answer that by asking a question.

Mr. DE NEFFE. All right.

Mr. GIRARD. Do not you think we are entitled to a freight rate that is sufficiently high to permit us to live and operate?

Mr. DE NEFFE. Well.

Mr. GIRARD. That change was made in that matter at the suggestion of Mr. Foley and Mr. Hallock.

Mr. DE NEFFE. Who is Mr. Foley?

Mr. GIRARD. He was a young man in our employ for a while, an attorney of Burns.

Mr. DE NEFFE. And Mr. Hallock is the company's attorney?

Mr. GIRARD. Yes; and he can explain the reason why.

Mr. DE NEFFE. Were the people of Grant or Harney Counties consulted on that?

Mr. GIRARD. No; and we need not consult them when we are making changes as long as we are within our rights, and in that way only getting what we were expected to get. That has been the whole trouble with the people of Grant County, thinking they should have the right to run this operation and that the Forest Service did not have the right.

Mr. DE NEFFE. They were simply insistent that Herrick should live up to the contract. Is there anything wrong with that?

Mr. GIRARD. Not a thing in the world, and he has lived up to it, has he not?

Mr. DE NEFFE. No.

Mr. GIRARD. Generally he has, but not in detail perhaps in reference to time.

Mr. DE NEFFE. Do not you think that time is a part of the contract?

Mr. GIRARD. I think that time is a part of the contract, yes, but whether it can be completed in all the details depending upon the conditions existing, is a matter to be considered.

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Mr. DE NEFFE. Why, if I made. a note and agreed to pay it in 30 days and —

Mr. MCGOWAN (interposing). Mr. Chairman, I submit that that is an argument and not a question.

Mr. DE NEFFE. I admit that it is an argument and I withdraw it.

Mr. HALLOCK. There have been so many references to a breach of contract that I think it should be again emphasized that the contract itself states that extensions from time to time shall be allowed in the discretion of the forester, or something to that effect.

The CHAIRMAN. Well, if that is the case the contract is in the record and will speak for itself.

Mr. HALLOCK. Certainly extensions are contemplated by the terms of the contract.

Mr. DE NEFFE. I should like to have you point that out to me.

Mr. MCGOWAN. You have the contract. Read it.

Mr. DE NEFFE. I should like to know about it if it is there.

Mr. MCGOWAN. If you do not know about it I think you ought to read it now.

Mr. HALLOCK. I think if you do not know that it is in the contract that I better point it out to you.

Mr. DE NEFFE. I would be glad if you would show it to me.

Mr. HALLOCK. I will look it up.

Mr. GIRARD. I will say that as to extensions of this contract, they have been more difficult to get so far as I know than any other large proposition I ever knew of.

Mr. DE NEFFE. And that was because the people of Grant County kept protesting and protesting.

Mr. GIRARD. That has been because the people of those two counties, Grant and Harney, did not know anything about practical lumber operations, and were permitting Mr. Barnes to represent them and to dictate to them.

Mr. HALLOCK. The contract does not fix any time for the construction of the railroad. It says that, the timber shall be cut and removed within a certain time. The contract reads:

> It is further agreed that the Secretary of Agriculture * * *

And I presume the Forester —

> Will, upon written application from the purchaser showing good and sufficient reasons therefor and specifically the existence of a serious emergency arising from changes in market conditions since the last reappraisal, at his option, when action of either character is necessary to relieve the purchaser from hardship, either —
>
> (1) Redetermine and establish the stumpage rates and designate a date when the rates as redetermined shall be effective, which date shall be within six months of the date of the application; or
>
> (2) Grant an extension of time within which the respective amounts of timber specified in section 3 shall be removed, not to exceed the total period allowed for cutting all the timber.

And section 3 is the section that fixes the date for the cutting of timber, which these gentlemen claim fixes the obligation to construct the railroad.

Mr. DE NEFFE. All that that does is to give the Secretary of Agriculture the right to grant an extension of time and I do not know whether it says the Secretary or the Forester, but it gives the right to grant an extension of time within certain limits specified in section 3. That is, that a certain amount shall be removed within a certain time.

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But it does not say he has the right to change the time within which cutting must begin, which is April 1, 1925, and when he starts to cut he must have a railroad there to haul it out, unless he is going to claim that he might take out a log or two on a truck, or carry one or two out on an airplane, and that that would be compliance with the contract.

Mr. HALLOCK. I am simply calling your attention to the fact that no time is set when the railroad shall be completed.

The CHAIRMAN. Counsel will be given an opportunity to argue this case. You may proceed with the examination of the witness.

Mr. DE NEFFE. Mr. Girard, what did you have to do with securing some of these extensions?

Mr. GIRARD. I furnished all the reasons I could think of why I thought they should be granted.

Mr. DE NEFFE. You started in along in the fall of 1924, did you not? Do you remember about when you started in, was it the summer or the spring?

Mr. GIRARD. Started in to do what?

Mr. DE NEFFE. To ask for an extension.

Mr. GIRARD. No, I think Mr. Herrick was the first one who asked for an extension, in his letter to the Forester.

Mr. DE NEFFE. Had you discussed it with the Portland office?

Mr. GIRARD. I do not remember whether I had or not. However, it was very evident to every one that an extension would be necessary, provided you construed the contract to mean, as you interpret it now, that it meant to have the railroad completed by the spring of 1925.

Mr. DE NEFFE. On November 6, 1924, and on October 26, 1924, Mr. Ames wrote you, did he not?

Mr. GIRARD. He probably did.

Mr. DE NEFFE. About the company making the announcement that it was going to apply for an extension; did not he write you about that, do you remember it?

Mr. GIRARD. I believe, since you have mentioned it, that he did write a letter to that effect.

Mr. DE NEFFE. I read from a letter from Mr. Ames dated November 6, 1924, Portland, Oreg., to James W. Girard, Burns, Oreg.—do you remember receiving that letter? It says:

> I have just received a letter from the Forester in which he says he is very glad that we arranged to have the announcement in regard to the application for an extension of time made by your company, and it appears to me that it is much better to have the information given out in this way. I would suggest therefore that this be done in whatever fashion appears to you most advisable.

Do you remember receiving that letter?

Mr. GIRARD. Yes.

Mr. DE NEFFE. Then again on November 26, 1924, Mr. Ames—and he is the assistant district forester at Portland, is he not?

Mr. GIRARD. Yes.

Mr. DE NEFFE. Wrote you again at Burns, in which he says:

> Referring to the last paragraph of my letter of November 6, I should appreciate it if you would let me know what has been done in the way of letting it be known that the application for an extension of time has been made by the company, since I suppose that if you should decide that you did not care to give out this information it will be up to us to do so in some manner.

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Then you wrote him back on December 1, 1924, did you not?

Mr. GIRARD. Well, if you will read it I will tell you

Mr. DE NEFFE. I show it to you.

Mr. GIRARD. Yes, I wrote this letter.

Mr. DE NEFFE. From Burns.

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. To the district forester, Mr. Ames, and it says:

> Reference is made to your letter of November 26. Upon my return to Burns I notified a few of the business men here of our application for one year's extension of time.
> Yours very truly,
> FRED HERRICK LUMBER CO.,
> By JAMES W. GIRARD, *Manager.*

Who were those few business men that you notified?

Mr. GIRARD. I believe I notified Ben Brown of Brown & Sons.

Mr. DE NEFFE. He is the banker there, is he not?

Mr. GIRARD. No; he runs a store. I think I notified Mr. Julian Byrd, who is here now and runs a newspaper, and I don't remember who else.

Mr. DE NEFFE. And they were all friends of yours and Herrick's, friendly to you and his company, were they not?

Mr. GIRARD. Yes; they were friends of mine, sure. I did not go out and notify people that Mr. Barnes had been working on. I did not think that was necessary.

Mr. DE NEFFE. There were a lot of other people probably besides those who were working with him. Did you give any notice to the other newspaper there?

Mr. GIRARD. No; I took the position all the time that it was not necessary to notify anybody, that this was a matter between the Fred Herrick Lumber Co. and the Forest Service. The Forest Service represented the public and the people of the United States.

Mr. DE NEFFE. And that as to the people of those two counties, it was none of their business whether you complied with the contract or not, that was your attitude.

Mr. GIRARD. No; I would not say that it was not any of their business. They had an interest in that thing, and have a reason to expect that a common-carrier railroad will be built, and that a sawmill be built, and that they will get a pay roll in that country, and transportation for their stock. Certainly they have some rights, but I want to get this clear, that they have the wrong point of view and the wrong attitude.

Mr. DE NEFFE. You did not think it was advisable to take them into your confidence?

Mr. GIRARD. I did not think that was necessary at all, regardless of whether it was advisable or not.

Mr. DE NEFFE. And you were afraid that it might cause some protest, was not that the reason why you did not let it be known generally?

Mr. GIRARD. I do not remember that I considered that particular phase of it. I figured that I had a perfect right to ask for an extension of time, and that it was up to the Forestry Department as to whether they would agree to it or not.

Mr. DE NEFFE. Did you have anything to do with the terminus of the road, stopping below Seneca?

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Mr. GIRARD. Yes, sir; that is where I decided it should stop.

Mr. DE NEFFE. It would be more convenient to you to stop there, is not that it?

Mr. GIRARD. That is the most logical place taking into consideration the various timber units in that locality and that the saw logs will be at least 99 per cent of the traffic hauled over that railroad and that should be the primary consideration in determining your terminus, and the present terminus is within two or three hundred feet of where Mr. Hoffman and myself when in there determined it should be, when we were in there together going over the matter. I did not know at that time where the Lincoln ranch was at Seneca, nor where the Southworth ranch was at Seneca.

Mr. DE NEFFE. In the summer of 1926 you were away, were you not, in California for some time?

Mr. GIRARD. Yes, sir.

Mr. DE NEFFE. How long were you gone?

Mr. GIRARD. About a month.

Mr. DE NEFFE. And you were working on a private job down. there?

Mr. GIRARD. I was appraising approximately 12,000 acres of redwood for the Pacific Lumber Co., and to help the Redwood League.

Mr. DE NEFFE. Who asked you to go down there?

Mr. GIRARD. Maj. David T. Mason, a forest engineer, with offices in the Northwestern Bank Building, at Portland.

Mr. DE NEFFE. A private engineer, or was he with the Forest Service?

Mr. GIRARD. He is a private engineer, in private business. And this was a matter it was decided to be settled by arbitration, and he submitted a list of names, and I was one of the men selected from that list of names.

Mr. DE NEFFE. Mr. Barnes was not at that meeting held at Burns on February 15, 1923, was he?

Mr. GIRARD. Not that I know of.

Mr. DE NEFFE. You did not see him there?

Mr. GIRARD. I do not remember it.
Mr. DE NEFFE. There were about 25 people at the meeting.

Mr. GIRARD. I was not at the meeting.

Mr. DE NEFFE. Why did not you go to the meeting?

Mr. GIRARD. I did not figure that it was an affair that I should mix in. It was something that the district forester could discuss with the public, and there was no reason why I should be there. I was doing my business with the district forester. But I do not want to leave the impression that everything we did was right and everything that the Forest Service was doing was wrong. I do not want to get that idea in the record at all.

Mr. DE NEFFE. It appears at some place in the minute book of the Fred Herrick Lumber Co. that you considered the contract was not in default because you had cut some timber before April 1, 1925, some private timber, and some Government timber before October 1, 1925 on Government land, is that right?

Mr. GIRARD. I stated that Mr. Herrick always contended that 60,000,000 feet removed by June 1, 1928, was the essence of the contract; and that if we would cut a few trees we could have complied

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with the contract from a technical, legal point of view, which I never exactly agreed with personally.

Mr. DE NEFFE. So you cut a few trees, is not that it, on private and Government lands?

Mr. GIRARD. We cut quite a few trees, but I did not claim that that complied with the spirit of the contract. I want to make that clear.

Mr. DE NEFFE. Your resolution in the minute book, page 62 of the Fred Herrick Lumber Co., states it is a compliance.

Mr. GIRARD. From a legal point of view it does.

Mr. DE NEFFE. You stated about how much was cut, and that some of it was western yellow pine, on what lands was it?

Mr. GIRARD. Some on privately owned lands, not on Forest Service land.

Mr. DE NEFFE. I understood you to say that it was on Government land?

Mr. GIRARD. No; we cut ties on our land, and cut yellow pine, and then we cut Douglas fir on the Government land. They will not permit us to cut these small trees for improvement purposes.

Mr. DE NEFFE. The Fred Herrick Lumber Co. passed resolutions January 3, 1927, did they not, authorizing Fred Herrick to assign, or authorizing the acquisition of this contract from Fred Herrick, did they not?

Mr. GIRARD. To assign it to the Fred Herrick Lumber Co., yes, sir.

Mr. DE NEFFE. When was it assigned?

Mr. GIRARD. So far as I know it has not yet been assigned.

Mr. DE NEFFE. It has not been assigned yet?

Mr. GIRARD. No.

Mr. DE NEFFE. That is all.

(Redirect examination by. Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Do not you want to correct that last remark?

Mr. GIRARD. About what?

Mr. HALLOCK. About the assignment of the contract from Fred Herrick to the Fred Herrick Lumber Co.

Mr. GIRARD. So far as I know, Mr. Hallock, this contract has not been formally assigned and turned over to the Fred Herrick Lumber Co.

Mr. HALLOCK. Possibly not, but I want you to clear that up a little, and state what has been done in the matter of accomplishing that assignment.

Mr. GIRARD. All the papers which the Forest Service require have been executed, and so far as I know the thing has been completed in every detail except possibly that the financial arrangements have not been satisfactorily completed.

Mr. HALLOCK. What I am getting at is this: In connection with your arrangements for a bond issue, did the underwriters of those bonds require that the contract, which stood in the name of Fred Herrick personally, should be assigned to the corporation, which .would get the benefits of the investment in the property?

Mr. GIRARD. It was necessary to do that in order to get this bond issue as I understand it.

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The CHAIRMAN. Has the Forest Service indicated that they would approve the assignment of the contract.

Mr. GIRARD. Yes; they have if we satisfy the Forest Service.

The CHAIRMAN. Well, my question is, has the Forest Service, and by that I mean Colonel Greeley or anyone in the Forest Service, indicated that they would approve the assignment?

Mr. GIRARD. I believe Colonel Greeley would approve the assignment of that contract; yes, sir.

Mr. HALLOCK. Subject to what?

Mr. GIRARD. Subject to a satisfactory financial set-up for the completion of the work.

Mr. DE NEFFE. So that if these financial arrangements are completed the Fred Herrick contract will be assigned to the Fred Herrick Lumber Co.

Mr. GIRARD. Yes, Sir.

Mr. HALLOCK. There have already been identified, Mr. Girard, a certified copy of the complaint in an action which Mr. Barnes brought against Mr. Herrick in Multnomah County, Oreg., and a certified copy of the complaint in the action brought by Mr. Barnes against Mr. Herrick in Harney County. In addition we have what purports to be a copy of a deed running from Mr. Barnes to Fred Herrick Lumber Co., covering the mill site; is that a copy of the

deed?

Mr. GIRARD. Without going over it in detail I would think it is a correct copy.

Mr. HALLOCK. Mr. Chairman, I should like to get these in the record.

Mr. DE NEFFE. I do not see what the relevancy is as to the fact that there are several lawsuits between Barnes and these people. Senator Walsh of Montana I think said they were collateral matters and that they did not have to be tried out in this proceeding.

Mr. HALLOCK. There has been a world of testimony about it, and I want the subcommittee to see what these documents are.

Mr. DE NEFFE. We do not deny that there has been litigation pending, but we do not see the necessity of cluttering up the record and making a big expense in copying all that, as to what pertains to other lawsuits.

Mr. HALLOCK. You are not bothered about cluttering up the record and the big expense when we consider the big bundle of papers that you have put in. These documents have been testified to in different phases of this matter by different witnesses, but we did not stop to introduce them at the time. These are for the record.

Mr. DE NEFFE. Those two papers refer to a private law suit between Mr. Barnes and Herrick, and there are witnesses who have testified that there were difficulties.

The CHAIRMAN. I do not think it is necessary to put those into our record, being complaints of civil suits pending between Mr. Barnes and Mr. Herrick, any more than you could have gone into other suits that Mr. Herrick may have. I will sustain the objection made by Mr. De Neffe, and they will not be made a part of the record.

Mr. HALLOCK. I should like to make the record clear, because Senator Walsh of Montana indicated that he wanted to know particularly about some of the provisions of the complaints.

The CHAIRMAN. If there is anything in either of the complaints that is material you will have an opportunity, if you have not already

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shown it, to bring it but in the way of evidence. But so far as putting the complaints in our hearing I will sustain the objection.

Mr. HALLOCK. Does that apply to the deed as well?

The CHAIRMAN. That does not apply to the deed. That may go in.

Mr. HALLOCK. I now offer the deed.

(The deed referred to is here made a part of the record, as follows:)

WARRANTY DEED

Know all men by these presents, that E. W. Barnes and Olive G. Barnes, his wife of Multnomah County, State of Oregon, for and in consideration of $10 to them paid by Fred Herrick Lumber Co., a corporation organized under the laws of the State of Oregon, have bargained and sold and by these presents do grant, bargain, sell and convey unto the said Fred Herrick Lumber Co., a corporation, its successors and assigns, all the following described real property situated in the county of Harney and State of Oregon, to wit:

The west half of the northwest quarter and the northwest quarter of the southwest quarter of section 25 and the east half of the east half of section 26 and the northeast quarter of the northeast quarter of section 35, all in township 23 south, range 30 east, Willamette meridian, and containing 320 acres, more or less, according to the United States Government survey thereof, together with all the right, title and interest of the guarantors in and to the waters of that certain spring locally known as the Warm Spring, situated upon the northeast quarter of the northeast quarter of section 35, township 23 south, range 30 east, Willamette meridian.

There is expressly reserved to the grantors herein, their proportional title and interest in and to any

surplus water from the said Warm Spring which is not needed or used by the grantee herein in connection with its sawmill and attendant industries.

It is expressly provided as a further consideration to this deed, that the grantee herein covenants to and with the grantors herein named, that it will locate upon the property herein conveyed its sawmill, pond, box factory, etc., and in case of the failure of the grantee, its successors or assigns so to do, said premises shall revert to the grantors, their heirs and assigns. This and all provisions hereinbefore contained shall be binding upon the successors and assigns of the said grantee and upon the heirs, administrators and assigns of the grantors herein and shall be deemed to be covenants running with the land.

Together with all and singular the tenements, hereditaments {*sic*} and appurtenances thereto belonging or in anywise {*sic*} appertaining, and also all their estate, right, title in and to the same, including dower and claim of dower.

To have and to hold, the above described and granted premises unto the said Fred Herrick Lumber Co., a corporation, its successors and assigns, forever. And E. W. Barnes and Olive G. Barnes, the grantors above named do covenant to and with Fred Herrick Lumber Co., a corporation, the above named grantee, its successors and assigns, that they are lawfully seized in fee simple of the above granted premises, that the above granted premises are free from all incumbrances *{sic}* and that they will and that their heirs, executors, and administrators shall forever warrant and defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever.

In witness whereof the grantors above named have hereunto set their hands and seals this 26th day of March, 1924.

E. W. BARNES. [SEAL.]
OLIVE G. BARNES. [SEAL.]

Signed, sealed, and delivered in the presence of:
H. H. NEWHALL.
H. F. PUPKE.
(United States internal revenue 50-cent stamp affixed and canceled.)

STATE OF OREGON,
County of Multnomah, ss:

Be it remembered, that on this 26th day of March, 1924, before me, the undersigned, a notary public in and for the said county and State, personally appeared the within named E. W. Barnes and Olive G. Barnes, his wife, who are known to

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me to be the identical persons named in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

In testimony whereof, I have hereunto set my hand and notarial seal the day and year last above written.

H. H. NEWHALL,
Notary Public for Oregon.

My commission expires March 30, 1925.

Mr. HALLOCK. Now, Mr. Girard, you have had a good deal to say about the location of the depot at Seneca. I notice among the maps sent here is one which shows that situation, and seemingly indicates the location of the Lincoln ranch and the Southworth ranch, and the railroad, and the highway, and things of that sort, do you recognize that map?

Mr. GIRARD. Yes, Sir.

Mr. HALLOCK. Does it correctly disclose that situation?

Mr. GIRARD. Yes; that is correct.

Mr. HALLOCK. I should like to have the map received in evidence and bound right into the volume of the transcript. There is a lot of testimony on that situation, with regard to distances and the physical aspects.

The CHAIRMAN. The map will be filed with the committee.

Mr. HALLOCK. Now, Mr. Girard, I had intended to ask you specifically as to whether or not you had made the statements that are credited to you by one or two witnesses to the effect that you would never carry any logs but Fred Herrick's; that you would not operate this railroad as a common carrier, that the common carrier feature was a joke or something to that effect; that you knew Colonel Greeley, or were close to the representatives of the Forest Service, and could secure all the extensions that you wanted, and matters of that sort; do you recall what I have in mind about these conversations?

Mr. GIRARD. In answer to all those questions along that line I will just answer briefly that all those contentions are untrue.

Mr. HALLOCK. Now, Mr. Chairman, I appreciate that this is not a very good way to deny specific charges of that kind, but I am trying to be brief, and if I may be understood in that connection I will let the denial stand in that way. Otherwise, I will take them up specifically and have a denial made in each case.

The CHAIRMAN. I think that is all that is necessary. Mr. Girard's contradiction has been made in the record several times as I recall.

Mr. HALLOCK. With that understanding I will say that is all.

Mr. DE NEFFE. Might I ask the Forest Service if they can furnish us with a statement that they have up to date as to the expenditure on this whole project? What is your last statement, Mr. McGowan, do you remember?

Mr. MCGOWAN. We will be glad to give you what we have.

Mr. HALLOCK. Mr. Chairman, I was under the impression that you were disposed to grant a night session. Is my impression on that correct?

The CHAIRMAN. No; while I was so inclined I am sorry that I have been unable to make arrangements accordingly. I am very eager to get through as quickly as possible, and hope we can conclude to-morrow. Mr. Girard is now excused, and the committee will recess until 10 o'clock to-morrow morning.

(Whereupon at 2.05 p. m. the committee recessed until to-morrow, Tuesday, February 22, 1927, at 10 a. m.)

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HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREG.

TUESDAY, FEBRUARY 22, 1927

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON
PUBLIC LANDS AND SURVEYS,
Washington, D. C.

The subcommittee met at 10 o'clock a. m., pursuant to the recess yesterday, Monday, February 21, 1927, in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senators Stanfield (chairman), Cameron, and Kendrick. Present also: Colonel Greeley, Chief of the Forest Service, and D. F. McGowan, attorney representing United States Forest Service; Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher; Frederick M. De Neffe, attorney representing Grant County, Oreg.

The CHAIRMAN. The committee will come to order. You may proceed.

Mr. DE NEFFE. Mr. Chairman, I have asked the Forest Service to produce a letter, which they are looking for now but have not as yet had time to find; being a letter from Fred Ames assistant district forester, Portland, Oreg. , addressed to the forest supervisor at John Day, Oreg., dated March 7, 1923. 1 should like to have either the original

of that letter from the John Day office files or a copy of it that doubtless Mr. Ames has in his files.

Mr. MCGOWAN. We will be very glad to make a search and see if we can not find it.

Mr. DE -NEFFE. I realize that you have not had time as yet to find it. We could not find it in the Portland files.

Mr. MCGOWAN. Mr. Knappen, will you please come around?

The CHAIRMAN. Hold up your right hand. You do solemnly swear that the evidence you are about to give in the hearing now in progress before this subcommittee of the Committee on Public Lands and Surveys, United States Senate, will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. KNAPPEN. I do.

**TESTIMONY OF THEODORE M. KNAPPEN, WRITER,
WASHINGTON, D. C.**

(Direct examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Please state your name, occupation, age, and post-office address.

Mr. KNAPPEN. My name is Theodore M. Knappen. I am a writer, and reside in Washington, D. C.

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Mr. MCGOWAN. Are you connected with the National Lumber Manufacturers Association?

Mr. KNAPPEN. I am in charge of some of their economic and research work, and publicity work.

Mr. MCGOWAN. What is that association, briefly stated?

Mr. KNAPPEN. The National Lumber Manufacturers' Association is a federation of the regional lumber manufacturers association of the United States. It is composed of about 14 regional associations.

Mr. MCGOWAN. Is it one of the purposes of the Association to disseminate information to the trade?

Mr. KNAPPEN. Yes, sir.

Mr. MCGOWAN. I hand you an article dated March 5, 1923 headed "National Lumber Manufacturers' Association—information service. Release on receipt, " and ask if you are familiar with that?

Mr. KNAPPEN. Yes, sir; I am familiar with it.

Mr. MCGOWAN. What is that article?

Mr. KNAPPEN. This is what is technically called an information release issued by the information service of the publicity department of the National Lumber Manufacturers' Association.

Mr. MCGOWAN. Does that article have to do with the readvertising of the Bear Valley Unit of the Malheur Forest, now involved in this Herrick contract?

Mr. KNAPPEN. Yes, sir.

Mr. MCGOWAN. Without objection I should like to read this into the record.

Mr. DE NEFFE. What is the purpose of it, Mr. McGowan?

Mr. MCGOWAN. It is in connection with the publicity given to the second advertisement by the Forest Service of the Bear Valley Unit.

Mr. DE NEFFE. All right.

Mr. MCGOWAN. I will not take the time to read it. I will offer it and supplement it with one or two questions.

The CHAIRMAN. It may be made a part of the record.

(The paper offered in evidence is here copied in full, as follows:)

NATIONAL LUMBER MANUFACTURERS' ASSOCIATION—INFORMATION SERVICE RELEASE ON RECEIPT

NO RUSH OF LUMBERMEN WITH $3,000,000 CASH—MUCH INTEREST BUT NO BIDS FOR GREAT MALHEUR FOREST CONTINUOUS LUMBERING PROJECT—TERMS MODIFIED AND BIDS RE ADVERTISED FOR—SALE APRIL 2 PROBABLE.

WASHINGTON, March 5.—In explanation of the fact that the Forest Service received no bids for the first unit of timber, initiating the utilization of about 7,000,000,000 feet, chiefly western yellow pine, in the Malheur National Forest, in Oregon, and is now readvertising the, National Lumber Manufacturers Association issued the following statement today:

"The Forest Service's plan for the opening of the Malheur Forest to lumbering operations on a continuous-production basis aroused the greatest interest among lumbermen in various sections of the country and elicited many inquiries. It is unique in that it is the most extensive project for maintaining a continuous lumber industry in a given region ever undertaken in America. While it was proposed to offer 890,000,000 feet in the first contract—to be cut within 20 years—it was assumed that the successful bidder would have such an advantage from his establishment on the ground that he would be able to bid successfully for all the other units from time to time, the whole amounting to about 7,000,000,000 feet, until the entire forest had been cut over once; by which time the second growth would be available for a renewed cycle of cutting. However, it

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appears that in view of the fact that it will be necessary to build about 80 miles o standard railway and a great deal of logging railway, involving with the logging equipment, sawmill plant, and accessory buildings, an investment of about $3,000,000, the initial price of $2.75 a thousand feet for the first five years was considered too high.

"The fact that much privately owned timber is interspersed with the Government timber adds a factor bearing on the price, which is also affected by other considerations. One of these was the apprehension caused by the proposition of the Governor of Oregon to place a State severance tax on national-forest lumber. This proposition was plainly unconstitutional, but nevertheless aroused some alarm; and it was followed by the introduction into the legislature of a bill providing for a general severance tax on everything removed from land or water in the
State. This bill has been defeated.

"The terms, including the upset initial price, have been somewhat liberalized and readvertisement for bids has started with the final date for receipt of bids April 2. The minimum bid for yellow pine which will be considered is $2 per thousand, log scale; other species the same as before, viz, 50 cents. The contract which the successful bidder will be required to execute is generally similar to that previously made public except that the maximum rate of cutting permissible has been changed to provide for a maximum cut of 150,000,000 feet each three years of operations. That is, not to exceed 150,000,000 feet may be cut by April 1,1928, and not to exceed 300,000,000 feet may be cut prior to April 1, 1931, etc. This change makes the proposition more attractive, as it permits earlier realization of the investment because 80,000,000 more feet of timber may be cut in the first six years.

"The National Lumber Manufacturers' Association believes that under the new conditions the Forest Service will receive bids, and that the ambitious project of establishing a perpetual lumber industry in the Blue Mountain section of Oregon will soon be under way, including the building of the railway and the opening up of an extensive region to agriculture and general settlement, as well as to the lumbering operations which will provide a market for local production and a field for general business activity." (Trade Press and Correspondents.)

Mr. MCGOWAN. Mr. Knappen, to what members of the trade, and to what members of the press did this article, go, if you know?

Mr. KNAPPEN. So far as 1 know it went to all the lumber-trade press of the United States, manufacturing,

wholesale and retail and large portion of the engineering and technical press that might be interested in such matters; and, in addition, it was mailed to all of the Washington correspondents of the daily papers about 100 in number.

Mr. MCGOWAN. Could you estimate roughly the number of persons who received copies of this article?

Mr. KNAPPEN. Yes, do you mean the number of publications?

Mr. MCGOWAN. The number of publications I should have stated.

Mr. KNAPPEN. Approximately 350.

Mr. MCGOWAN. Did you say it went to approximately 350?

Mr. KNAPPEN. Yes, Sir.

Mr. MCGOWAN. You may cross-examine.

(Cross-examination by Mr. Frederick M. De Neffe, Attorney representing Grant County, Oreg.)
Mr. DE NEFFE. Who requested you to come here as a witness.

Mr. KNAPPEN. Mr. McGowan.

Mr. DE NEFFE. Were you subpoenaed?

Mr. KNAPPEN. No, sir.

Mr. DE NEFFE. What position did you say you occupy with the National Lumber Manufacturers' Association?

Mr. KNAPPEN. A part of my time is devoted to conducting, among others, for the National Lumber Manufacturers' Association, the service mentioned at the head of that release.

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Mr. DE NEFFE. Have you ever been connected with the Forest Service?

Mr. KNAPPEN. No, sir.

Mr. DE NEFFE. I should like to read this over if the chairman will allow me. There may be some things I want to ask the witness about.

The CHAIRMAN. All right.

Mr. DE NEFFE. Mr. Knappen, did you write this article?

Mr. KNAPPEN. Yes, sir.

Mr. DE NEFFE. I notice that you say that the last date for the receipt of bids is April 2; was that correct?

Mr. KNAPPEN. Well, I can not positively say at this length of time. I could not say without the evidence before me.

Mr. DE NEFFE. There has been evidence introduced here by the Forest Service that the last date was April 4.

Mr. KNAPPEN. Is that so?

Mr. DE NEFFE. Yes. Is not that right, Mr. McGowan?

Mr. MCGOWAN. Yes; the original date for the closing of bids was changed a little later on to extend the period, as I recall it.

Mr. DE NEFFE. So your article was not correct in that respect?

Mr. KNAPPEN. Well, I can not say. I imagine it was correct at the time that it was written. It may be that there was a change in the date afterwards.

Mr. DE NEFFE. I notice your article uses this language:

> The Forest Service's plan for the opening of the Malheur Forest to lumbering operations on a continuous production basis aroused the greatest interest among lumbermen in various sections of the country and elicited many inquiries.

What did you understand by "operations on a continuous production basis?"

Mr. KNAPPEN. Well, the Forest Service plan, as distinguished from ordinary ones for cutting in most private lumbering operations, is the rotation plan, by which this forest would always be producing timber.

Mr. DE NEFFE. Well, then, also you had reference to the provision in the contract which would require a minimum cut, would you not, within certain three-year periods?

Mr. KNAPPEN. A minimum cut was a part of the perpetual plan, as I understood it.

Mr. DE NEFFE. To June 30, 1931, and then a minimum cut every three years of 100,000,000 feet.

Mr. KNAPPEN. I do not recall those particulars. Do I say that there?

Mr. DE NEFFE. No; you do not say that, but I want to find out what you meant.

Mr. KNAPPEN. I do not recall the particulars. I have not looked it up in order to refresh my memory.

Mr. DE NEFFE. On the last paragraph, at the bottom of page 1, you say:

> The terms, including the upset initial price, have been somewhat liberalized and readvertisement for bids has started with the final date for receipt of bids April 2. The minimum bid for yellow pine which will be considered is $2 per thousand, log scale; other species the same as before, viz, 50 cents. The contract which the successful bidder will be required to execute is generally similar to that previously made public except that the maximum rate of cutting permissible has been changed to provide for a maximum cut of 150,000,000 feet each three years

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> operations. That is, not to exceed 150,000,000 feet may be cut by April 1, 1928, and not to exceed 300,000,000 feet may be cut prior to April 1, 1931, etc.

Then your understanding was that the contract which the successful bidder would be required to execute was the same as the contract which had previously been made public in the first prospectus, except that the maximum rate of cutting permissible had been changed to provide as stated here, is that right?

Mr. MCGOWAN. Mr. Chairman, this article is offered solely for the purpose of showing that the trade was advised of the readvertisement and substantially what the changes were as against the original prospectus. Now, it does not make any difference as to what Mr. Knappen knew about it or did not know about it; this was the article that went to the trade journals and to the press of the country, and we submit that the question propounded is improper.

Mr. DE NEFFE. Well, I will not pursue that any further.

Mr. MCGOWAN. It is simply taking up the time of the subcommittee and does not produce anything that would help you at all.

Mr. DE NEFFE. I will withdraw that question and ask you this: Who gave you the information that went into this article?

Mr. KNAPPEN. The general source of the information was Mr. Carter, of the Forest Service.

Mr. DE NEFFE. Who was he?

Mr. KNAPPEN. He is the Assistant Forester of the United States Forest Service, stationed here in Washington.

Mr. MCGOWAN. The gentleman sitting right here behind us?

Mr. KNAPPEN. Yes, sir; that is Mr. Carter over there.

Mr. DE NEFFE. Did you ever talk to Colonel Greeley about it?

Mr. KNAPPEN. I think not.

Mr. DE NEFFE. Or Mr. Ames, of the Portland office?

Mr. KNAPPEN. No.

Mr. DE NEFFE. You just put in this article what you got from the Forest Service, is that it?

Mr. KNAPPEN. Yes, sir.

Mr. DE NEFFE. Now, you state that this article went to all the lumber trade journals?

Mr. KNAPPEN. Yes, sir.

Mr. DE NEFFE. And engineering journals?

Mr. KNAPPEN. Yes, sir.

Mr. DE NEFFE. And to the press?

Mr. KNAPPEN. To the daily press as represented in Washington by Washington correspondents.

Mr. DE NEFFE. Do you know that of your own personal knowledge?

Mr. KNAPPEN. Well, I know it in this way: That I have a regular routine system of sending out releases of that kind, and I put it in the regular channels, the messenger service and the mails.

Mr. DE NEFFE. That would be the only knowledge you have as to really whether it actually went out or not.

Mr. KNAPPEN. Except as I get returns from the publication in the form of clippings.

Mr. DE NEFFE. You did not personally do this mailing yourself?

Mr. KNAPPEN. No; but I personally gave instructions to have it sent out.

Mr. DE NEFFE. That is all.

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(Redirect examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. From your knowledge of the lumber trade do you know of any better way, or any more extensive way of getting information to them than through the medium that you used in the dissemination of the article?

Mr. KNAPPEN. Well, I think not. It is our preferred medium for getting out to people interested in forestry and lumbering operations, information that we think would be valuable to them.

Mr. MCGOWAN. And that is the purpose of your news service?

Mr. KNAPPEN. Yes, Sir.

Mr. MCGOWAN. That is all I wish to ask.

Mr. DE NEFFE. Nothing more.

(And the witness left the stand.)

Mr. HALLOCK. Mr. Chairman, I should like to ask Mr. Girard one question before we put on our next witness.

The CHAIRMAN. Go ahead, Mr. Girard, you may sit just where you are.

Mr. HALLOCK. Mr. Girard, when did you first learn of the difference in the cutting requirements between those provided in the contract as set up in the prospectus, and those provided in the contract which was signed by Mr. Herrick, with relation to those matters that have been the subject of discussion here bearing upon that feature?

Mr. GIRARD. When I came here to this investigation.

Mr. HALLOCK. Right here in Washington this month?

Mr. GIRARD. Yes, Sir.

Mr. HALLOCK. That is all.

Mr. DE NEFFE. Might I ask Mr. Girard one question now?

The CHAIRMAN. Yes.

Mr. DE NEFFE. Well, I will ask a few questions later on. I first want to look at your minute book, may I?

Mr. HALLOCK. Yes. Now, Mr. Chairman, May I ask one question of Mr. Herrick?

The CHAIRMAN. Yes. He may sit just where he is.

Mr. HALLOCK. Mr. Herrick, when did you first learn of the difference in the cutting requirements between the contract as set up in the prospectus and the contract which you signed, with relation to those matters which have been discussed here bearing upon that feature?

Mr. HERRICK. At this hearing.

Mr. HALLOCK. Not before that?

Mr. HERRICK. Not before.

Mr. HALLOCK. That is all.

The CHAIRMAN. Do you mean the difference in the contract that was signed, and the other contract?

Mr. HERRICK. As to the cutting clause.

The CHAIRMAN. As to paragraph 3?

Mr. HERRICK. Yes, Sir.

The CHAIRMAN. You knew at the time you signed the contract?

Mr. HERRICK. I knew at the time I signed the contract what was in the contract, but my attention was not called to the difference between that and the prospectus.

The CHAIRMAN. All right.

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Mr. MCGOWAN. Mr. De Neffe made a request this morning for a copy of Mr. Ames's letter of March 7, 1923, in which Mr. Ames transmits Mr. Carter's and Doctor Brooks's agreement of March 1, 1923, to the forest supervisor at John Day, Oreg. I now hand it to him.

Mr. HALLOCK. And counsel has again asked for the minute book the Malheur Railroad Co., and I hand him that volume. I now call Mr. Byrd.

The CHAIRMAN. Hold up your right hand. You do solemnly wear that the evidence you are now about to give in this hearing in progress before this subcommittee of the Committee on Public Lands and Surveys of the United States Senate will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BYRD. I do.

The CHAIRMAN. Just take a seat there.

TESTIMONY OF JULIAN BYRD, PUBLISHER OF THE TIMES-HERALD, BURNS, OREG.

(Direct examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. State your name, age, residence, and occupation.

Mr. BYRD. My name is Julian Byrd; I live at Burns, Oreg.; and I am in the newspaper business.

Mr. HALLOCK. Are you a man of family, Mr. Byrd?

Mr. BY RD. Yes, Sir.

Mr. HALLOCK. How long have you lived in the town of Burns, Oreg.?

Mr. BYRD. Since 1883.

Mr. HALLOCK. What paper do you publish there?

Mr. BYRD. The Times-Herald.

Mr. HALLOCK. That is a paper of general circulation, published in Burns and circulated there pretty generally?

Mr. BYRD. All over the United States. I guess I have subscribers in every State in the Union, but it is a purely local paper.

Mr. HALLOCK. Is it read quite extensively in Harney County,
Oreg.?

Mr. BYRD. Yes, Sir.

Mr. HALLOCK. What can you say as to whether or not, based upon the fact that as a publisher you must necessarily keep in touch with affairs out there, that your observations, interviews, and comments that you may have to make will reflect the sentiment and attitude of Harney County people and the people of Burns as you understand it?

Mr. BYRD. Yes, sir; not as to particular individuals, but generally.

Mr. HALLOCK. That is what I mean. Now, have you any documents disclosing your authority here to speak for or to represent Harney County in this matter?

Mr. BYRD. Yes; I have a telegram from the county judge.

Mr. HALLOCK. Will you produce it, please?

Mr. BYRD. Here it is.

Mr. HALLOCK. We should be glad to have this telegram read into the record, if there is no objection.

Mr. DE NEFFE. Is it not already in at some place?

Mr. HALLOCK. No.

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Mr. DE NEFFE. I have no objection.

Mr. HALLOCK. It is as follows:

BURNS, OREG., *February 12, 1927.*

JULIAN BYRD,

Care Senator R. N. Stanfield:

You are each hereby delegated as representatives of Harney County to present our interests in the Herrick senatorial investigation.

R. J. WILLIAMS, *County Judge*.

Now, this telegram says "you are each." Who is the other individual to whom a similar telegram addressed?

Mr. BYRD. Mr. Jamieson.

Mr. HALLOCK. Mr. Grover Jamieson, the mayor of Burns Oreg.

Mr. BYRD. Yes, Sir.

Mr. HALLOCK. Who is here at this time?

Mr. BYRD. Yes, sir.

Mr. HALLOCK. I wish you would tell us in a general way what business interests you have at Burns or in Harney County, in addition to your newspaper business?

Mr. BYRD. Well, I own jointly with Mr. Phil Smith and also personally quite a bit of business property on Main Street. We have one office building and theater, and another building that we intend to remodel into a larger office and theater building, besides some vacant property on Main Street, and my home, and about 1,000 acres of land.

Mr. HALLOCK. Including several different pieces of ranch property?

Mr. BYRD. Yes, sir; several different ranches. And I also have some timber holdings, including 320 acres.

Mr. HALLOCK. Are you connected with the Harney County Fair Association?

Mr. BYRD. I am secretary.

Mr. HALLOCK. There has been some testimony adduced here to the effect that the Harney County Fair Association conveyed some real property to Mr. Barnes in consideration of his signing a deed to Mr. Herrick covering the mill site. You handled that transaction to some extent, did you?

Mr. BYRD. Yes, sir.

Mr. HALLOCK. And can later give us some more information in detail along that line if desired?

Mr. BYRD. Yes, sir.

Mr. HALLOCK. There has been some talk here relative to the activities of a committee of 10. Were you a member of that committee?

Mr. BYRD. That committee of 10 was organized in my office.

Mr. HALLOCK. Well, now, without going too much into detail, and without the necessity of my interrogating you fully, can you go ahead in your own way and give us the benefit of your observations in this matter, touching upon the organization of the committee of 10, and generally the matters that you feel this subcommittee should be entitled to have bearing upon the attitude of your community, and what you feel the best interests of that community are in this matter?

Mr. BYRD. My attention was brought to the timber proposition by Arch McGowan, in which he informed me that Mr. Barnes had been promoting a timber sale in the Bear Valley section for a big timber organization or lumbering organization, and I think it was Hines, but I will not be sure about that; and during the process of this trans-

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action that, he had acquired a considerable number of options on timber.

Before the deal was consummated my understanding was that some executive of this big organization died, and those in active charge at that time, following that, decided not to go on with this proposition, and Mr. Barnes had exhausted his personal resources. In view of the fact that he had quite a few attractive contracts, according to Mr. Archie McGowan, it was very necessary that he go on. McGowan explained to me that Mr. Barnes could do this without any assistance should he tie up with some other big operating proposition, but he could make better money by promoting the sale Government timber.

Well, our town was dead in a way, and there was no prospect of anything anywhere along the line. Our principal source of income being stock, that was demoralized following the war, and we were all hard up. I made the suggestion to Mr. McGowan that we invite a number of men who were actively engaged in business along the street to meet at my office on a Sunday afternoon. Well, there were more than 2 times 10 invited to that meeting, but unfortunately only the 10 came. And we discussed the proposition and decided among ourselves that we would finance Mr. Barnes to a certain extent, each of us so much a month, for a period of perhaps nine months. On concluding that I either telephoned to a pool hall where Billy Farre was playing pinochle, or went after him and brought him over and laid the plan before him, and he said, "Well, I can't put up any $20 a month." "Well," I said, "Billy, we don't expect you to, but we are all more or less busy, and we would like to have you take active charge of this." And he did, and from that {time} on I think that was the start of securing the numerous petitions, and our going to Portland, using of our influence with Boone Dodson, the general manager of the Portland Chamber of Commerce, and interceding with Mr. Barnes and getting in touch with our delegation in Congress.

Mr. Barnes was our representative during that period of getting the timber on the market the first time. We were absolutely dominated, that is, we allowed Mr. Barnes all the privilege, and he just bossed us. He admonished us to secrecy, and we were put in a rather bad box once in a while because some of the fellows said, "Why all this secrecy?" "Don't know. Up to Mr. Barnes." He said we would gum the cards if we would allow the general public to know. It put us in a rather peculiar situation before our numerous associates around town, but regardless of that we went on and stayed continually on the firing line. If there was a $500 overdraft come to the First National Bank of Mr. Barnes's, if it took more than $20 of my money, I paid it. We continued up until the sale, I mean until the first—no, clear to the sale, as far as that is concerned, through the second period of the sale.

Mr. HALLOCK. Now, can I interrupt you there just a moment; Mr. Byrd? I want to get an idea of how much money the committee obtained to put up for Mr. Barnes's use in that matter?

Mr. BYRD. Mr. Hallock, I could not state absolutely. It was generally understood, and Billy Farre would know, but by the committee of 10, and through its solicitation, approximately $10,000. Now, of course, that covered more than the period of nine months,

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because we were not able to get this matter all arranged during that period.

Mr. HALLOCK. And as I understand it the interest of yourself and your associates on that committee at that time was to get this Government timber on the market and endeavor to induce some sole arrangement of some kind?

Mr. BYRD. Well, Mr. Hallock, here was the proposition. We were absolutely up against it so far as development was concerned, and I do not recall the date, but at any rate we seemed to have a hard time interesting the Forest Service in putting this tract of timber on the market. And Billy Farre and Mr. Geare {Waldo Geare} of our committee met with the delegation in Portland at the time Colonel Greeley was there and it was largely through—I attribute it largely to the fact that Billy Farre outlined our isolation, the prospects we had for irrigation and general development, the need of transportation in order to facilitate matters and bring about an irrigation project, that really seemed to me the turning point in Colonel Greeley 's interest in the project.

Mr. HALLOCK. Now I want to ask you a little more about the general development situation in a moment, but right at that juncture, Mr. Byrd, can you tell me whether or not it was the plan of the committee of 10 to capitalize this venture for their own profit and to make a speculative proposition of it in any sense?

Mr. BYRD. We could not do that and keep faith with our neighbors. For instance, Phil Smith, who is associated with me in business ventures, and another one I know, Jim Dalton, who was then engaged in the general merchandising business, particularly mentioned the fact—apparently people were questioning the purpose of this committee of 10 and this secrecy. They could not understand it, and intimated that we were there doing something for some particular personal motive.

Mr. HALLOCK. Well, now, what was Mr. Barnes's attitude in the matter of speculating, and under what circumstances was it that you finally withdrew your support from him?

Mr. Byrd. Well, we did not withdraw our support, Mr. Hallock, until we had accomplished our purpose.

Mr. HALLOCK. Yes?

Mr. BYRD. But just previous to our really disbanding as a live organization, why Mr. Barnes had acquired a considerable amount of land surrounding Burns, and I knew nothing about that at that time. And Mr. Barnes made a proposition showing his appreciation, I suppose, of our aid and help in that, to form—-that is to incorporate and put this land on the market—he would retain 51 per cent and we would have 49 per cent. Well, the peculiar situation with us was that when those two men particularly had expressed to my knowledge that as long as Julian Byrd was on there they felt their interests were protected, I felt that I could not afford to do it, if I made a million dollars, I couldn't go into it, and I so expressed myself.

Mr. HALLOCK. You did not want to make it a speculative or remunerative proposition, in view of the fact that you had the community interests there primarily at heart, is that it?

Mr. BYRD. It was purely a community interest to start with, entirely, all the way through, and we would have been glad to have more people contributing toward it, but they were not disposed to do it.

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Mr. HALLOCK. Now, you mentioned Archie McGowan. I wish you would tell us more about who Archie McGowan is, and where interests lie in this matter, as far as you know.

Mr. BYRD. Archie McGowan is a garage man. His father named Burns after we arrived there. And he has been dealing in land and farms, and he owns a few purebred sheep and things of that kind. And he is also interested in the Barnes holdings surrounding Burns. To what extent I do not know. He has always been closely identified with Mr. Barnes, and apparently a spokesman in advocating the same things that Mr. Barnes would promote.

Mr. HALLOCK. Now at this juncture, Mr. De Neffe, may we have the copy of the memorial that Mr. Barnes told us he prepared and sent to Mr. McGowan to be adopted by the Oregon Legislature?

Mr. DE NEFFE. When you called me up this morning, Mr. Hallock, I tried to get Mr. Barnes, and he had left the hotel, and he tells me it is down at the hotel.

Mr. HALLOCK. Will you produce it later, Mr. De Neffe?

Mr. DE NEFFE. We had it up here three or four times, and we tendered it to Senator Walsh, and —

Mr. HALLOCK. Let me interrupt you. I appreciate that, and I have no criticism. I thought if it were here I could use it to interrogate this witness, and I frankly confess that you tendered it to me several times. I just simply was not in position to use it for examination.

Mr. DE NEFFE. I just wanted the record to show it, that is all.

Mr. HALLOCK. Yes. Well, apropos of that matter, Mr. Byrd, that was the first knowledge that you had and how was it communicated to you that an investigation of this matter was contemplated by Congress and that the Oregon Legislature had memorialized Congress to investigate these matters?

Mr. BYRD. I read it in the Sunday morning Oregonian, I think, on January 16. I am quite sure that is the date.

Mr. HALLOCK. Yes. Do you know whether or not the community there at Burns, and I include Harney County as well as the city, was notified officially or otherwise of the plan to appear before the Oregon Legislature and seek this memorial?

Mr. BYRD. No, sir.

Mr. HALLOCK. Had your community received such notice, in your opinion, what would have been the reaction toward taking an interest in this matter at that juncture?

Mr. DE NEFFE. Well, now, if the chairman please, that is very speculative, unless this man can read the minds of hundreds of people out there.

Mr. HALLOCK. Well, he is authorized to speak for them and express their views.

Mr. MCGOWAN. He is a newspaper man and certainly knows the sentiments of his community.

Mr. DE NEFFE. Who authorized him to speak for them?

Mr. HALLOCK. You have the telegram.

Mr. DE NEFFE. Well, does that one man control the community?

Mr. HALLOCK. Well, you can develop that on cross-examination, Mr. De Neffe. He is a newspaper man, and he says he thinks he can reflect the attitude. I think he is entitled to answer.

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The CHAIRMAN. He may answer the question as to what his opinion is.

Mr. BYRD. I can not speak for hundreds of men or hundreds of individuals. But I am pretty closely associated with the business interests of Burns. Men of affairs there discuss very freely anything of a public nature with me, and before I had to go to anyone there were a half dozen and possibly a dozen men had come to me on the proposition, particularly along this line.

The article, by inference at least, indicated that the committee of 10 was dissatisfied and were instrumental in initiating this memorial. And because of the fact of my activity with the committee of 10 they said, "What about it? What did you have to do with this?" Well, of course, I had to explain to them that I knew nothing about it whatever. And we discussed the matter—and I say "we, " that does not mean hundreds of people, because I expect the active business men of Burns would not exceed 30 on the main street, outside of the professional men, that is men actively engaged in business, but we discussed it generally. And while they knew nothing about it, they were at a loss to understand why it was necessary, especially as it stressed the elimination of the common-carrier clause in the contract with Mr. Herrick's road, because there had been no intimation, so far as I know, of his ever attempting it.

Further, my particular interest in the matter following that publication, as well as others, that following that was the attack on the Forest Service, and particularly the attack on two very honorable and capable men in Burns who were actively in charge of this work. The situation just about was this, that so far as those with whom I discussed the matter were concerned, they considered it a slap at Colonel Greeley, and if it were allowed to go out undisputed, that the Forest Service might get the impression that the entire community felt that Colonel Greeley was not keeping faith with his promises. And because of that fact I was the author of a communication to the Oregonian, which was signed by 5 of the committee of 10, denying any authorship or prior knowledge of this memorial.

Mr. HALLOCK. Now, had your community received notice in advance of the plan to ask the Oregon Legislature for such a memorial, would that community have been represented at Salem, and would it have desired to express its views in the matter?

Mr. BYRD. It certainly would.

Mr. HALLOCK. There has been introduced in evidence and appears set forth at pages 22 to 27, inclusive, a document addressed to Hon. Charles L. McNary, Hon. Robert N. Stanfield, and Hon. N. J. Sinnott here in Washington bearing upon this matter, and signed by Mr. Williams, the county judge; Mr. Jamieson, the mayor, and Mr. Hibbard, the president of the commercial club. You have seen that document or are generally familiar with its contents?

Mr. BYRD. Yes.

Mr. HALLOCK. What can you state as to whether or not that document expresses the view of that community generally on this feature, as you understand it?

Mr. BYRD. Yes, sir.

Mr. HALLOCK. Now you indicated that you had some views with respect to the effect of Mr. Herrick's activities in a general way in your community, and the attitude of your community toward

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Mr. Herrick in that matter. Will you give us the benefit of your views in that connection?

Before you do that I wish you would pardon me right there, Mr. Byrd. Counsel calls my attention to the fact that the paging may be different in this document when printed. I am therefore referring to the communication bearing date January 23, 1927, which was introduced in this proceeding in the first day's hearing under date of February the 11th this year.

Now, will you go ahead regarding the general situation over there and the attitude of the community.

Mr. BYRD. I would like to have the question. What was the question?

The Chairman. Will the reporter repeat the question?

(Thereupon the question was read by the reporter, as above recorded, as follows:)

> Now you indicated that you had some views with respect to the effect of Mr. Herrick's activities in a general way in your community, and the attitude of your community toward Mr. Herrick in that matter. Will you give us the benefit of your views in that connection?

Mr. BYRD. There has been a rapid change of sentiment in the last year or more toward Mr. Herrick's project. About the only active information bureau we had for a time indicated that Mr. Herrick was not sufficiently financed, and that he would never go on with the project. Well, at that time more than one had expressed the hope that if that were the case, that Mr. Herrick would sell out to some one who would go on. But after he had put in a lot of money—I don't know whether he put it in or not, but it is the only money that we have had for a good long time—at any rate the money was there, and had gone so far in the project, we felt that he was the man to continue and complete it.

I have had more or less conversation with his representatives there. Naturally in a small community, and news rather hard to gather, and because of its—well, it is the only project in fact that we have, and because of the great interest taken in its development, I go as often as once a week, sometimes oftener, and maybe I will skip a week, to the office and discuss the plan and the progress of the work and try to keep my readers informed. One particular reason for that is that I have possibly 40 or 50, more or less, subscribers to my paper that live in other States, or possibly in Oregon and away from there, who state that their object in writing and asking for subscription is that they want to keep in touch with the timber development. Well, with that in view I publish to a greater length certain phases, or anything of that character, because of these outside subscribers, and perhaps the articles are entirely known and familiar to approximately everybody in Burns and that vicinity.

Well, as an instance, we feel this way, that Mr. Herrick's project is the biggest thing that I have ever had anything to do with in that line in the way of development, but I view it as a means to an end. I believe I remarked to Mr. Herrick the other day, that through the general development of our community and the big territory, that Fred Herrick's mill would be a small unit compared to the resources and general conditions of Harney County when it has once got on
its feet. I believe, and in fact I am quite positive, that the building of the railroad into and through the irrigation district is the con-

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trolling factor in a very attractive report from the United State Reclamation Service engineers on the Harney Valley irrigation project.

Mr. HALLOCK. What can you say, Mr. Byrd, as to the physical aspect of the development work, whether or not it is of a character that meets with the approval of you people there, or is of a flimsy and makeshift character, something merely to get by on?

Mr. BYRD. Mr. Hallock, my railroad experience is entirely on paper. I have traveled over the railroads of the West. But my views on the matter would not mean anything, perhaps. But when I have talked to the engineers of the Union Pacific and other men who have come in there from time to time, and they have said it was main-line construction, I considered they knew what they were talking about.

Mr. HALLOCK. Well, briefly, is there any disposition upon the part of your people over there to criticize that work from the physical standpoint?

Mr. BYRD. None whatever.

Mr. HALLOCK. Will you tell us what the attitude toward Mr. Barnes is in that community at this time?

Mr. BYRD. Well, there is a division of opinion there. Mr. Barnes does not have the entire confidence of the community that he had during the period of putting this on the market, because apparently he has used obstructive methods instead of promotive {*sic*}, and I have felt, and others the same way, that things that he has initiated there in the way of suits and things of that kind, have retarded—at any rate, as I expressed it, I think to Mr. Barnes, one time, it gave Mr. Herrick an excuse to lay off, anyhow.

Mr. HALLOCK. Mr. Byrd, what can you say as to whether or not that community views Mr. Barnes's activities as wholly altruistic and public spirited, or whether they feel that they are more of a personal nature, and that he is dealing more in his own personal interests than he is in the community's interests?

Mr. BYRD. He is decidedly antagonistic to Mr. Herrick in all of his public expressions—private as far as that is concerned. I used to discuss the subject with Mr. Barnes at frequent intervals, but of late well, the last couple of years I guess—I purposely avoided discussing the matter with Mr. Barnes because he just always goes back to the same story and has nothing new to offer.

Mr. HALLOCK. What are the facts with respect to whether or not the Harney County Fair Association was required to convey property to Mr. Barnes in order to induce him to transfer the mill site to Mr. Herrick which he had contracted previously to convey?

Mr. BYRD. That was the only consideration for which the fair association deeded him a tract of twenty-four and some odd acres. He tendered us in return a 40-acre tract that was not suitable in location or character in any way to such purpose, and put restrictions in the deed that makes it absolutely useless to us.

Mr. HALLOCK. Well, why was it necessary for the community there to get in and induce Mr. Barnes to make this transfer?

Mr. BYRD. Well, preceding that I had been informed that Mr. Herrick had said that if he could not come to some understanding and he could not get that mill-site deed from Mr. Barnes that he would ask Jim Girard to place the mill in Bear Valley. We were

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naturally concerned about that. We wanted the mill. And our fair association, which consists of, oh, 50 or 60 stockholders, and is a nonprofit organization—just simply a fair, no one ever got any benefits or dividends or anything out of it—but among those active fight in Burns, and my immediate associates, who constitute the board of directors, had discussed informally on more than one occasion that if it became necessary we would give the fairgrounds as terminal grounds for the railroad, and would gladly have done that without any consideration whatever other than the necessary $1. But when the tentative location of the depot was made below the fairgrounds, leaving that between the town proper and the depot, I suppose I was one of the first fellows to put up a holler. And that was discussed more or less.

Well, following this, when it was threatened to take the mill to Bear Valley, and apparently Mr. Barnes would

not give the deed to Mr. Herrick, there were mass meetings. We were just up in arms. A little community can get somewhat stirred up over a small matter sometimes. And then Mr. Barnes made a proposition or condition under which he would transfer this deed. One of the considerations was that he should be deeded the fairgrounds, for which he would give us a 40-acre tract farther away. We never went to look at it until after the transfer of deeds. And another consideration was moving the stockyards from a certain location. Now I do not know what other considerations. But there was a committee named at a public mass meeting they had there to confer with Mr. Barnes, and one of those three men was the treasurer and a director of the Harney County Fair Association. Following that Mr. Ben Brown, the individual I referred to, had said that was one of the conditions.

We immediately prepared a memorial or resolution at a stockholders' meeting, not entirely representative, but sufficient to allow us to proceed, in which they authorized the directors of the organization to make a deed to Mr. Barnes for that in exchange for the 40 acres he had offered, with a provision that the deed from the Harney County Fair Association to Mr. Barnes would be placed of record simultaneously with his deed to Mr. Herrick for the mill site. That deed was placed in escrow in the First National Bank and the transaction was completed in that way.

Mr. HALLOCK. And it was in that manner that Mr. Barnes was finally induced to transfer title to the Fred Herrick Lumber Co.?

Mr. BYRD. That is my active interest in the matter. So far as I know I do not know what other considerations there were, but that was under my personal observation and through my own transactions.

Mr. HALLOCK. Yes. Now prior to that had the community been pretty thoroughly aroused over Mr. Barnes's disposition to insist upon the location of the depot at Burns way down on his real estate holdings south of town?

Mr. BYRD. In my opinion that is what precipitated this scrap.

Mr. HALLOCK. He did maintain for that location, did he?

Mr. BYRD. Yes.

Mr. HALLOCK. And did that result in a compromise and a location of the depot somewhat farther south than what Mr. Herrick's plan contemplated, and somewhat farther north than Mr. Barnes wanted it?

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Mr. BYRD. I think it did result in that. I was not with the delegation who visited Mr. Herrick in his rooms. I seemed to be a wet blanket with Mr. Herrick when he first appeared in Burns around there, because of the fact that I was a newspaper man, I guess, and he wouldn't discuss anything with me except bear hunting[2] or something of that kind, so I personally did not visit his rooms with this delegation. But following that, when the party came down from the hotel and started down to the field just below town with Mr. Armstrong, and there were two or three other officers of the Union Pacific —

Mr. HALLOCK (interposing). Who is Mr. Armstrong, by the way?

Mr. BYRD. I don't know just exactly what his position is.

Mr. HALLOCK. Chief engineer of the Oregon Short Line?

Mr. BYRD. Yes, he is associated with it in some way. I suppose that is it. Well, I accompanied them, but I was in the particular company with another individual of that organization. It was not Mr. Calvin, I am pretty sure, although I can not recall just the man. But we went down, and we discussed informally the situation. But coming back, and during the period of time that we were down viewing this proposed location of the depot, I talked with Mr. Armstrong. And they just simply said, "We will locate it right here. It is right at the foot of Main Street."

Mr. HALLOCK. Yes. Well, I do not care so much about the detail, but I do want to develop the fact that the controversy was on there and raged in your town for some weeks; isn't that true?

Mr. BYRD. Yes; it was quite a bone of contention.

[2]It was probably cougar hunting. Mr. Herrick was an avid cougar hunter.

Mr. HALLOCK. Now what was the apprehension of the community with respect to Barnes's desire to get the depot and the town clear down south of the present city limits?

Mr. BYRD. Well, it made it possible to really centralize the town down toward the depot and further toward the mill, and really put our present business district in the back yard.

Mr. HALLOCK. Yes—divided the town into two units, you might say?

Mr. BYRD. It would.

Mr. HALLOCK. Just another word, Mr. Byrd, on the matter of Mr. Herrick's plans for a bond issue. What are the facts as to whether or not, to your knowledge, Mr. Herrick has his plans for a bond issue well under way during the fall of 1926 and long prior to any request for a senatorial investigation of these matters?

Mr. BYRD. I know that for a fact.

Mr. HALLOCK. You had seen the representatives of the J. D. Lacey Co. there, had you?

Mr. BYRD. Yes.
Mr. HALLOCK. They were Mr. Culver and the Pacific coast representative, Mr. Lyford

Mr. DE NEFFE. How would it be to let him testify, Mr. Hallock?

Mr. HALLOCK. I think that is right, Mr. De Neffe. That is leading.

Mr. BYRD. Immediately following the election—the election was held on a Tuesday, I think, was it not?—a delegation of some 20 men from our community made a pilgrimage to Lakeview in the interest of the Central Oregon Highway. We came back, Sunday evening, and the members of my automobile party, consisting of

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Mr. Digges {*sic*; should probably be Biggs }, Waldo Geare, and Mr. Shattuck stopped at a café to have some supper—-it was along between 6 and 7 o'clock-before disbanding and going to our respective homes. When we went into the café the first man I saw was Mr. Herrick. He introduced me to his companions, and I remember Mr. Culver very particularly, but I do not recall the other man's name.

Following that, in my capacity as a newspaper man I went to the Fred Herrick Lumber Co.'s offices and discussed with Mr. Girard the object of this visit, and, contrary to Mr. Herrick's idea about newspaper men—he sometimes told things that he did not always want published—Mr. Girard had become very well acquainted with me and we discussed matters more or less in a confidential way, and he told me, not at that time, but just a little bit earlier, that that was the object of this visit and what Mr. Culver represented.

Mr. HALLOCK. Now, just a little more, Mr. Byrd, regarding the financial condition of your community prior to Mr. Herrick's coming and the effect of the expenditure of these moneys on the community's situation.

Mr. BYRD. Well, Mr. Hallock, to anyone in the West, and particularly anyone who is familiar with our location, they realize the demoralized situation with us when we were dependent entirely upon livestock industry. The situation has been very tense following the war. I could enumerate men whom I considered to be very well fixed in the livestock business that have gone into bankruptcy because of conditions there and demoralized marketing following the war situation. There was absolutely nothing doing. That was one reason for the committee of 10, headed by Mr. Barnes, getting this timber on the market. I undertake to say there is not a man or woman living in Burns to-day that six years ago, or even just immediately prior to this, that ever thought for a minute that the timber resources to our north would be responsible for the development of our country. It had not entered into our consideration at all. We had attempted to get transportation in there time and again. Mr. Herrick yesterday spoke of a woman that came there 20 years ago in order to beat the railroad. Well, I went there over 40 years ago, and there was actual construction of the railroad east from Ontario—that is, west from Ontario to us—and also the old Oregon Eastern, running out through Corvallis up into the mountains, was projected east from there for a connection. So it is over 40 years that I have been expecting a railroad.

Mr. HALLOCK. What did the community do in the way of proposing to actually bond itself to get a railroad in there?

Mr. BYRD. It did not only propose it, it voted bonds.

Mr. HALLOCK. To the amount of how much?

Mr. BYRD. I could not tell you about that, Mr. Hallock; I think it was $120,000.

Mr. HALLOCK. What are the facts as to whether Mr. Herrick has ever sought or has ever received, either from the county or the city or from your community, anything in the way of a bonus to induce him to spend his money in that country?

Mr. BYRD. None whatever.

Mr. HALLOCK. What effect have his expenditures had upon your financial situation?

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Mr. BYRD. It has been approximately all the ready money in circulation there during that period. Of course, there have been other things of a minor nature.

Mr. HALLOCK. But that has been the big factor?

Mr. BYRD. That has been the big factor.

Mr. HALLOCK. I wish you would give us a little more information with respect to the antagonism of Mr. Barnes toward Mr. Herrick, and his general attitude.

Mr. BYRD. That would go back some time, Mr. Hallock.

Mr. HALLOCK. I do not care about the details particularly, Mr. Byrd, but just the facts in a general way.

Mr. BYRD. Mr. Barnes and I were very close at the time that this contract was made, and we discussed things in confidence at the time, but later apparently that influence was extended to every individual that I would meet, and it was antagonistic. The burden of it had been always that Mr. Herrick would never go through with it, and he has repeatedly said he would not lay a pound of steel or do anything whatever —

Mr. HALLOCK. That is, Mr. Barnes said that?

Mr. BYRD. Mr. Barnes said that—until it became quite a bore to me. I always avoided the subject when I would meet him.

Mr. HALLOCK. There have been some telegraphic communications received here from your community expressing confidence in Mr. Herrick and in the Forest Service. What have been the facts, to your knowledge, as to whether or not such communications have been solicited by Mr. Herrick or any member of his organization?

Mr. BYRD. Mr. Jim Girard has always said to me in any such event, when these periodical complaints came up, "I don't argue about anything affecting Mr. Herrick at all. Go right on." But he has always shown appreciation and satisfaction at our reiterating our confidence in the Forest Service, especially Colonel Greeley.

Mr. HALLOCK. And in Mr. Girard and Mr. Klobucher as well.

Mr. BYRD. Oh, yes.

Mr. HALLOCK. Do you entertain that confidence at this time?

Mr. BYRD. Oh, absolutely. But they have never asked us to do that. In fact, Jim Girard has told me on more than one occasion, "Just leave me out of it entirely."

Mr. HALLOCK. Do you know of any real suspicion entertained by any reliable citizen there to the effect that Mr. Guard or Mr. Klobucher or any member of the Herrick organization there has been guilty of collusion or conspiracy or fraud?

Mr. BYRD. Why, it was entirely foreign to anyone's mind, so far as I know. I am confident that nothing of that kind was considered in any way until this came up in The Oregonian and it was published that there was collusion. That was the first information that anybody had of that.

Mr. HALLOCK. Does the same answer apply to the Forest Service and its people?

Mr. BYRD. Oh, yes.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Just one or two questions, Mr. Byrd. You have been in close touch with this project ever since it started?

Mr. BYRD. Yes.

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Mr. MCGOWAN. Interviewing Mr. Girard, as you have answered, probably at least once a month?

Mr. BYRD. Once a week.

Mr. MCGOWAN. Have you at any time since this contract was signed heard anybody intimate that the Forest Service was going to abandon the common-carrier clause?

Mr. BYRD. Oh, I would from time to time, yes. That has been referred to. I have discussed that matter with Jim Girard, by the way.

Mr. MCGOWAN. When Mr. Farre was on the stand—and I think I quote him correctly, or at least the impression that he gave me—he said that there was some secrecy about some of the reports in connection with this work. Has there been at any time any secrecy as far as you as the editor of your paper are concerned by the Forest Service in connection with work?

Mr. BYRD. None at all. I have found occasion to address Mr. Granger two or three times, perhaps, and ask him for certain things, and every time I go to Portland—I have other friends on the same floor, I think they are on the same floor with Mr. Granger, and I go in there and pay my respects to him and maybe take up 15 minutes of his time. There has never been anything that I asked for that has not been freely given to me. I have not asked, Mr. McGowan, directly about their relationship with Mr. Herrick or their contract, but I have considered that matter none of my business.

Mr. MCGOWAN. Were you here when Mr. Farre was testifying? Did you hear his testimony?

Mr. BY RD. Why, yes, I was here.

Mr. MCGOWAN. He was relieving you for a week or so on the newspaper?

Mr. BYRD. Yes.

Mr. MCGOWAN. But you are the man that really runs the newspaper?

Mr. BYRD. Yes.

Mr. MCGOWAN. And he was acting in a relief role entirely?

Mr. BYRD. Yes

Mr. MCGOWAN. That is all.

The CHAIRMAN. Take the witness, Mr. De Neffe.

(Cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE N NEFFE. Who is paying your expenses here?

Mr. BYRD. I am.

Mr. DE NEFFE. Yourself?

Mr. BYRD. Yes.

Mr. DE NEFFE. Has not Mr. Herrick or his attorney promised that you would be reimbursed for this trip?

Mr. BYRD. No promises.

Mr. DE NEFFE. How about expectations?

Mr. BYRD. I will take it if they will give it to me.

Mr. DE NEFFE. There is somewhat of an understanding, is there, that they will give it to you?

Mr. BYRD. The matter has not been discussed at all, Mr. De Neffe. It has never been mentioned.

Mr. DE NEFFE. You were not subpoenaed, were you?

Mr. BYRD. No. I expected to be.

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Mr. DE NEFFE. You just packed up your baggage and came here voluntarily without anybody suggesting it?

Mr. BYRD. Mr. De Neffe, the matter of my coming as a witness was suggested from the forest office and Mr. Dutton.

Mr. DE NEFFE. That is what I wanted to know.

Mr. BIRD. Well, he called me and said that it was likely they would want some witnesses from our community, and expressed a desire that I come. I told him that I could get a dozen witnesses in Burns that would be better witnesses than I, but he remarked that because of my general knowledge of this proposition from its inception he would like to have me, and indicated that the character of men as representative men of the community that he would like to have as other witnesses. I discussed the matter over the telephone with him, and he said I would likely get a subpoena. Anticipating such a thing, I discussed it with perhaps a dozen men in Burns. We got together and discussed the situation as to what this individual or that. individual could testify to and what effect it would have and the possibility of their getting away. Well, it resolved itself down to four of us that said we would come.

Mr. DE NEFFE. Who were the four?

Mr. BYRD. Myself, Mr. Jamison, Bob Duncan, and Mr. Geare. I was selected because of my conversation with Mr. Dutton, that they would like to have me because of my general knowledge of the situation; Mr. Geare because he was made president of our committee of 10; Mr. Jamison because of his position as mayor of Burns. We went to Mr. Klobucher and asked that he take us up over the line, I think it was the 31st day of January, and he took us up. We spent the day and went clear to the end of the rail and spent the entire day there. On our return we were looking forward all the time expecting subpoenas and arranging our plans to meet the situation should subpoenas come. On Friday night Mr. Dutton called me from the forest office at John Day and asked if we had been subpoenaed and I told him we had not. Well, he said, he had to come on. That was the extent of our conversation. Later, I guess it was Sunday, there was a wire from here asking the community of Burns to request Senator Stanfield to have certain individuals subpoenaed.

Mr. DE NEFFE. Who sent the wire from here?

Mr. BYRD. That did not come to me, but. it came from the forest. office. But no subpoenas were wired or anything done at all.

Mr. MCGOWAN. I will be glad to furnish you with a copy of that wire if you want it, Mr. De Neffe.

Mr. DE NEFFE. No, I do not want it. I saw it in the files; I remember it now.

Mr. MCGOWAN. Let us get the record clear on that. There was not anything in there —

Mr. DE NEFFE. Oh, no, I do not claim that there was.

Mr. MCGOWAN. Nothing beyond the suggestion that Senator Stanfield be given these names. Wasn't that the substance of it?

Mr. BYRD. Mr. De Neffe, in discussing this matter among individuals it developed that Harney County would not be represented in any way as expressing its sentiment toward this project.

Mr. DE NEFFE. Then when did you decide you would come on your own expense.

Mr. BYRD. Sunday.

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Mr. DE NEFFE. But you talked with Mr. Dutton —

Mr. BYRD. Friday. Mr. Dutton talked to me on Friday.

Mr. DE NEFFE. Then did you talk with him Sunday again?

Mr. BYRD. No. He said he had to leave. That was the last conversation I had with him.

Mr. DE NEFFE. You knew it would involve quite an expense, didn't you, to make the trip?

Mr. BIRD. Mr. De Neffe, I have sufficient business interests so that if I would take a selfish view of it it would justify my coming. But I was a little bit aroused over the attack on Jim Girard and Frank Klobucher, intimating that they were in collusion.

Mr. DE NEFFE. You talked to them about your going —

Mr. HALLOCK. Just a minute; he had not finished.

Mr. BYRD. No, I did not talk to them about my going. It was a proposition that, apparently from my reading of the Blue Mountain Eagle, Mr. Height's paper, they were intimating that those two men were too little for the job, and there was evidently something wrong in connection with it or they would not have been put on the job. Well, from my knowledge of what they had done and the character of the work I knew darned well they were capable men. I resented that, from my personal interest in the two men, and particularly Frank Klobucher who is a fellow that very seldom says anything and is hard to get acquainted with. But his wife is a very dear friend of ours, and I consider her one of my girls, in fact, in a way, because of our close association, she and Evelyn being school friends, and I would have made the trip on my own responsibility, paying my own money, rather than not have Harney County represented here. I did not know anything of the seriousness of this.

Mr. DE NEFFE. Very well. Going back to your testimony you stated that it never entered into the minds of any of your people at Burns that the timber resources to the north of Burns might be used as a means of bringing a railroad? Did I understand you right?

Mr. BYRD. Yes; previous to Mr. Barnes's activities.

Mr. DE NEFFE. Then Mr. Barnes is really responsible for this whole idea, isn't he, of bringing in a railroad by that means?

Mr. BYRD. He initiated it.

Mr. DE NEFFE. Yes. He came there and told you people how it could be done? Isn't that right?

Mr. BYRD. After we organized our committee of 10.

Mr. DE NEFFE. Yes; but I mean even before you organized your committee of 10, didn't he come and tell you the method that could be employed to develop the whole country there and bring in the railroad and develop the timber resources? He explained that to you, didn't he?

Mr. BYRD. No. I did not discuss Mr. Barnes's relationships at all previous to this. We had met casually, and I knew that he was promoting a timber deal to the north of us, but to what extent or what it involved was never discussed with me.

Mr. DE NEFFE. Was not the fact that Mr. Barnes came with this idea the cause of the committee of 10 being organized, in order to have some, concrete organization which could go ahead and do whatever was necessary to help Mr. Barnes develop the idea? Was not that the purpose of the committee of 10?

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Mr. BYRD. Yes, but that was brought to my attention following his losing out with the big timber project. We were not in on his business propositions at all before that. I did not know it involved a railroad or that a mill would be established in Burns or whether the timber would go out over the Sumpter Valley or come our way, or go down to Juntura. In fact, I did not speculate on it; I was not familiar with the situation.

Mr. DE NEFFE. A good deal of it could have gone out by Juntura couldn't it?

Mr. BIRD. At that time I would have said yes, but since these developments and reconnaissance surveys have taken place I feel now that this particular track could not have gone out that way.

Mr. DE NEFFE. Then it is true, isn't it, that Mr. Barnes coming and suggesting this method is what resulted in the timber being put on the market? Isn't that right?

Mr. BYRD. Yes; absolutely.

Mr. DE NEFFE. You said your paper reflected the general sentiment of the people in Burns. Is that right?
Mr. BYRD. Yes.

Mr. DE NEFFE. It does not reflect the sentiment of John Biggs here, for instance, does it?

Mr. BYRD. Oh, I do not say individuals.

Mr. DE NEFFE. But the sentiment of the people worth while? Would you say that?

Mr. BIRD. Not necessarily worth while. I do not mean that.

Mr. DE NEFFE. You would not put it as strongly as Mr. Girard did?

Mr. BYRD. Here is the way I would put it, that the sentiment of the substantial business interests of Burns is reflected through my newspaper—the heavier property owners and active business men.

Mr. DE NEFFE. And there are a great many other property owners and active business men who would align themselves with the other side? Isn't that right?

Mr. BYRD. To a certain extent. It is a proposition of how they are approached, how they are situated, their financial condition, and what they expect.

Mr. DE NEFFE. Those, for instance, who are merchants there and doing business-—he Herrick people probably bought a lot of stuff from them and did a lot of trading with them?

Mr. BYRD. Oh, yes.

Mr. DE NEFFE. And they naturally expect more trade, and would naturally be friendly to Mr. Herrick? Isn't that right?

Mr. BIRD. Not necessarily. I can state positively that one of the most active men, who resists any attempt to

retard Mr. Herrick or to throw anything in his way, is Ben Brown, of Ben Brown & Sons. I do not know that he has any of that business—very little of that business.

Mr. DE NEFFE. But he may have expectations or hopes?

Mr. BIRD. He does not expect so much from Mr. Herrick as he does from the general development that will follow.

Mr. DE NEFFE. There was a telegram that Mr. Hallock read in evidence, signed by Judge Williams, the county judge, dated February 11, 1927, addressed to you, and a similar one to Mr. Grover Jamieson. That just reflects his personal view, doesn't it?

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Mr. HALLOCK. Pardon me. He has already seen the documents. It is a community view, Mr. De Neffe.

Mr. DE NEFFE. Yes; I am coming to that.

Mr. HALLOCK. I wanted to call the witness's attention to that.

Mr. DE NEFFE. That is just a personal telegram, isn't it, from Judge Williams?

Mr. BYRD. Yes, sir.

Mr. DE NEFFE. He did not purport to represent the county court when he sent that telegram?

Mr. BYRD. Oh, I took it that way.

Mr. DE NEFFE. Does the telegram state so?

Mr. HALLOCK. Yes; I think he says "represent us" or "Harney County."

Mr. DE NEFFE. What are his initials?

Mr. BYRD. R. J. Williams.

Mr. DE NEFFE. That was the way it was signed?

Mr. BIRD. Yes.

Mr. DE NEFFE. It did not say "County Court of Harney County, by R. J. Williams, judge?"

Mr. BYRD. No.

Mr. DE NEFFE. So it is just simply an expression of his personal sentiment. At the time Judge Williams sent that telegram he probably knew nothing of the provisions in paragraph 3 of the Herrick contract, did he?

Mr. HALLOCK. Mr. De Neffe, isn't it true that none of us here knew that, including yourself, until we got into this hearing? I think Ed will tell us so.

Mr. DE NEFFE. Do you think that Judge Williams, after having learned about the provisions of paragraph 3 of the Herrick contract, would still have signed that kind of telegram?

Mr. MCGOWAN. Why, certainly he would.

Mr. BYRD. Yes, sir.

The CHAIRMAN. Let the witness answer the question. I wish counsel would not interfere.

Mr. DE NEFFE. You do not think that Mr. Barnes was trying to advise the committee all the time, do you, Mr. Byrd?

Mr. BIRD. Oh, yes.

Mr. DE NEFFE. All the time?

Mr. BYRD. All the time that we were functioning.
Mr. DE NEFFE. Why didn't you quit him, if he was that kind of man, right from the beginning?

Mr. BIRD. Why should we quit him? We had absolute confidence in Mr. Barnes at that time. He was doing just what we wanted done.

Mr. DE NEFFE. Did this demand that he made of you for secrecy continue clear up to the second advertisement of the sale?

Mr. BYRD. I am quite sure it did, during the entire life of that committee—that is, where it functioned as a live committee. We accepted every word that Mr. Barnes said.

Mr. DE NEFFE. It was not kept a secret was it? It was generally published in your paper?

Mr. BYRD. Oh, sure.

Mr. DE NEFFE. And talked about a good deal?

Mr. BYRD. Yes.

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Mr. DE NEFFE. What did he ask be kept secret?

Mr. BYRD. There were certain phases of the circumstances surrounding it that he asked be kept a secret.

Mr. DE NEFFE. Archie McGowan, you say, is merely a garage man. He owns some property around there?

Mr. BYRD. He owns lots of property.

Mr. DE NEFFE. And he is a member of the Oregon Legislature.

Mr. BYRD. Yes.

Mr. DE NEFFE. And is he not a man of high character and integrity? Wouldn't you say that?

Mr. BYRD. Archie McGowan is a very good friend of mine.

Mr. DE NEFFE. And he is a man of high character and integrity, isn't he?

Mr. BYRD. So far as his relationship with me, he is.

Mr. DE NEFFE. And with everybody else? Isn't that a fact?

Mr. BYRD. I can not speak for other people.

Mr. DE NEFFE. Can you point to any time or place when he has ever done a dishonorable thing?

Mr. BYRD. No, not any dishonorable thing.

Mr. DE NEFFE. Or a crooked thing?

Mr. BYRD. He presumes a good deal, and assumes a good deal.

Mr. DE NEFFE. He asserts himself, certainly, like everybody else does there? He expresses his opinion?

Mr. BYRD. Yes, sir.

Mr. DE NEFFE. There is nothing wrong in that, is there?

Mr. BYRD. Not the least.

Mr. DE NEFFE. And he was elected by a substantial majority, wasn't he, to the legislature?

Mr. BYRD. My county defeated him.

Mr. DE NEFFE. What is that?

Mr. BYRD. He was defeated in my county.

Mr. DE NEFFE. Do you suppose that Herrick had anything to do with that?

Mr. BIRD. No, sir.

Mr. DE NEFFE. He got a substantial vote from Harvey County, didn't he?

Mr. BYRD. Oh, yes.

Mr. DE NEFFE. Referring to this telegram that was sent to the Oregon delegation, signed by Judge Williams, Mayor Jamison, and Mr. Hibbard, that was Judge Williams's personal expression also, wasn't it?

Mr. BIRD. Mr. De Neffe, I do not know whether the commissioners were at that meeting or not.

Mr. DE NEFFE. It was just merely the country judge, wasn't it, personally, that sent that?

Mr. BYRD. I presume that he represented himself, although I do not know; I was not at that meeting.

Mr. DE NEFFE. Mr. Hibbard, you say, is the president of the commercial club?

Mr. BYRD. President of the Burns and Harvey County Commercial Club.

Mr. DE NEFFE. Was there a meeting of the commercial club before you sent the telegram?

Mr. BYRD. Yes.

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Mr. DE NEFFE. That club has not functioned, has it, for a long time?

Mr. BYRD. The Burns and Harvey County Commercial Club was called together at intervals. It has not had any regular meetings that I know of, but when a thing of this character comes before them, or a live proposition or anything of a public nature requiring their attention, they are called into session by the president.

Mr. DE NEFFE. You say that Mr. Barnes has obstructed Mr. Herrick in this work?

Mr. BYRD. That is my view of it.

Mr. DE NEFFE. He has merely complained about all these delays, hasn't he?

Mr. BYRD. Yes, he complained continually.

Mr. DE NEFFE. When work has lagged?

Mr. BY RD. Whether it has lagged or not. When I have discussed the matter with him he has always had some complaint.

Mr. DE NEFFE. Well, it has lagged a great deal, hasn't it, Mr. Byrd?

Mr. BYRD. It could have been done quicker.

Mr. DE NEFFE. Yes.

Mr. BYRD. But here is the view I took of it—and I think I reflect the views of the substantial people—that while we were suffering from this delay and a postponement meant dollars and cents in the way we anticipated this to go ahead, but we did not feel—at least I did not feel that I should profit by Mr. Herrick's loss. I never questioned his financial ability to construct that, and I placed that confidence in the Forest Service that they knew what they were doing when they gave him that contract.

Mr. DE NEFFE. At that time you didn't know of the extent to which Herrick was delinquent in the contract and the modifications, did you?

Mr. BIRD. No.

Mr. DE NEFFE. You learned a good deal since you have come to this hearing?

Mr. BYRD. Yes, Sir.

Mr. DE NEFFE. From the Government records.

Mr. BYRD. Although I knew from time to time, each period of checking up, when Mr. Hoffman would come in, I never discussed the matter with Mr. Hoffman. I felt it should go to his superiors before it should be a matter of news, and I never asked him anything about it. That is, the particulars.

Mr. DE NEFFE. In regard to this location of the depot site, don't you remember that Mr. Girard picked the site on Mr. Barnes's land that was within the city limits?

Mr. BIRD. No; I don't know that he picked it.

Mr. DE NEFFE. You do not?

Mr. BYRD. No; sir; but it is within the city limits, the original depot site.

Mr. DE NEFFE. Yes.

Mr. BIRD. I immediately expressed my dissatisfaction.

Mr. DE NEFFE. You say Mr. Herrick never sought a bonus from the community for building in there?

Mr. BYRD. No.

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Mr. DE NEFFE. Well, do you think he is entitled to any particular credit for that?

Mr. BYRD. Why, no.

Mr. DE NEFFE. He had a contract with the Government to do certain things, didn't he?

Mr. BYRD. Sure.

Mr. DE NEFFE. So he was obligated under his contract to do that very thing; isn't that right?

Mr. BYRD. He was in position to do it, and the citizens of Burns would very gladly have complied. If Mr. Herrick had come to the city of Burns and asked us to give him a mill site we would have got it very gladly for him, and thought we were getting our money's worth.

Mr. DE NEFFE. You said you never asked the Forest Service regarding the terms of the Herrick contract

because you thought it was none of your business. Don't you think the community is interested in the terms of that contract?

Mr. BYRD. Certainly, we are. But here is the situation, Mr. De Neffe, in that respect: These technical things you pick up, the ordinary individual would read it and take no recognition of it at all.

Mr. DE NEFFE. Do you think if you had had that contract at your office, a copy of it, say, and you had talked to John Biggs about it, that he would have claimed that there was technical objections to it merely?

Mr. BYRD. His legal mind would have seen them, no doubt.

Mr. DE NEFFE. You heard him analyze paragraph 3, did you not, of the Herrick contract?

Mr. BYRD. Yes, Sir.

Mr. DE NEFFE. Do you think that is a correct analysis of it?

Mr. BYRD. It is barely possible.

Mr. DE NEFFE. It is a correct analysis then, isn't it?

Mr. BYRD. I don't know as I interpret it—I don't know what I would say about it, Mr. De Neffe. The thing that strikes me is this, as it has been expressed around here, that a man with a $3,000,000 investment and a railroad that was dependent entirely, you might say, on hauling logs, because other freight and passenger would be a losing proposition, that is all; he could not conduct a railroad with any profit without the logs, and to have a mill that is going to cost a million dollars and that equipment lie idle for any length of time, it seems to me like it would be out of the question.

Mr. DE NEFFE. If there was a big DROP in lumber, a condition would arise, would it not, where it would pay him to shut down, even though he had a big investment, rather than take a big loss?

Mr. BIRD. Mr. De Neffe, I can not anticipate anything like that. You know, I have no knowledge of the lumbering business, but it would seem simply impossible for a mill to be shut down for any appreciable time. It might be for a few weeks, or a few months.

Mr. DE NEFFE. You heard the picture painted by Mr. Culver, that might happen almost any time?

Mr. BYRD. I don't recall Mr. Culver —

Mr. DE NEFFE (interposing). He painted a very gloomy picture of the lumber market.

Mr. BYRD. Oh, yes; I recall that. But at the same time, he didn't say they were all going to shut down because of that.

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Mr. DE NEFFE. No; but they do shut down when the prices get how. Isn't that good business?

Mr. BYRD. I don't know about that. I know Shevlin-Hixon and Brooks-Scanlon are not running full capacity.

Mr. DE NEFFE. Because the price is low?

Mr. BYRD. No doubt that is responsible for it.

Mr. DE NEFFE. And you people, the community, wanted continuous operation there, didn't you, every year?

Mr. BYRD. There is another situation, Mr. De Neffe, that I outlined a while ago. Why should I profit at the expense of some one else? During the depression in the cattle market I do not insist on Will Handley going out and selling steers in order to make me money.

Mr. DE NEFFE. You don't think Mr. Herrick owes any duty to the community to keep his payroll constant, according to his contract? I am just talking about the contract that you people thought you were going to get.

Mr. BYRD. We thought it would be a reasonably continuous operation of the mill.

Mr. DE NEFFE. And that would have insured, by that provision of the prospectus that you people thought you got, requiring a minimum cut every year, a minimum cut of 100,000,000 feet every year after the period of three years, after June 1, 1931?

Mr. HALLOCK. We object to that, a minimum cut of 100,000,000 feet each year —

Mr. DE NEFFE (interposing). I said after June 1, 1931. You remember that minimum cut of 100,000,000 feet?

Mr. BYRD. Yes, sir.

Mr. DE NEFFE. You remember that?

Mr. BYRD. Yes, sir.

Mr. DE NEFFE. And that would insure constant operation, wouldn't it?

Mr. BYRD. Mr. De Neffe, I couldn't go into those details, because I am not familiar with it at all.

Mr. DE NEFFE. Now, if this contract that Herrick got would permit him to shut down from three to six year periods if he desired, as Mr. Biggs has stated, do you think it would be good for the community to do that, if he wanted to?

Mr. BYRD. I would take the same stand as Mr. Culver in that respect. I think it would be as hard on Herrick as on us. I don't think it is possible—it is possible —

Mr. DE NEFFE (interposing). Sure it is.

Mr. BIRD. I will say it is possible, but not at all probable.

Mr. DE NEFFE. And you say the Shevlin-Hixon are cutting down?

Mr. BYRD. They are curtailing. I do not say it has affected them very much. They are still going.

Mr. DE NEFFE. Do you remember, when this railroad was distressed, it was always thought that you would have through rates, didn't you, in that community?

Mr. BYRD. Those details were not discussed and never considered.

Mr. DE NEFFE. Freight rates?

Mr. BYRD. A common-carrier railroad is what we considered it to be.

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Mr. DE NEFFE. Now, Mr. Barnes helped to get rights of way with Mr. Girard, didn't he?

Mr. BYRD. Yes; I accompanied him.

Mr. DE NEFFE. You know that personally?

Mr. BYRD. On one occasion—I don't know whether more than one.

Mr. DE NEFFE. And the Will Handley Co., and the Pacific Live Stock Co. gave Herrick rights of way too, didn't they?

Mr. BYRD. Yes; that was one of the conditions of rerouting the railroad from Crane to Burns.

Mr. DE NEFFE. That was free, wasn't it?

Mr. BYRD. I think there are some restrictions and conditions in all deeds of the Pacific Live Stock Co.

Mr. DE NEFFE. The usual conditions that the railroad must be built there.

Mr. BYRD. Yes; and particularly the mill site.

Mr. DE NEFFE. Oh, I thought they made some oil reservations.

Mr. BYRD. No.

Mr. DE NEFFE. No oil reservations?

Mr. BYRD. No; I am quite positive, if you will investigate the deed from the Pacific Live Stock Co. for the tract on which the mill is being erected, you will find that Mr. Herrick could not let his mill lie idle to exceed two years at any time.

Mr. DE NEFFE. You know Phil Smith there, a contractor, he is?

Mr. BYRD. Phil Smith?

Mr. DE NEFFE. Isn't he a contractor?

Mr. BYRD. No.

Mr. DE NEFFE. Well, you spoke of him. You remember he told Mr. Girard soon after the contract was signed, when Mr. Guard announced that he would like to let the work to local people, that he would get a lot of local people together and build this quick grade from Crane to Burns?

MT. BYRD. No.

Mr. DE NEFFE. Don't you remember that statement?

Mr. BYRD. No.

Mr. DE NEFFE. That is all.

Mr. HALLOCK. Just one question, please, Mr. Byrd. You spoke of Mr. McGowan's defeat in that county. Is it a fact that Mr. McGowan was defeated in Harvey County by a man whose name was written in the ballot?

Mr. BYRD. Mr. Hallock, I am not sure. I believe Mr. McConnell's name was printed on the ballot. I am not sure about that, and I ought to know, because the ballots were printed in my office.

Mr. HALLOCK. I am of the impression Mr. McConnell's name was written in.

Mr. BYRD. He made no active campaign in our vicinity.

Mr. HALLOCK. That is all.

The CHAIRMAN. The witness is excused. Call your next witness.

Mr. HALLOCK. I will call Mr. Jamison.

The CHAIRMAN. We will recess, gentlemen, in 12 minutes.

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TESTIMONY OF GROVER JAMISON, OF BURNS, GREG.

(The witness was duly sworn by the chairman.)

(Direct examination by Mr. Blame Hallock, attorney representing Fred Herrick, Mr. James W. Girard, and Mr. Frank J. Klobucher.)

Mr. HALLOCK. Your name is Grover Jamison?

Mr. JAMISON. Grover Jamison.

Mr. HALLOCK. What is your age, Mr. Jamison?

Mr. JAMISON. Forty-one years.

Mr. HALLOCK. Are you a man of family?

Mr. JAMISON. I am.

Mr. HALLOCK. Where do you live?

Mr. JAMISON. Burns, Oreg.

Mr. HALLOCK. How long have you lived there?

Mr. JAMISON. Forty-one years.

Mr. HALLOCK. What position do you occupy with the city administration?

Mr. JAMISON. I am mayor of the city of Burns at the present time.

Mr. HALLOCK. What is your occupation, Mr. Jamison?

Mr. JAMISON. Banking is my occupation.

Mr. HALLOCK. Have you property and business interests in and around Burns other than your banking interests?

Mr. JAMISON. I have..

Mr. HALLOCK. Just briefly, what do they consist of?

Mr. JAMISON. Well, I have a home in Burns, and some acreage within the corporate limits. I own some unimproved residence lots An I have an interest—a one-third interest—in an 80-acre tract of land one mile north of Burns, and 120 acres of timber in Grant County.

Mr. HALLOCK. I have already referred to the document communicated to the members of the Oregon delegation purporting to have been signed by yourself as mayor, and which was also signed by the county judge representing the county, and Mr. Hibbard, representing your commercial club. Are you the individual who signed that document on behalf of the city?

Mr. JAMISON. Yes, sir.

Mr. HALLOCK. Was that and is that an official expression of the attitude of the city of Burns as you know it and undertook to communicate it?

Mr. JAMISON. Yes, Sir.

Mr. HALLOCK. And what you will have to say here will likewise represent the city viewpoint, as you understand it?

Mr. JAMISON. Yes, Sir.

Mr. HALLOCK. Have you any other document having to do with your right to speak on behalf of your community?

Mr. JAMISON. I have a telegram from R. J. Williams, county judge. I think it reads the same as the telegram received by Mr. Byrd.

Mr. HALLOCK. Received at the same time?

Mr. JAMISON. Yes, Sir.

Mr. HALLOCK. I would like to read this into the record.

Mr. DE NEFFE. No objection.

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Mr. HALLOCK (reading)

BURNS, OREG., *February 12, 1927.*

G. JAMISON,

Care Senator R. N. Stanfield:

You are each hereby delegated as representatives of Harvey County to present our interests in the Herrick senatorial investigation.

R. T. WILLIAMS, *County Judge.*

Now, this refers to "each. " That, as you explained, includes Mr. Byrd and yourself?

Mr. JAMISON. Yes, Sir.

Mr. HALLOCK. Mr. Jamison, for the sake of brevity, and inasmuch as the Senator has indicated that our time is going to be somewhat limited, will you be able in your own way to give us a statement of your views, as expressive of the attitude of the city in this matter, and considered by you to be material.

Mr. JAMISON. Well, I might say that the people of Burns as a whole give Mr. Barnes absolute credit for making this possible this timber development possible, and had he not broken faith with these people he would be the biggest man in eastern Oregon to-day. The general impression from the people that I am connected with, and my own observations during the last two years, I think Mr. Barnes, through selfish motives of his own, has endeavored to obstruct the development work of Mr. Herrick in every conceivable plan; and I will go on record as officially stating that that is the general impression of the substantial business interests and taxpayers of the city of Burns, the largest taxpayers of the city of Burns also included.

To illustrate a few points, I might add that Mr. Barnes told me, in the presence of Mr. R. Fred Williams last spring—I can not give you the exact date—that he had Mr. Herrick bottled up in every DRAW that went into Bear Valley; that he had him bottled up in the main line in the canyon below Lincoln. I said, "It seems as though you are a little ahead of him all the time." And he said, "I am three jumps ahead of him, and intend to stay ahead of him." That led me to believe that it is purely a selfish motive on Mr. Barnes's part regarding any future development of Mr. Herrick's plan.

I may say that the people of Burns, from their own selfish standpoint, and my own selfish standpoint, have not been satisfied with the development, in that it is not being completed at the required time. But in general, in view of the economic conditions, and all things to be considered, we are very fortunate to have what we have at the present time. And had it not been for the Herrick development and the money that has been spent in that country up to this time—being connected with the bank I believe I am in a position to state—the city of Burns and Harvey County in general would have felt the hardest time that they have ever felt in the history of the country, and I have lived there all my life continuously.

I might add that prior to 1924, I am safe in saying that there was not one year in the history of Burns that I can recall—and I have watched each house constructed during my lifetime there—there has not been at any one time five houses, substantial dwelling houses, built in any one year. In 1925 I had the privilege of making a census of the newly constructed dwellings in the corporate limits of the city of Burns—I can not recall the exact figures, but it is between

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50 and 55 that were built. And in 1926 the building program was not so extensive, but I am safe in saying it is at

least 30 or 40 houses built in 1926. So we consider that we have a very remarkable growth.

And from the banking standpoint—had I known this would be necessary I could have brought statements as rendered to the Comptroller of the Currency to substantiate the fact that our deposits have increased in the neighborhood of $250,000 to $300,000 during the years 1925 and 1926. And during this last fall our deposits are higher than ever in the history of the Harvey County National Bank, and I am the assistant cashier.

Mr. HALLOCK. I had some questions to ask you, Mr. Jamison, but I did not want to interrupt you unless you are through on those features.

Mr. JAMISON. All right.

Mr. HALLOCK. That is, on the matter of representatives who have had an opportunity to come in, are you acquainted with a gentleman by the name of Ivan Oaks?

Mr. JAMISON. Ivan Oaks? I am.

Mr. HALLOCK. What is his position in the community?

Mr. JAMISON. He is general manager for the Pacific Live Stock Co.

Mr. HALLOCK. What are the facts, as you know them, regarding the willingness of Mr. Oaks to appear here in the interests of Harvey County?

Mr. JAMISON. Mr. Oaks called, I think, Mr. Duncan on the phone, as Mr. Duncan is the local attorney, and told him—I may be mistaken; he may have called Mr. Byrd, or some one; but, anyhow, the general information was out that Mr. Oaks had voluntarily offered services to come to this hearing and represent the interests of the Pacific Live Stock Co. so far as he was able to do so.

Mr. HALLOCK. Now, why was it that Harvey County wanted to be represented in this hearing?

Mr. JAMISON. Well, we thought, in view of the fact that there was a very small amount appropriated for witnesses, etc., that Harvey County was not going to be represented.

Mr. HALLOCK. And had Harvey County been notified, officially or otherwise, of the action of the Oregon Legislature?

Mr. JAMISON. Absolutely no. We tried upon several times to get a copy of the memorial and were unable to do so. Neither was a copy mailed to either paper, the Times-Herald or the Burns News, as was the custom, and Mr. Round, the cashier of the Harvey County National Bank, wired for a copy of that memorial.

Mr. HALLOCK. Are you acquainted with Archie McGowan?

Mr. JAMISON. I am.

Mr. HALLOCK. I wish you would just give the subcommittee the benefit of your knowledge of Mr. McGowan's connection with this matter, and particularly his relations with Mr. Barnes.

Mr. JAMISON. Well, Mr. McGowan has been very active in promoting Mr. Barnes's interest ever since Mr. Barnes hit Harvey County, and any action that Mr. McGowan may have taken I considered, and I think the majority of the people considered, that that was based upon information given him by Mr. Barnes.

Mr. HALLOCK. Has he worked very closely with Mr. Barnes, to your knowledge?

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Mr. JAMISON. Yes; he has. That is, that is the impression I get from him.

Mr. HALLOCK. Yes. Now, Mr. Byrd called our attention to the fact that Mr. McGowan was defeated in Harney County by Mr. McConnell. Do you know whether his name was written on the ballot?

Mr. JAMISON. Mr. McConnell was not a regular candidate at the primary election; his name was written in at the primary election, and he defeated Mr. McGowan in the general election in Harney County.

The CHAIRMAN. Let us clear that up. In the general election his name was printed on the ballot?

Mr. JAMISON. His name was printed on the ballot.

The CHAIRMAN. At the time the contest developed between Mr. McGowan and Mr. McConnell?

Mr. JAMISON. Yes, Sir.

Mr. HALLOCK. Mr. McConnell?

Mr. JAMISON. C. B. McConnell.

Mr. HALLOCK. What has been Mr. Barnes's attitude, and what method of expression has he used, without repeating his language necessarily, towards Mr. Herrick generally?

Mr. JAMISON. Well, Mr. Barnes has never talked of Mr. Herrick in very endearing terms, nor of the Forestry Department. I do not believe it is necessary for me to elaborate on that, but there is plenty of proof available to substantiate the testimony that Mr. Barnes has, upon every occasion, public and private, vilified the name of Mr. Herrick, and also every one connected with the Forestry Department. He has to me, at any rate.

The CHAIRMAN. Mr. Hallock, the committee. will recess until 2 o'clock.

Mr. HALLOCK. Thank you, Senator. I say, "thank you" because I assume we are going to get a little more time.

(Whereupon, at 11.55 o'clock a. m., the committee took a recess until 2 o'clock p. m. of the same day.)

AFTER RECESS

The subcommittee resumed at 2 o'clock p. m. at the expiration of the recess.

The CHAIRMAN. The subcommittee will resume.

Mr. HALLOCK. Mr. Jamison, you were on the stand.

TESTIMONY OF GROVER JAMISON, OF BURNS, OREG.-Resumed

(The witness was duly sworn when first put on the stand.)

(Direct examination resumed by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Guard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Jamison, in this proceeding it is charged by the resolution, and Mr. Barnes and some others have testified to the effect, that there is some collusion between the Forest Service and Mr. Guard and Mr. Klobucher on the one hand, and Mr. Herrick's interests on the other, or vice versa. I ask you whether or not you have ever heard from anyone at Burns or anywhere else that either Mr. Guard or Mr. Klobucher were in any way now connected with the Forest Service.

Mr. JAMISON. Mr. Barnes was the only person I had ever heard that from, and I only heard it that one time. He told me that Mr._

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Girard—well, he outlined how Herrick came to get this timber, and among other things told me that Mr. Guard and Mr. Klobucher were still in the Forestry Department. I made the remark, "You do not mean to tell me, Ed, that they are still on the pay roll?" He says, "That does not make any difference; they are still forest officers." That was the first intimation I ever had that they were ever connected with the Forestry Department in any way.

Mr. HALLOCK. When did Mr. Barnes make that statement?

Mr. JAMISON. That was last spring. I can not fix the date, but I would say in March or April, 1926.

Mr. HALLOCK. Have you ever heard any one else state or intimate that either Mr. Klobucher or Mr. Guard was connected with the Forest Service?

Mr. JAMISON. I have not.

Mr. HALLOCK. Are you able to tell us about how much money the Fred Herrick Lumber Co. and the Malheur Railroad Co. clear through your bank every day in the form of checks DRAWN on the funds of those companies, that pass through your banking institution.

Mr. JAMISON. I am not able to give you the exact amount covering any certain length of time, but I could furnish that information all right. But during the summer of 1926 I would say that the Fred Herrick Lumber Co. and the Malheur Railroad Co. checks were presented to us through the Oregon Short Line agent at the rate of $500 to $1,000 a day. Those checks would range in amount from $350 to $4,000 in the payment of freight and one thing and another. And we immediately would advance our Portland DRAFT, or our Idaho DRAFT on the First National Bank of Idaho, in payment of those checks, and hold them until the next day's clearing at the First National Bank.

Mr. HALLOCK. What are the facts as to whether many checks to employees and the contractors and to material men come through your bank in the course of business?

Mr. JAMISON. It is safe to say that owing to the Harney County National Bank being the larger institution, that 80 per cent of Herrick's checks in some way pass through the Harney County National Bank.

Mr. HALLOCK. Have you ever known any of those checks to be repudiated?

Mr. JAMISON. No, Sir.

Mr. HALLOCK. Or to be turned down for want of funds?

Mr. JAMISON. No, sir; none of them.

Mr. HALLOCK. Or in any respect for lack of funds behind the chocks as and when presented?

.Mr. JAMISON. No, sir. We always advanced our Portland DRAFT or our Idaho DRAFT, and there was never any question asked. We got the money the next day.

Mr. HALLOCK. Do either Mr. Guard or Mr. Klobucher bank with you?

Mr. JAMISON. No, Sir.

Mr. HALLOCK. What are the facts as to whether or not you carry the account of either the Fred Herrick Lumber Co. or the Malheur Railroad Co.?

Mr. JAMISON. We have never had any business from the Fred Herrick Lumber Co. or the Malheur Railroad Co. along depositary lines.

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Mr. HALLOCK. So from the standpoint of business then you could not have any reason why your testimony might be influenced in their behalf?

Mr. JAMISON. Absolutely none.

Mr. HALLOCK. Have you loaned the Fred Herrick Lumber Co. or the Malheur Railroad Co. sums of money from time to time through your bank?

Mr. JAMISON. We have.

Mr. HALLOCK. Those loans have been made for intermittent or brief periods?

Mr. JAMISON. At one time I remember Mr. Girard and Mr. Klobucher came in and borrowed $10,000, and that is the limit that we can loan, and I think it was for 9 days or 15 days, and I would not say which; but the loans were

all promptly paid anyway.

Mr. HALLOCK. They were all promptly paid?

Mr. JAMISON. Yes, sir.

Mr. HALLOCK. They were what we might term short-time bank loans?

Mr. JAMISON. Yes, Sir.

Mr. HALLOCK. What is the reputation generally of the Fred Herrick Lumber Co. and the Malheur Railroad Co. for responding to their obligations as evidenced by their checks and any other orders DRAWN upon their funds?

Mr. JAMISON. Well, their reputation would have to be first class in order for Mr. Brown, the cashier of our bank, to readily advance his DRAFT in payment of one of those checks before it was presented to the place of payment.

Mr. HALLOCK. And that has been your regular custom?

Mr. JAMISON. That has been his regular custom. For all outside items, and any large item of local interest, we ascertain whether or not the check will be paid before DRAWING our DRAFT.

Mr. HALLOCK. You may take the witness.

Mr. MCGOWAN. Did I understand you to say, Mr. Jamison, that Mr. Barnes made the remark in 1926 that Klobucher and Girard were in 1926 in the employ of the Forest Service?

Mr. JAMISON. That is the way I took it. I asked him "You don't mean to say, Mr. Barnes, that they are still DRAWING pay from the Forestry Department?" He said, "It don't make any difference. They are still in the Forest Service." Those were his exact remarks, as I remember them.

Mr. MCGOWAN. That is all.

(Cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Who is paying your expenses?

Mr. JAMISON. I am myself so far as I know.

Mr. DE NEFFE. You were not subpoenaed, were you?

Mr. JAMISON. No, Sir.

Mr. DE NEFFE. Who asked you to come?

Mr. JAMISON. I think Mr. Byrd has explained how the matter came up. At the request of several substantial business men of Burns I decided to come.

Mr. DE NEFFE. The Forest Service asked you to come, too, did they not?

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Mr. JAMISON. They asked that I request a subpoena in order to present the views of our community before the committee.

Mr. DE NEFFE. The first that you heard that you were wanted was a request from the Forest Service.

Mr. JAMISON. Yes, sir.

Mr. DE NEFFE. You expect to be reimbursed by somebody, do you not?

Mr. JAMISON. Well, I have a very receptive disposition, and if Mr. Herrick or the citizens of Burns, or whoever sees fit to pay my expenses, offers to do so I will certainly appreciate it.

Mr. DE NEFFE. It would not take much urging?

Mr. JAMISON. No, indeed, it would not.

Mr. DE NEFFE. You are in the real-estate business, too, are you not, besides being in the Harvey County National Bank?

Mr. JAMISON. In a small way; yes, sir.

Mr. DE NEFFE. You are a partner of Mr. Williams, who is the county judge?

Mr. JAMISON. He is the son of the county judge; I am his partner.
Mr. DE NEFFE. Leon Brown is the president of the Harney County National Bank?

Mr. JAMISON. The cashier.

Mr. DE NEFFE. Did Mr. Brown give you some assurance that your expenses would be taken care of?

Mr. JAMISON. Mr. Brown did not.

Mr. DE NEFFE. Or anybody connected with the Herrick people?

Mr. JAMISON. No, sir. I would say that Mr. Brown was good enough to loan me the money, through the regular bank channels, and I signed a note when I left Burns, with which to pay my expenses. I did not have available the ready cash.

Mr. DE NEFFE. The telegram in which you joined with Doctor Hibbard and Mr. Williams you signed as mayor.

Mr. JAMISON. As mayor of the city of Burns.

Mr. DE NEFFE. Did you consider that an official action or a personal matter, and was that "mayor" added to your name merely as descriptive of your position, or was it official?

Mr. JAMISON. I intended to convey by attaching the mayor there that I was officially representing the city of Burns; yes, sir.

Mr. DE NEFFE. What is your form of government, have you a council?

Mr. JAMISON. Yes, Sir.

Mr. DE NEFFE. And when any action is taken in the name of or as representing the city the council must do it, must it not?

Mr. JAMISON. Under certain conditions.

Mr. DE NEFFE. And the mayor presides over the council?

Mr. JAMISON. Yes, sir.

Mr. DE NEFFE. And when they do anything in the name of the city of Burns they pass an ordinance or a. resolution, do they not?

Mr. JAMISON. Not necessarily.

Mr. DE: NEFFE. How do they do it? Do they talk about it on the street?

Mr. JAMISON. No, sir. 1 might add that any act of the mayor which would involve the expenditure of money for some local improvement, or a change in an ordinance, etc., would require a meeting of the city council, but there area good many acts as I see it in connec-
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tion with the office that the mayor is permitted to do upon his own responsibility.

Mr. DE NEFFE. How many councilmen are there?

Mr. JAMISON: Four.

Mr. DE NEFFE. And is there anything in the charter which gives the mayor the power to express the sentiment of the city?

Mr. JAMISON. I do not know.

Mr. DE NEFFE. In the way that you expressed it in this telegram?

Mr. JAMISON. I do not know, I am sure.

Mr. DE NEFFE. Before you signed that telegram did you call the council together and have a meeting and get their views?

Mr. JAMISON. I did not.

Mr. DE NEFFE. Well, under the circumstances do you say that you are expressing the mews of the council men too?

Mr. JAMISON. I do, of a majority of them.

Mr. DE NEFFE. Without consulting them?

Mr. JAMISON. Yes, Sir.

Mr. DE NEFFE. And as mayor you also think that you are expressing the views of the whole city, is that it?

Mr. JAMISON. Officially; yes.

Mr. DE NEFFE. Without any action of the council?

Mr. JAMISON. Yes.

Mr. DE NEFFE. You state that the people gave Mr. Barnes credit for conceiving this idea and starting the project, and that if he had not broken faith with the people he would be the biggest man over there.

Mr. JAMISON. Yes, Sir.

Mr. DE NEFFE. In what way did he break faith with the people?

Mr. JAMISON. Well, I think Mr. Barnes has broken faith with the people in a good many ways, and with different individuals in a good many ways. The thing that affects the community is in developing a townsite outside the city of Burns proper and against the wishes and desires of the old taxpayers who have lived there for 50 years.

Mr. DE NEFFE. Well, is it not customary and usual in the ordinary course of events, when any industrial plant starts up near the suburbs of a city, that residences grow up around there, is not that natural?

Mr. JAMISON. That is perfectly natural.

Mr. DE NEFFE. And did not Mr. Barnes have a perfect right to do that?

Mr. JAMISON. Under the circumstances I do not think that he did have. The people of Burns were putting up

the money for Mr. Barnes to promote this matter.

Mr. DE NEFFE. Did he not put up a good deal of money of his own before he came to the people?

Mr. JAMISON. I do not think that Mr. Barnes had it to put up.

Mr. DE NEFFE. You do not think that he put up a lot of money before he ever came to the people of Burns?

Mr. JAMISON. I do not deny it, but I do not think he had a great deal to put up.

Mr. DE NEFFE. You are assuming that?

Mr. JAMISON. Yes, sir.

Mr. DE NEFFE. You do not deny that he actually has been putting up money of his own?

Mr. JAMISON. I will not deny it, no.

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Mr. DE NEFFE. He was open and above board about acquiring options and that sort of thing, was he not, did not try to conceal it I mean?

Mr. JAMISON. Not that I know of, I do not think so.

Mr. DE NEFFE. Did anybody in Burns who was not a member of the committee of ten, as Mr. Byrd explained, have the right, or could not they have gone out and gotten options on anything they wanted, and started a town of their own?

Mr. JAMISON. The town of Burns, you understand, as a whole, was with Mr. Barnes until a division was made in the committee of ten. We knew that as long as certain men were on that committee of ten that the thing would be regular, and that anything which would be developed would be for the best interests of the old town of Burns.

Mr. DE NEFFE. Do not you think that the town of Burns will still grow with the influx of population?
Mr. JAMISON. To a certain extent.

Mr. DE NEFFE. You can not confine any city to any particular limits.

Mr. JAMISON. Not necessarily.

Mr. DE NEFFE. And yet the town of Burns is not very large, is it?

Mr. JAMISON. Not very.

Mr. DE NEFFE. You are right along the rim of rock there, and to the east it is nothing but flat land and meadow.

Mr. JAMISON. We can take care of anything, I mean a good many hundred people inside the present town.

Mr. DE NEFFE. You say in the opinion of a large number of the substantial people Mr. Barnes has obstructed Mr. Herrick. Could you cite what he did to obstruct him?

Mr. JAMISON. I think that has been gone over a good many times, but in my opinion and in the opinion of those people of whom I speak, it was in tying Mr. Herrick up on his rights of way, and this investigation, which according to my own personal opinion and the opinion of a. good many citizens of Burns, was made possible by the activity of Mr. Barnes and his associates, who are directly connected with the development of the Burns Co., a Bend corporation.

Mr. DE NEFFE. This litigation between Mr. Barnes and the Herrick interests was the result of some written contractual relations that existed between them; was not that a fact?

Mr. JAMISON. I did not get that.

Mr. DL NEFFE. I will ask the shorthand reporter to read the question to you.

(Which was done.)

Mr. JAMISON. I do not know anything about that, except what he told me about having him bottled up in Bear Valley. That was conclusive evidence to me that he was trying to bottle Mr. Herrick up.

Mr. DE NEFFE. There was some controversy about whether Mr. Herrick was entitled to the mill site because he had not completed the mill and the railroad, which was a condition to his getting the deed for the mill site. Was not there some trouble about that, you have heard of that, have you not?

Mr. JAMISON. I will answer that in this way: I used to be in the abstracting business, and the only thing pertaining to a deed I always took from the deed itself. If that is so recited in the deed, then that is a fact.

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Mr. DE NEFFE. So Mr. Barnes was just trying to have Mr. Herrick perform his part of the contract as he saw it, the same as the Government, or the Forest Service, should compel him to perform his contract with the Forest Service; is not that it?

Mr. JAMISON. Mr. Barnes was very active in seeing that Mr. Herrick performed all the different modifications, etc., of the contract, but I can not see where he was doing that in any other way than to promote his own selfish interests.

Mr. DE NEFFE. The sooner the railroad is finished and the sooner the mill is finished it would redound to the benefit of everybody in there.

Mr. JAMISON. It would benefit me, yes; and everyone else.

Mr. DE NEFFE. That is all that Mr. Barnes was trying to accomplish, was it not?

Mr. JAMISON. Well, sir, it may be, but not according to my way of thinking.

Mr. DE NEFFE. The only way that Mr. Barnes could profit by this land that you say he had surrounding the mill was to have the mill in operation and the railroad finished; is not that right?

Mr. JAMISON. That is true.

Mr. DE NEFFE. So you would not say that he would do anything to obstruct the accomplishment of that thing, would you?

Mr. JAMISON. He would not do anything to obstruct that development there along his property lines, but there is a difference of opinion, Mr. De Neffe, and in Mr. Barnes's opinion if Mr. Herrick's contract was canceled he could develop this much faster, or the parties whom he represents, might do it. I am on the other side of the fence, and contend that the faster way to get this development is to leave Mr. Herrick alone.

Mr. DE NEFFE. After he has got you people all tied up there then let him take his own dilatory course and finish it as he pleases; is that the way you see it?

Mr. JAMISON. I have been tied up a good many years in paying interest, and it takes all of my salary to keep my interest payments up; but at the same time, for the good of the country I believe, and a majority of the people believe, that the development program as outlined by the Forestry Department will eventually bring us better results.

Mr. DE NEFFE. When was it that Mr. Barnes said that he had Herrick bottled up in Bear Valley and at Seneca?

Mr. JAMISON. I will say that it was in the spring of 1926, in the office of the Globe Realty Co.

Mr. DE NEFFE. Now, that was after Mr. Herrick had been in default three times, is not that right?

Mr. JAMISON. I do not know.

Mr. DE NEFFE. On his contract with the Forest Department.

Mr. JAMISON. I would not say anything about that. I do not know.

Mr. DE NEFFE. The first modification was granted the 3d of March, 1925. H e was to do certain things by March 1 and he only did 50 per cent of it as the records of the Forest Service show. Then he was granted another extension on the 8th of September, 1925, and he fell down on that. So there were repeated defaults

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and failures on his contract, and that was the time that it happened that Mr. Barnes told you these things about Mr. Herrick, was it?

Mr. JAMISON. I am not going to discuss the contract with you. But I was of opinion all along the line that the time of cutting, and that is the only part I would say that I was familiar with in reference to the contract, and that was only based upon general information, was that the cutting and removal of so much timber was to be done by June 1, 1928.

Mr. DE NEFFE. Sixty million feet by June 1, 1928.

Mr. JAMISON. Yes Sir.

Mr. DE NEFFE. That is just what Girard has said, and it is just what Herrick has always said, is not that right, that it was the essence of the contract?

Mr. JAMISON. They have never told me so. I never met Mr. Herrick until I came to Washington.

Mr. DE NEFFE. How did Barnes say that he had Herrick bottled up?

Mr. JAMISON. That Herrick had to go through his land in order to get to Bear Valley, before he could get his timber.

Mr. DE NEFFE. Herrick could condemn a right of way through there, could he not?

Mr. JAMISON. I think that is the legal way to do it; yes, sir.

Mr. DE NEFFE. Then how could Barnes have him bottled up?

Mr. JAMISON. That is the remark he made. I am not undertaking to say how or why, but those were his remarks.

Mr. DE NEFFE, You say that none of the checks of the Fred Herrick Lumber Co. or of any of these subsidiary corporations were ever turned down?

Mr. JAMISON. Not to my knowledge.

Mr. DE NEFFE. But they might have been without your knowing it, is not that right?

Mr. JAMISON. It is possible; yes, sir.

Mr. DE NEFFE. When Mr. Carter of the Forest Service stated in his report to the Forester of February 20, 1925, that checks to employees had been protested for lack of funds in bank, would you deny that that was the truth?

Mr. JAMISON. No, sir; I would not.

Mr. DE NEFFE. And you do not know what kind of bank balance Herrick or his companies carried at Burns, do you?

Mr. JAMISON. No, Sir.

Mr. DE NEFFE. Whether large or small?

Mr. JAMISON. No, Sir.

Mr. HALLOCK. Mr. De Neffe, you understand that these statements are all here pursuant to your request.

Mr. DE NEFFE. What statements?

Mr. HALLOCK. The bank statements, deposit slips, canceled checks, and vouchers, and all that character of material.

Mr. DE NEFFE. All right.

Mr. JAMISON. I might say that I have never heard, and I have only been away from the bank 10 days out of each year since 1921, and I have the management of that portion of the bank in the way of handling the clearance, etc., that I have never heard mentioned by any one that there was a check of the Fred Herrick Lumber Co. or the Malheur Railroad Co. protested or repudiated in any way.

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Mr. DE NEFFE. So that you would judge that Mr. Carter was mistaken?

Mr. JAMISON. I won't say that Mr. Carter was mistaken. He might have had some evidence from the other bank, which would be perfectly all right.

Mr. DE NEFFE. One of the principal things that the people of Burns were interested in was having a mill there. That is, of course, besides the railroad, and they wanted a mill that would be. operating continuously, did they not?

Mr. JAMISON. Yes, Sir. I am sure that I do.

Mr. DE NEFFE. How big a pay roll did you expect there when the mill got in operation?

Mr. JAMISON. Why, I have been led to believe that that, mill would employ at least 500 or 600 men in the neighborhood of Burns.

Mr. DE NEFFE. That would mean a lot of new houses, would it not?

Mr. JAMISON. Yes, Sir.

Mr. DE NEFFE. And would require an expansion of the city's facilities, sewer and water and all those things, would it not?

Mr. JAMISON. It would.

Mr. DE NEFFE. And would require the city to go into considerable debt to take care of that expansion?

Mr. JAMISON. Yes, Sir.

Mr. DE NEFFE. So it was very important and everybody felt it was necessary that there should be a continuous operation of the mill, is not that the way the people felt?

Mr. JAMISON. They all supposed there would be a continuous operation; yes, sir.

Mr. DE NEFFE. And that supposition was probably based on the form of the contract in the prospectus, which required a certain minimum cut every three years, is not that right?

Mr. JAMISON. The only information that we had as to what the cut was, was the prospectus, and I do not think that that was ever considered. We have a very high regard in our country for Colonel Greeley, and we naturally supposed, and we were all satisfied that as long as Colonel Greeley was in charge and had the making of that contract in every detail and everything in connection with it, we were perfectly satisfied, I say.

Mr. DE NEFFE. You knew that the contract set out and the prospectus provided for, a minimum cut of 60,000,000 feet for the first three years.

Mr. JAMISON. I would not undertake to argue the prospectus or the contract with you, Mr. De Neffe, because I am not familiar with the general provisions in them at all.

Mr. DE NEFFE. I am not trying to argue them with you. But everybody figured that there would be such a contract as would insure a continuous operation.

Mr. JAMISON. Yes, Sir.

Mr. DE NEFFE. And not one, one year and then stop for three or four or five years.

Mr. JAMISON. Yes, Sir.

Mr. DE NEFFE. And you have implicit confidence in Colonel Greeley so that you thought he would protect you in that?

Mr. JAMISON. We have.

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Mr. DE NEFFE. Do you think that he protected you in it?

Mr. JAMISON. I think that he has.

Mr. DE NEFFE. After hearing Mr. Biggs' analysis of paragraph 3 of the Herrick contract, what do you say?

Mr. JAMISON. I still think, and I want to say that I have a very high regard for Mr. Biggs, as he knows, and we are neighbors together, and I still contend that we will have a continuous operation regardless of who interprets the contract.

Mr. DE NEFFE. You heard him say, and heard Colonel Greeley admit that under this contract, paragraph 3, that Mr. Herrick could shut down for from three to six years if he wanted to.

Mr. JAMISON. Yes, sir.

Mr. DE NEFFE. And in view of Mr. Herrick's failure to keep faith with the people in the past in the performance of his contract, do you think the people are willing to submit themselves to his tender mercies in the future in regard to keeping his mill going?

Mr. JAMISON. I think it is safe to say that any business concern handled by responsible people would not consider doing a thing like that, shutting down a sawmill and operation which means an expenditure of $3,000,000, for any period of time. I never heard of one. Of course, I am not very well versed in the lumbering industry, but then it sounds like child's play to me. I do not say that there are not loopholes in the contract, but I do say that I firmly believe Mr. Girard and Mr. Herrick knew nothing of those conditions, and Colonel Greeley from his testimony showed that he knew nothing of that condition.

Mr. DE NEFFE. That they were just imposed upon, is that it?

Mr. JAMISON. No, Sir.

Mr. DE NEFFE. That Herrick and Girard were imposed upon by the Forest Service?

Mr. JAMISON. I dint say that.

Mr. DE NEFFE. That they slipped this paragraph in without Herrick and Girard knowing about it?

Mr. JAMISON. I don't think that they knew anything about the modifications of that contract as to the cutting requirements, because Mr. Guard told me that he knew nothing until he got to Washington, D. C., and his word is good enough for me.

Mr. DE NEFFE. Well, suppose the lumber market should be in such bad condition that the loss which Mr. Herrick would suffer on account of the low market would be twice as much as the amount that he would lose by shutting down; that is, the overhead, the interest, and tax charges, do you not think that it would pay him to shut down under those circumstances?

Mr. JAMISON. Well, if it was a business of mine I would certainly shut down, and I would say that he was foolish if he didn't, if the loss was twice as great as the income.

Mr. DE NEFFE. Yes; and then the community would suffer, wouldn't it?

Mr. JAMISON. To a certain extent.

Mr. DE NEFFE. And this contract gives him the right to do that very thing, does it not?

Mr. JAMISON. I am not in a position to interpret the meaning of the contract, Mr. De Neffe.

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Mr. DE NEFFE. Well, if Colonel Greeley and Mr. Biggs say so wouldn't you agree with them?

Mr. JAMISON. Of course, there might be a difference of opinion. And some men of intelligence might construe it in some other way, So I am not going to act in that capacity in that matter.

Mr. DE NEFFE. That is all.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. Mr. Jamison, your community is hopeful that there will be a continuous operation?

Mr. JAMISON. Yes, sir; we certainly want one.

Mr. MCGOWAN. You would be grateful, too, if the mill ran probably three shifts a day, wouldn't you?

Mr. JAMISON. Yes, sir.

Mr. MCGOWAN. On the other hand, if perchance the situation should arise where Herrick, by reason of, say, the lumber market, could not maintain that operation without losing money, would it be either the hope or the desire of Burns for him to continue operating under those circumstances?

Mr. JAMISON. I think, Mr. McGowan, if Mr. Herrick would show to the people of Burns—the business interests of Burns—that he was operating at a great loss, that they would not request him to keep his mill in operation.

Mr. MCGOWAN. Is there a business in your town or any other town in the whole United States when, if business gets bad, they do not curtail or reserve the right to themselves to lay off for a while until business gets better? That is common knowledge, is it not?

Mr. JAMISON. I might say that, in view of the decreased business of the Harney County National Bank during 1925 and 1926, that we have curtailed our expenses largely and have gone so far as to do the work by each one working longer hours, with one less on the banking force.

Mr. MCGOWAN. That is all.

(Further cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.:)

Mr. DE NEFFE. You are not speaking for the people of Grant County, are you Mr. Jamison?

Mr. JAMISON. No, sir.

Mr. DE NEFFE. And you would not undertake to say that, if Mr. Herrick would say that he would have to

operate at a loss, that they would be willing to let him shut down his logging camps and shut down his mill? Do you think they would?

Mr. JAMISON. I am not attempting, Mr. De Neffe, to convey the sentiment of Grant County in the least. I do understand that the sentiment is divided about the same as it is in Burns, in Harney County, at this time.

Mr. DE NEFFE. What makes you think so?

Mr. JAMISON. From information I have received since coming to Washington.

Mr. DE NEFFE. Who did you get that information from?

Mr. JAMISON. Different ones.

Mr. DE NEFFE. Who? Can you name one?

Mr. JAMISON. I will name Mr. Dutton, the Forest Supervisor.

Mr. DE NEFFE. I mean anybody that is not in the Forest Service.

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Mr. JAMISON. No; I do not know that there is any other man here from Canyon City. I do not recall any.

Mr. DE NEFFE. Is it not a fact that the people there are united absolutely, on this proposition?

Mr. JAMISON. I do not think so, Mr. De Neffe.

Mr. DE NEFFE. But you can not name anybody who is in favor of Mr. Herrick?

Mr. JAMISON. I think evidence will be presented later on to show that there are people. I am not very well acquainted in Grant County.

Mr. DE NEFFE. That is all.

(Redirect examination by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Jamison, counsel read to you some excerpts from the letter addressed by Mr. Carter to the Forester in the form of a memorandum, dated February 20, 1925. And I notice that letter contains some other observations with respect to which I think you can give us a little information. It is my recollection that Mr. Biggs testified that the town had expended a lot of money in improving its water and sewer systems because of this great development which it anticipated would take place several years ago. Now I notice that Mr. Carter in his letter, which I have referred to, says that: "For years, the State board of health has been demanding the installation of a water and sewage system in Burns." Is that a fact?

Mr. JAMISON. Yes, sir; I believe it to be a fact.

Mr. HALLOCK. And then what can you say as to whether or not that expenditure that Mr. Biggs told us about resulted solely for the reasons which he indicated?

Mr. JAMISON. Well, I don't think that Mr. Biggs meant it that way. Of course, I think that he is familiar with the fact that the Sate board of health has for several years, as I understood it, informed the city council that unless steps were taken to install a water and sewer system that they would do it for us.

Mr. HALLOCK. Now, I notice that in commenting upon the difficulty in securing a mill site Mr. Carter in this same letter says, in referring to the trade that was worked out between Mr. Barnes and your people there:

> The trade was made possible by the action of the town of Burns, which gave Mr. Barnes a large acreage between the mill site and the present town.

Do you know whether that refers to the same matter that Mr. Byrd covered by his testimony?

Mr. JAMISON. I think it does, yes; I am sure about that.

Mr. HALLOCK. And without going into detail, is it a fact, Mr. Jamison, that Mr. Herrick was only able to secure the deed through that arrangement?

Mr. JAMISON. That was my understanding, yes, sir; I was at the meeting that night when that was fully demonstrated.

Mr. HALLOCK. Yes; I notice in this letter, Mr. Carter, whose work is cited with some approval by Mr. Barnes and his counsel, refers to this very railroad as a logging railroad. Where he observes that certain money has been spent charged to this logging railroad. Now what are the facts as to whether or not that phraseology appearing in Mr. Carter's letter, or as it may have appeared in

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stipulations bearing upon extensions of time or otherwise, caused you or any of the citizens of Burns, as far as you know, any apprehension that there was any disposition to avoid the common-carrier clause?

Mr. JAMISON. No, sir; I never heard anything about the common-carrier clause until we got a Portland paper in regard to the memorial that was presented to the Oregon Legislature.

Mr. HALLOCK. Now, with respect to the matter of Mr. Herrick's disposition to speculate with the property, I notice that Mr. Carter also says in this letter:

> There is also evidence that Mr. Herrick has refused to sell out the Malheur project to the Brooks-Scanlon Lumber Co. Exact terms of the offer are unknown. A certified check for $200,000 was displayed by Mr. Barnes as constituting part of the offer.

Do you know whether or not it is pretty general-current talk in your community that Mr. Barnes has endeavored for a period of years to induce Mr. Herrick to sell out to some parties whom he represents?

Mr. JAMISON. Mr. Barnes has even made the remark, I know he has to me, that he would take over his holdings, pay him dollar for dollar, but he would not give him any bonus. That is the general impression through the whole country.

Mr. HALLOCK. Take over Mr. Herrick's holdings?

Mr. JAMISON. Yes; take over Mr. Herrick's holdings.

Mr. HALLOCK. You have identified the formal document that was addressed to the Oregon delegation here in behalf of the city and the county and the Commercial Club, and have commented on some telegrams that were sent, including the telegram addressed by yourself. I wish you would state, Mr. Jamison, generally whether either Mr. Klobucher or Mr. Guard or anyone else in Mr. Herrick's organization ever endeavored to solicit any expressions from you or anybody in Burns, as far as you know, relative to this inquiry, this investigation?

Mr. JAMISON. Absolutely no. I have been quite frequently with Mr. Guard and Mr. Klobucher, but I was never able to get an expression from them as to their manner of proceeding. In fact, I never asked for one. And this telegram that Mr. Williams and Doctor Hibbard and myself sent to Colonel Greeley was my telegram. I am the man that started that telegram.

Mr. HALLOCK. Was it solicited by these. gentlemen?

Mr. JAMISON. It was not. And the resolution of the Oregon delegation was not solicited by Mr. Girard or Mr. Klobucher. It was suggested from one business man to another that we take some action owing to the fact that we were not consulted in DRAFTING the memorial, that we were not aware of the fact that there would be a memorial in the Oregon Legislature until it was too late. I might add there that had I known that, I would immediately have called a special meeting of the council and made an appropriation to send a committee down there, to be represented.

Mr. MCGOWAN. Down where?

Mr. JAMISON. To {Salem}.

Mr. HALLOCK. Now just one more question. Of your own knowledge, Mr. Jamison, do you know whether the Fred Herrick people

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had actually put in operation the machinery toward working out a bond issue along in October or November of last year, long prior to any suggestion of this investigation?

Mr. JAMISON. There was a general impression over the whole town of Burns, everyone was familiar, that is, not familiar, but there was a general impression that a bond issue was being started by the Herrick people.

Mr. HALLOCK. Was that because of the presence of the James D. Lacey people there?

Mr. JAMISON. That is the way that we understood it, yes; that was their business there; to look over the properties of Mr. Herrick.

Mr. HALLOCK. That is all.

(Recross-examination by Mr. Frederick M. De Neffe, attorney ;representing Grant County, Oreg.:)

Mr. DE NEFFE. Something appeared in the Oregonian, did there not, on Sunday before this memorial was passed, stating that it would come up Monday? Do you remember reading that?

Mr. JAMISON. Yes, sir; I remember reading that.

Mr. DE NEFFE. And it had not gone through the house then, yet, had it?

Mr. JAMISON. No, sir.

Mr. DE NEFFE. Well, did you people immediately go to Salem then to take steps to prevent it from passing?

Mr. JAMISON. We, did not.

Mr. DE NEFFE. Well, why didn't you, then?

Mr. JAMISON. We didn't figure that we had any time. Grant County had a lobby there composed of Mr. Wollenberg, Mr. Haight, Mr. Patterson and Mr. Barnes, or Mr. Barnes's representative, Mr. McGowan.

Mr. DE NEFFE. Couldn't you have taken a dozen of these substantial citizens that you and Mr. Byrd have talked about and gone down there?

Mr. JAMISON. There were telegrams from substantial citizens sent in, yes, sir.

Mr. DE NEFFE. And why didn't you appropriate some money and send some of them down there?

Mr. JAMISON. We didn't have time.

Mr. DE NEFFE. You couldn't get down there?

Mr. JAMISON. We didn't figure we had time.

Mr. DE NEFFE. Why? Couldn't you get there by Monday?

Mr. JAMISON. Well, that is the way we looked at it.

Mr. DE NEFFE. And did any of you send any telegrams or call up any of the delegation in the legislature over long distance and have them hold it up, to wait to be heard on the matter?

Mr. JAMISON. I think there were a good many telegrams, I would not say how many, I know I sent one myself, but I would not undertake to say how many telegrams were sent, asking that it be held up, or viewed with suspicion.

Mr. DE NEFFE. Well, there was no telegram sent asking that it be held up until you people could come and be heard, was there?

Mr. JAMISON. Not that I know of. Not to my knowledge.

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Mr. DE NEFFE. No. And there was nothing to prevent you from sending such a telegram?

Mr. JAMISON. No, there was not.

Mr. DE NEFFE. There was nothing to prevent you from sending such a telegram, and for your delegation to go down and be heard? So you would not say then that the matter was slipped through without you people having a chance to be heard, would you?

Mr. JAMISON. Yes, sir; that is my contention exactly.

Mr. DE NEFFE. When you had a right to go down?

Mr. JAMISON. We had a right after it was too late. I am not going to argue dates with you, but this matter was thoroughly talked over in Burns, and we all felt as though this had been framed before Mr. McGowan went up to the legislature. And we were not able, as I testified, to get a cope of this. And there were some more bills of Mr. McGowan that we could not get a copy of until we wired for them.

Mr. DE NEFFE. Well, it is usual whenever committees are to hear any matter, if they get telegrams from large, important delegations of people, that they hold the thing up and let them have a hearing. That has always been my experience.

Mr. JAMISON. Well, I haven't had much experience before the Oregon Legislature. Mr. De Neffe.

Mr. DE NEFFE. When was it Barnes told you that he would take over Herrick's project and pay him dollar for dollar without a bonus?

Mr. JAMISON. I think he told me that, conservatively speaking, 50 times, and everybody else in Burns.

Mr. DE NEFFE. When was it, do you remember about it? Recently, was it?

Mr. JAMISON. On every visit of Mr. Barnes to Burns I think he has told that story up and down the street.

Mr. DE NEFFE. Well, wasn't that because Herrick was stalling along and the work was not going ahead? Wasn't that the reason?

Mr. JAMISON. That was the way Mr. Barnes looked at it; yes, sir.

Mr. DE NEFFE. And he felt that, if Herrick isn't going to do anything, let somebody else come in who will? Wasn't that the attitude he took?

Mr. JAMISON. Well, that was the interpretation we had; yes, sir.

Mr. DE NEFFE. Well, was there anything wrong with it, Mr. Jamison, when a man wasn't fulfilling his contract, and was stalling and not doing anything? Wouldn't it have been a good thing for everybody, to have had somebody in there who would do it?

Mr. JAMISON. What evidence did we have that Mr. Barnes had any one that could develop this proposition?

Mr. DE NEFFE. Well, you seem to resent his even making the suggestion that he could bring somebody. Everybody seemed to view him with suspicion whenever he made such a statement, when he was trying to do

something to benefit the community?

Mr. JAMISON. I never said we viewed it with suspicion when he talked about his buying Herrick out.

Mr. DE NEFFE. Well, we have been maligned here. This smoke screen has been getting denser and denser. We have heard nothing but "Barnes" here. You would think that the Oregon Legislature

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and Mr. Barnes are on trial from the volumes of testimony here about hem.

Mr. JAMISON. If you go over to Burns you will hear more about them, too, both Barnes and the Oregon Legislature.

Mr. DE NEFFE. Well, I think both of them can take, care of themselves. Now, about this State board of health, when did they insist on the enlargement of the sewer system?

Mr. JAMISON. It was not an enlargement, Mr. De Neffe. We never had a sewer system until last year.

Mr. DE NEFFE. I see. When was it last year that they required that to be done?

Mr. JAMISON. I am not in a position to give the exact dates.

Mr. DE NEFFE. Well, give it approximately.

Mr. JAMISON. But it is the general impression of the city that the State board of health has been after us for some time to install water and sewer systems. If you want me to give dates or anything of that find, I can not. I never saw any of the letters.

Mr. DE NEFFE. I do not want that. Was it within the last year?

Mr. JAMISON. No; it was not within the last year, because we have had water and sewer almost a year now.

Mr. DE NEFFE. Well, this enlargement started after Herrick began to come in there, wasn't that it, and you were anticipating a growth of the town?

Mr. JAMISON. We started our water and sewer system after he came in there, and we have also been requested by the State board of health to install a water and sewer system after Mr. Herrick came in there.

Mr. DE NEFFE. Yes, and that was in anticipation that he would go ahead and develop and build up pay rolls?

Mr. JAMISON. Yes, and we are still anticipating that.

Mr. DE NEFFE. Yes, you are hoping. I think that is all.

(Redirect examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Guard, and Frank J. Klobucher:)

Mr. HALLOCK. Mr. Jamison, it is my understanding from counsel's question that in the Oregonian of a certain Sunday an item appeared to the effect that on the following Monday this action would be taken in the Oregon Legislature, is that correct?

Mr. JAMISON. That is the way that I got it, yes, sir.

Mr. HALLOCK. Yes. Now how long does it take for the Sunday Oregonian to reach Burns?

Mr. JAMISON. The Sunday Oregonian we get Tuesday morning.

Mr. HALLOCK. You get that Tuesday morning?

Mr. JAMISON. We can get it sometimes if the train is early Monday night.

Mr. HALLOCK. But ordinarily it is Tuesday morning, is it not —

Mr. JAMISON (interposing). Ordinarily it is Tuesday morning, through the mail.

Mr. HALLOCK (continuing). Then you read your Sunday paper?

Mr. JAMISON. Yes, sir.

Mr. HALLOCK. Now then, how much time would it take you if you got that news on Tuesday morning, and going just as fast as you could, to get your party together and assemble your data and get down to Salem?

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Mr. JAMISON. Well, I left that to others, that had more time. And they figured that we didn't. have time enough to do anything.

Mr. HALLOCK. Yes, but I am talking about train connections. If you get out of Burns on Wednesday morning, that would be your earliest opportunity, would it not?

Mr. JAMISON. Wednesday morning, yes, sir.

Mr. HALLOCK. And you would consume all day going to Ontario, wouldn't you?

Mr. JAMISON. We would get in Portland Thursday morning.

Mr. HALLOCK. Yes, and get down to Salem some time Thursday afternoon or evening?

Mr. JAMISON. Yes, sir.

Mr. HALLOCK. Or perhaps toward the middle of the day Thursday. Now do you think, Mr. Jamison, that with the newspaper stating that this action would be taken on Monday it would have done you much good to have got a delegation together and go down there and arrive there the following Thursday?

Mr. JAMISON. That is the way we thought, that it would not do us any good. It was too late in the game.

Mr. HALLOCK. Well, that sounds very reasonable to me, sir.

Mr. JAMISON. They slipped it over on us.

Mr. HALLOCK. I think that is all.

(Recross-examination by Air. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. The resolution was not passed until the following Friday, was it?
Mr. JAMISON. I do not know the exact date.

Mr. DE NEFFE. Have you that, Mr. Hallock?

Mr. HALLOCK. Yes, I have it here, Mr. De Neffe.

Mr. DE NEFFE. January 19. What day was that?

Mr. MCGOWAN. Adopted in the Senate January 19, Concurred in the House January 20.

Mr. DE NEFFE. What day of the week was the 19th?

The CHAIRMAN. I do not see that that is material. It is taking up a lot of time, gentlemen.

Mr. DE NEFFE. Yes, I think so too. Mr. Hallock was down there at that time representing Herrick, at the legislature?

Mr. JAMISON. Not that I know of. I heard he was there. I can't swear to that..

Mr. HALLOCK. You mean after this work had all been done, yes.

Mr. DE NEFFE. Yes, before it passed in the House you were there, were you not?

Mr. HALLOCK. No, sir.

Mr. DE NEFFE. You were not there?

Mr. HALLOCK. Not for one moment. I was there after the fireworks were over.

Mr. JAMISON. That is the way we had it.

Mr. DE NEFFE. I see. But the Forest Service knew about it, didn't they?

Mr. JAMISON. I do not know, Mr. De Neffe. I am not in a position to say.

Mr. DE NEFFE. I saw a letter in the file where they were notified. That is all.

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Mr. HALLOCK. That is all, Mr. Jamison.

The CHAIRMAN. You will be excused.

(Witness excused.)

Mr. MCGOWAN. Mr. Chairman, we have several witnesses here from the Forest Service, and I shall attempt to be very pointed and brief in my questions. The position of the Forest Service here is rather a peculiar one in that the senate resolution under which this hearing is being conducted states that there was fraud and collusion between Herrick and certain officials of the Forest Service. Now, what that fraud was or who the officials were we do not know yet. But, however, the Forest Service is going to offer the forest officers who were most directly connected with this sale, and I shall ask a few questions, and then turn each one of these witnesses over to the committee and to counsel, Mr. De Neffe, with the suggestion that he ask these men any questions that he might want to, irrespective of what I bring out on direct examination.

Mr. HALLOCK. Just a moment, please, Mr. McGowan. While we were discussing senate joint memorial No. 5 of the Oregon Legislature; I would like to offer it in evidence, and also offer in evidence the document prepared by Mr. Barnes and which he states was sent to Mr. McGowan as a basis for this memorial, and which Mr. Barnes has been good enough to indicate he will again produce for us.

Mr. DE NEFFE. I think the memorial has already been made a part of the record.

The CHAIRMAN. Yes. It occurs in the record in two different places, I think.

Mr. HALLOCK. No; if you will pardon me, Senator, I checked that very carefully and did not find it in the record.

The CHAIRMAN. It is in the first day's hearings. You may go ahead and make your offer while that is looked up. I am sure it appears in the first day's proceedings.

Mr. HALLOCK. I would like the two documents in the record, and I would prefer to have them side by side, if the chairman is of the opinion that they should go in.

The CHAIRMAN. Yes; this document occurs here in the first day's proceedings, senate joint memorial No. 5.

Mr. HALLOCK. All right, Senator, then, if the reporter may leave a space for the purpose of incorporating the DRAFT of this memorial as prepared by Mr. Barnes, I will allow Mr. McGowan to proceed, and you will produce that, Mr. McGowan, so it can go in the record at this point, will you?

Mr. DE NEFFE. Yes.

Mr. HALLOCK. Thank you.

(The draft of the memorial prepared by Mr. Barnes is here printed in the record is full, as follows:)

[State of Oregon, thirty-fourth legislative assembly, regular session.
Hall of Representatives]

House joint memorial No. ---

To the honorable Senate and House of Representatives of the United States of America in Congress assembled:

We, your memorialists, the Legislative Assembly of the State of Oregon, respectfully submit that:

Whereas under date of June l5, 1923, a contract was made and entered into by and between the United States Forestry Service and one Fred Herrick of

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St. Maries Idaho, for the purchase by said Herrick of approximately 890,000, 000 feet of timber, situate in United States Forest Reserve in Grant County, Oreg., known as the Bear Valley Unit, Malheur National Forest; and

Whereas by the terms of said contract the purchaser agreed, within a period of two years from the date of said contract, to construct and complete ready for operation approximately eighty miles of common carrier railroad within said Grant County, Oreg.; and

Whereas by the terms of said contract the purchaser agreed, within a period of two years from the date of said contract, to construct and complete ready for operation a sawmill at Burns, Oreg., and to commence logging and milling operations by April 1, 1925; and

Whereas the citizens of Grant County, Oreg., recommended to and urged upon the United States Forest Service the necessity of entering into such a contract for the purpose of opening up said Grant County and developing a vast district of unlimited material wealth; and

Whereas said Fred Herrick failed in the performance of his said contract and did not carry out its terms within the period therein provided for, much to the disadvantage of the citizens of Grant County, and

Whereas an extension of time to June 15, 1926 was granted and approved to said Herrick within which to comply with the terms of his said contract; and

Whereas within the period of such extension of time the said Herrick has wholly failed to perform and carry out the terms of his said contract in its entirety ; and

Whereas any further extension of time will curly serve to delay the completion of said contract and the consequent development of the natural resources of Grant County, much to the detriment of the people of Grant County in particular and the State of Oregon in general, because the prosperity of Grant County is in a large measure dependent upon the cutting of the timber sold under the terms of this contract and the operations which will be incidental thereto; and

Whereas the United States Forest Service, despite the failure of the said Herrick to perform all of the terms of his said contract, lave neglected to cancel said contract, but on the contrary have granted unwarranted extensions of time: therefore be it

Resolved by the Legislative Assembly of the State of Oregon, That the Senate of the United States be, and the same is hereby memorialized to appoint a special committee of the Senate to investigate all the facts and circumstances surrounding the execution of the original contract herein above referred to and the granting of any and all extensions of time for compliance with the terms thereof, said committee to be vested with power to subpoena any and all papers bearing thereon and to compel the attendance of witnesses having a knowledge thereof; Be it further

Resolved, That said special committee be authorized to direct the United States Forest Service to refuse to grant any further extension of time for the compliance with the terms of said contract ; Be it further

Resolved, That said special committee he authorized to recommend to the Department of Justice the institution of proceedings proper in the case, if upon the investigation of said special committee it shall develop that the interests of the citizens of Grant County, the state of Oregon, and the United States of America have been adversely affected and not properly protected by the failure of said Fred Herrick to comply with all of the terms of his said contract within the time limit therein provided: Be it further

Resolved, That the secretary of state of the State of Oregon be, and is hereby, instructed to forward a copy of this resolution to each Member of Congress of the United States of America, to the president of the United States Senate, and to the Speaker of the House of Representatives.

Mr. MCGOWAN. Now, Mr. Chairman, on February 17, I think that was the date, the matter of Mr. Herrick's first becoming connected with this sale was under consideration.

Mr. DE NEFFE. What year, Mr. McGowan?

Mr. MCGOWAN. 1927. We sent a wire to the forest supervisor at Coeur d'Alene, Idaho, as follows:

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WASHINGTON, D. C., *February 17, 1927.*

MCHARG,
Forest Service, Coeur d'Alene, Idaho:
Rush wire stating whether you were the one who originally interested Fred Herrick in Malheur sale. Wire all details direct to this office.
HEADLEY.

Mr. McHarg replied as follows:

COEUR. D'ALENE, IDAHO, *February 17, 1927*.

FORESTER,
Forest Service:
March 13, 1923, in casually talking with Fred Herrick in Spokane he asked if the Forest Service had any good yellow-pine logging chances in this territory. I called his attention to the Malheur sale. He said that was Indian timber. I told him this was national forest timber and would send him prospectus immediately. Prospectus mailed him at St. Maries March 14. He phoned me about March 15 asking who appraised the Bear Valley unit. I told him Girard assisted on that appraisal and that he could call Girard at Missoula for further information. He stated he would call Girard immediately, which he did, requesting him to come over with data concerning sale from the conversation on March 13. I believe this was Herrick's first intimation concerning Malheur timber sale. Copies relative letters are being forwarded.

MCHARG

Mr. MCGOWAN. Now, those letters that Mr. McHarg refers to are here, and are as follows:

MARCH 14, 1923.

MR. FRED HERRICK,
St. Maries, Idaho.
DEAR MR. HERRICK: Reference is made to our conversation yesterday.
I am enclosing herewith the sale prospectus of the large yellow-pine timber sale which was offered for sale on the Malheur National Forest, Oreg. It is my impression that under the original advertisement at $2.75 for yellow pine no bids were received and the chance is to be again offered and some changes in the contract. This prospectus will, however, give the general information which you desired.
I am requesting the forest supervisor at John Day, Oreg., to give you whatever further information is now available concerning this sale. Sincerely pours,
C. K. MCHARG, JR.,
Forest Supervisor.

Then on the same date Mr. McHarg wrote to the supervisor at John Day, Oreg., as follows:

MARCH 14, 1923
FOREST SUPERVISOR,

Malheur National Forest, John Day, Oreg.

DEAR Sir: I was talking yesterday with Mr. Fred Herrick, president of the Milwaukee Lumber Co., of St Maries, Idaho, concerning the Bear Valley unit. Mr. Herrick is definitely interested in this timber and had a very hazy idea of it, thinking that it was advertised by the Indian Service. I sent him the file copy of the prospectus and because of the change in the sale offer he would like to have an outline of the changes under the new advertisement.

Mr. Herrick, through the Milwaukee Lumber Co. and other companies in which he is interested, has been one of the most intensive operators in National Forest timber in this locality. He logged many million feet of the 1910 fire-killed timber on the St. Joe River and is dependent upon purchasers, both of privately owned and forest timber to keep the Milwaukee mill going. He stated yesterday that he was interested in moving out of the white-pine region if he could find a suitable locality and preferred yellow pine where the fire hazard is lower.

As I sent the file copy of this prospectus to Mr. Herrick I will appreciate it very much if you will send me one for our files.

Very truly yours,

C. K. MCHARG, JR.,
Forest Supervisor.

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Then on March 17, 1923, Reid, the supervisor, from John Day Oreg., replied to McHarg's letter as follows:

JOHN DAY, OREG., *March 17, 1923.*

FOREST SUPERVISOR,
Coeur d'Alene, Idaho.

DEAR JIM: In response to your letter of March 14 I inclose a prospectus to replace the one yon gave to the Milwaukee Lumber Co. of St. Maries, Idaho.

The timber is now being advertised for 30 days at a minimum price of $2 for yellow pine, bids to be opened April 4 in the office of the district forester Portland Ores. The sale contemplates building a common-carrier railroad to Bear Valley.

A copy of this letter is being mailed to Mr. Fred Herrick and to the district forester, Portland, Oreg.

Very truly yours,

C.C. REID, *Forest Supervisor*

We offer these letters.

Mr. DE NEFFE. No objection.

Mr. MCGOWAN. There is no objection?

Mr. DE NEFFE. No.

Mr. MCGOWAN. Call Mr. Dutton.

TESTIMONY OF W. L. DUTTON, SUPERVISOR MALHEUR NATIONAL FOREST, JOHN DAY, OREG.

(The witness was duly sworn by the chairman.)

(Direct examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. State your name, age, post-office address, and occupation.

Mr. DUTTON. W.L. Dutton, 38 years of age, John Day, Oreg., supervisor of Malheur Forest.

Mr. MCGOWAN. The record shows that the Oregon memorial was passed on January 19 and the witness Haight testified that he appeared at Salem in connection with the enactment of that memorial. Mr. Dutton, I wish you would state whether or not on or abort January 11, 1927, with Mr. Haight, you had any conversation with reference to the Fred Herrick contract and state what the conversation was, if you had one.

Mr. DUTTON. Yes. A short time prior to January 11 certain newspaper dispatches carried what I considered to be a misrepresentation of the facts in connection with the states of the Herrick contract. This misrepresentation, as I saw it, was stirring up some agitation locally, and it occurred to me that I would go out and. interview Mr. Haight for the specific purpose of persuading him to publish my explanation of the common carrier clause and the collection of the $50,000 liquidation damages.

Accordingly I drove up to Canyon City on the morning of January 11 and dropped in at the office of the county agent, Dick Richards. While I was in there Mr. Haight came in and the three of us discussed this matter for perhaps three hours-until lunch time. I explained in considerable detail that the common carrier clause in the contract, so far as my record showed, had never been modified. I also advised Mr. Haight that so far as the records showed them had not been so much as the scratch of a pen in these files indicating any intention on the part of the service to eliminate or modify this clause.

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Mr. Haight's reply to this explanation was that Colonel Greeley's recent press dispatch in which he referred to the Burns-Bear Valley Road as a logging railroad was all the information he needed to convince him that the common-carrier clause had been or was about to be eliminated.

I then explained in as much detail as possible the collection of the $50,000 liquidated damages, advising both Mr. Haight and Mr. Richards that I had a copy of the letter of transmittal in my files and that I wanted both Haight and Richards to come to the office and make an examination of the contract with reference to the common-carrier clause as well as the copy of the letter of transmittal.

Mr. MCGOWAN. A letter of transmittal convening what?

Mr. DUTTON. Covering the collection of the $50,000 liquidated damages. Mr. Haight countered this explanation, or my invitation to come to the office, by the statement that he bad always—no, I will retract that; that he held a very intense dislike for Colonel Greeley and that nothing that I or anyone else could do or say would change his attitude in this regard. That was about as far as I got with Mr. Haight, but I did expect, inasmuch as Mr. Haight had always seemed inclined to treat me respectfully, that he would publish the fact that I had attempted to make an explanation of it.

Mr. MCGOWAN. Did he so publish the facts as you gave them to him?

Mr. DUTTON. He did not. He made no reference to my visit to his office, but instead he came out in a later issue of his paper as I said before, giving a distortion of the truth with a vicious attack on Colonel Greeley, Girard, and Klobucher. That was, I believe, on the 28th of the month, if I recall the dates correctly.

In the following issue, which I think was February 4, he came out repeating these attacks and including a slur on the local personnel of the Malheur Forest.

Mr. DE NEFFE. What was the date?

Mr. DUTTON. I believe that was February 4, as nearly as I can remember it, 1927.

Mr. MCGOWAN. At the time then that Mr. Haight appeared before the Oregon Legislature the real facts were in his possession, because you know that you had given them to him, isn't that correct?

Mr. DUTTON. That is correct. And I want to add for the purpose of the record that Mr. Haight knew that those records were in my office and could be examined.

It might be advisable to state also that in addition to Haight and Richards, Mr. Barnes knew that the files were there and open for inspection, because he inspected the records of the Herrick timber sale early in the spring of 1925. He examined the contract and all the correspondence in connection therewith in that office.

Mr. MCGOWAN. I hand you a memorial. Have you ever seen this paper before, Mr. Dutton?

Mr. DUTTON. Yes.

Mr. MCGOWAN. Did I show it to you before?

Mr. DUTTON. You showed it to me the other day.

Mr. MCGOWAN. Can you identify any of the signatures that appear on that memorial?

Mr. DUTTON. Yes; I can.

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Mr. MCGOWAN. Let me have it, please. I would like to read the memorial:

(The memorial was read by Mr. McGowan, and is here printed in full as follows:)

JOHN DAY, OREG., *February 4, 1927*

UNITED STATES FOREST SERVICE

Washington, D. C.

GENTLEMEN: We, the undersigned taxpayers and business men of Grant County, Oreg., do hereby certify that we are in favor of the investigation now being conducted against the Herrick Lumber Co. development, in Grant County, Oreg., but disapprove of any cancellation of the present contract which the Government has with the Herrick Lumber Co., unless the same be in the discretion of the committee, absolutely necessary. We disapprove of the activities of Mr. Barnes at Grant County's expense, for the reason that he is in our opinion a promoter, working for the financial interests of himself and timber corporations, other than the Herrick Lumber Co. We also hereby affirm our confidence in the Forest Service and the integrity of its officials.

Respectfully submitted.

F. M. Round, taxpayer; Earl Williams; H. B. Hayes, rancher; Ira G. Royce, taxpayer; Sig Ferguson; Dan J. Glisten, taxpayer; S. Watson, merchant; G. A. Rinehart, butcher; J. A. Pereira, merchant; J. G. Sliffe lumber dealer; W. R. Dickey, garage man; W. H. Damon, blacksmith ; Geo. G. Carl, physician; Finley MacGilliway, bookkeeper.

Mr. HALLOCK. How many signatures?

Mr. MCGOWAN. Fourteen signatures. Is there any objection, Mr. De Neffe?

Mr. DE NEFFE. No; I Have no objection.

The CHAIRMAN. It will be made a hart of the record.

Mr. DE NEFFE. I do not see how that is material though.

(Cross-examination by Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. How did this resolution come to be passed, do you know?

Mr. DUTTON. That came here since my arrival at Washington.

Mr. DE NEFFE. Did you request somebody to get up this resolution?

Mr. DUTTON. No, sir; I did not.

Mr. De NEFFE. Do you know who was instrumental in getting it up and having it passed?

Mr. DUTTON. I do.

Mr. DE NEFFE. Who?

Mr. DUTTON. Harlan Hayes, a local garage owner and manager and owner of the public camp ground; Ira G. Royce, retired rancher; Attorney Hicks, at Canyon City—I could name several.

Mr. DE NEFFE. Mr. Hicks was really the one that took the initiative?

Mr. DUTTON. No; he did not. I do not think he signed this. This was signed by John Day taxpayers and residents, I believe.

Mr. DE NEFFE. How do you know that Mr. Hayes and Hicks had something to do with it?

Mr. DUTTON. Because they called at my office.

Mr. DE NEFFE. February 12, wasn't it? That was before you started to Washington?

Mr. DUTTON. No; I started for Washington, I believe, February 5.

Mr. DE NEFFE. You say they called at your office. You were gone then, weren't you?

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Mr. DUTTON. No. They called at my office before I left. For that matter, a great number of local people called at my office the week prior to my leaving to discuss the Herrick contract, not only including those who were not in sympathy with Mr. Barnes but the gentlemen on the other side.

Mr. DE NEFFE. And among them were Hayes and Boyce?

Mr. DUTTON. I do not believe that Mr. Boyce ever called at the office.

Mr. DE NEFFE. Well, at the time they called and at the time they drew up this resolution, of course they did not know just what this derrick contract contained, did they?

Mr. DUTTON. Yes, sir.

Mr. DE NEFFE. Had they read the whole contract?

Mr. DUTTON. They had. They had gone over the contract in my office the week prior to my leaving.

Mr. DE NEFFE. Had they analyzed it, do you know?

Mr. DUTTON. They satisfied themselves that the common-carrier clause —

Mr. DE NEFFE. That was what they were interested in?

Mr. DUTTON. They were interested in two things, Mr. De Neffe, primarily. One was the common-carrier clause, and the other was the collection of the $50,000 liquidated damages, concerning which fraud had been charged.

Mr. DE NEFFE. I see.

Mr. DUTTON. In addition to that—those were the two points played up by Mr. Haight and Mr. Woldenberg in creating a sentiment against the Forest Service and Mr. Herrick, with especial emphasis on the common-carrier clause.

Mr. DE NEFFE. You would not say that these 14 men represented the sentiment of Grant County, would you?

Mr. DUTTON. Oh, No; indeed, I would not do that. But I would say, if you are asking for my personal opinion, that at the present time and at the time of my leaving I believe it is conservative to state that a substantial majority of the citizens of those two communities were not in sympathy with Mr. Barnes as the representative of Grant County at Grant County's expense. As a matter of fact, there is considerable protest being registered right now in the two communities over the appropriation of money to finance the investigation.

Mr. DE NEFFE. Of course, you do not know what the sentiment is since certain evidence has been given out in this hearing, do you?

Mr. DUTTON. The local sentiment.?

Mr. DE NEFFE. Yes. You do not know anything about what their sentiment is since the investigation started?

Mr. DUTTON. I have no telegraphic advice, no. All I know is before the last five days, we will say.
Mr. DE NEFFE. That is all.

Mr. MCGOWAN. Mr. Carter.

Mr. HALLOCK. May I ask Mr. Dutton just one question, please? Mr. Dutton, you have sat here through practically the entire session, have you?

Mr. DUTTON. Yes, sir; I have.

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Mr. HALLOCK. Have you heard any evidence, as counsel says which in your opinion would lend any strength to the position of the supporters of Mr. Barnes in Grant County?

Mr. DUTTON. No.

Mr. HALLOCK. That is in line with counsel's suggestion that since certain evidence was developed they might now be favoring Mr. Barnes to a greater extent.

Mr. DUTTON. Yes. I think the contrary is the truth, though. I think it is just the opposite.

Mr. DE NEFFE. Mr. Dutton, you would not undertake to say what the people in Grant County would think of this part of the Herrick contract which would permit him to shut down logging operations for front three to five years, would you?

Mr. DUTTON. No, I would not, Mr. De Neffe, but I feel quite sure if you went out to John Day and Canyon to-day and held a mass-meeting the general contention would be that it is ridiculous to make a point of that matter.

Mr. DE NEFFE. Then you feel that Mr. Biggs here is ridiculous to claim that there is anything to that point?

Mr. DUTTON. I gave you my personal opinion.

Mr. DE NEFFE. You are not speaking for the people there, at all, are you?

Mr. DUTTON. I am giving you my personal opinion as to how the local people feel in the matter right now.

Mr. DE NEFFE. All right.

TESTIMONY OF E. E. CARTER, ASSISTANT FORESTER, UNITED STATES FOREST SERVICE, DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.

(The witness was duly sworn by the chairman.)

(Direct examination by Mr. D. F. MCGOWAN, attorney representing the United States Forest Service:)

Mr. MCGOWAN. State your name, age, post-office address, and occupation.

Mr. CARTER. E. E. Carter, 46 years old, resident of Washington, D. C.; Assistant Forester, Forest Service.

Mr. MCGOWAN. Mr. Carter, when did you first become acquainted with this Bear Valley unit that has subsequently been included in the Fred Herrick timber sale contract of 1923?

Mr. CARTER. I leave known of the existence of the body of pine timber in the Malheur for a good many years, but the first direct contact I had with it was at the time of the meeting with the Oregon delegation here in the capital when Mr. Barnes was present and Colonel Greeley brought me up with him.

Mr. MCGOWAN. That was some time in 1922?

Mr. CARTER. This, as I remember it now, was early in the year 1922.

Mr. MCGOWAN. Briefly, what were the developments from that conference?

Mr. CARTER. The Forester agreed to have the timber cruised, advertised, any put on the market as early as possible. That was done.

Mr. MCGOWAN. What was the length of that advertisement?

Mr. CARTER. Six months.

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Mr. MCGOWAN. When was, approximately, the final date for the opening of bids in the first ad.?

Mr. CARTER. February 17, 1923, if I remember correctly.

Mr. MCGOWAN. And there were no bids received?

Mr. CARTER. So the Washington office was informed by the district forester.

Mr. MCGOWAN. And the minimum price under which the timber was advertised was $2.75 for yellow pine, as I understand it.

Mr. CARTER. That is correct.

Mr. MCGOWAN. When it developed that following that advertisement—and I understand that there was considerable publicity given to the sale and the chance—was there any anxiety in the minds of forest officers as to why that timber had not brought a bid?

Mr. CARTER. Yes; we were extremely curious to know why no bid had been received.

Mr. MCGOWAN. Did you then make inquiries in connection with reasons generally why no bid had been received?

Mr. CARTER. Taking "you" to mean the Forest Service —

Mr. MCGOWAN. Yes.

Mr. CARTER. I do not remember whether I sent the telegrams myself or not. We did. Specifically, if I remember correctly, we asked the district forester, asking if he could find out.

Mr. MCGOWAN. Shortly after the close of the first advertising period and the non-receipt of bids, did you receive an offer—did the forest Service receive an offer from the Brooks-Scanlon Lumber ,Co.? I hand you a letter dated February l7, 1923.

Mr. CARTER. That was received.

Mr. MCGOWAN. I would like to read this letter into the record. (Reading:)

BROOKS-SCANLON LUMBER CO.
1120 PLYMOUTH BUILDING
Minneapolis, Minn., February 17, 1923.

Sales, D-6, Malheur, Bear Valley Unit.
MR. W.B. GREELEY,
Forester, Forest Service
United States Department of Agriculture
Washington, D.C.

DEAR SIR: We sent our representatives, with cruisers, into the Bear Valley unit of the Malheur national Forest in Oregon at two different times—early in November and again in December. These men did not by any means cruise the whole body of timber but they got a very fair idea of the quality, stumpage, lay of the land and amount of railroad required for operation.

After thoroughly studying the information with which they furnished us, we concluded that we could not afford to bid on the upset price called for in the advertisement for bids to be opened February 15, The price, the number of feet to be cut per annum, together with the large sum necessary to construct the common-carrier railroad, were all bars to our having anything to do with the proposition, considering the inaccessibility of this body of timber to market, under present conditions.

However, Mr. E.W. Barnes, who represents the people of Grant and Harney Counties in this development, called on us this morning and talked the situation over with us. We have decided and hereby offer $2 per thousand feet for the western yellow pine and 50 cents per thousand for all other species of timber under the following conditions:

That we be permitted to cut a minimum of 60,000,000 feet and a maximum of 80,000,000 feet per annum, instead of the fixed amount of 60,000,000, as provided in the former advertisement of sale.

In all other respects we agree to abide by your contract in the former advertisement of sale, we to assume all the obligations as provided therein.

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We are contemplating additional investments in other directions, and accordingly must limit the time for acceptance of this offer to April 1, 1923.

We inclose herewith certified check for $25,000, drawn payable to your order and attached to your Form 861-P.

Trusting that this offer may receive favorable consideration. We remain,

Very truly yours,

BROOKS-SCANLON LUMBER CO.,
D. F. BROOKS, *President*.

* * * * * * * * * *

I offer that, Mr. De Neffe.

Mr. DE NEFFE. No objection.

The CHAIRMAN. It will be made a part of the record.

Mr. MCGOWAN. Following the receipt of that letter that I have just read, Mr. Carter, what transpired, if anything, in connection with your going to see Doctor Brooks, of the Brooks-Scanlon people?

Mr. CARTER. Colonel Greeley instructed me to go to Minneapolis, meet Mr. Ames, of the Portland office, and discuss the offer with Doctor Brooks.

Mr. MCGOWAN. Generally, what was the nature of that discussion that you had with Doctor Brooks?

Mr. CARTER. We endeavored to secure an offer of more than $2 per thousand for the timber, but were not successful in doing so. Doctor Brooks stated that the company had prior to that time made up their minds that under no conditions could they afford to give more than $2 per thousand for the timber.

We discussed the question of the maximum cuts, Doctor Brooks being quite insistent that the contract provide for a larger maximum cut than was stipulated in the contract previously printed in the prospectus. He also was inclined to be doubtful of the estimated amount of timber, stating that reports to him had been to the effect that the timber would cut more pine than the 770,000,000 feet given in the prospectus. After considerable discussion he finally agreed that the company would submit a bid if the timber were readvertised at $2 per thousand and if the contract as printed in the prospectus were changed so that a maximum cut of Government timber at the rate of 50,000,000 feet per year were permitted.

He also asked that the contract provide that if during the life of the sale it was ascertained that there was more timber available for cutting on the sale area than the estimated amounts named in the contract the maximum cut would be increased accordingly.

Shall I continue, Mr. McGowan ?

Mr. MCGOWAN. Did you arrive at any tentative agreement with Doctor Brooks in connection with the

possible inclusion of those provisions in the form of a contract that would be entered into in connection with the readvertisement of the timber?

Mr. CARTER. We did.

Mr. MCGOWAN. Are you familiar with clause No. 3 in the Fred Herrick contract, of June 15, 1923 ?

Mr. CARTER. I am.

Mr. MCGOWAN. When and where was that clause drafted?

Mr. DE NEFFE. Which clause do you mean?

Mr. MCGOWAN. Paragraph 3 of the present contract.

Mr. CARTER. That clause was drafted by Mr. Ames and myself in Minneapolis at the time of the conference with Doctor Brooks. It was written out in longhand by us in the hotel and was first reduced to typewriting in the office of tile Brooks-Scanlon Lumber Co. so

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that we could look at it together in typewritten form. Perhaps I should amend that statement by pointing out that, perhaps, some editing was done on it later.

Mr. MCGOWAN. I hand you what purports to be a carbon copy, which is also an original of a memorandum of agreement, dated March 1, 1923, signed by yourself, E. E. Carter, assistant forester, D. F. Brooks, president of the Brooks-Scanlon Lumber Co., and ask you if you recognize that document?

Mr. CARTER. Yes.

Mr. MCGOWAN. What is the document?

Mr. CARTER. This is a memorandum dictated by me in the office of the Brooks-Scanlon Lumber Co., of Minneapolis, on March 1, 1923, reducing to writing the tentative agreement reached as the result of the discussions between Doctor Brooks, Mr. Ames and myself.

Mr. MCGOWAN. Attached to the memorandum is a form of a clause of contract which is the same as the clause now incorporated in paragraph 3 of the Fred Herrick contract? What have you to say with reference to that form that appears in connection with these papers—attached to them?

CARTER. This is the draft of the change in the second paragraph of section 3 as it was printed in the prospectus, which we worked up in Minneapolis at that time, and also covers the provision which appears as the third paragraph of section 3 of the Fred Herrick contract.

Mr. MCGOWAN. Now, you say it was worked up at that time. Just what do you mean by "at that time"?

Mr. CARTER. I mean that it was worked up is Minneapolis at the time of the conferences between Mr. Ames, Doctor Brooks, and myself.

Mr. MCGOWAN. State whether or not Fred Herrick, Jim Girard, or anybody connected with the Herrick outfit had anything to do with the preparation of this modified form that you have just described.

Mr. CARTER. Absolutely nothing.

Mr. MCGOWAN. We offer the document for the record with the accompanying memorandum of Mr. Carter.

The CHAIRMAN. If there is no objection it will be made a part of the record.

Mr. CARTER. There are several hooked together there. The top one I have not identified, if I am not mistaken.
Mr. MCGOWAN. That is the accompanying memorandum that goes with the form itself.

(The memorandum referred to and the accompanying papers are here printed in full, as follows:)

WITH MEMORANDUM FOR FILES OF MARCH 5, 1923

Sales, D-6, Malheur, Bear Valley unit. Memorandum:

MARCH 1, 1923.

DR. D. F. BROOKS,
Minneapolis, Minn.

DEAR SIR: Reference is made to your letter of February 17 to W. B. Greeley, Forester, and to your conference with Mr. Ames and myself in regard to the readvertisement of the timber in the Malheur National Forest.

Our discussions, as I understand it, led to your agreement that your company would submit a bid, if the timber were readvertised, under the following conditions:

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1. The minimum price for western yellow pine which will be considered to be $2 per 1,000 feet, log scale, and for other species, to be taken at the option of the purchaser, $0.50 per 1,000 feet, log scale.

2. The maximum rate of cutting the Government timber to be described in the contract is not to exceed 150,000,000 feet, log scale, in the first 3 years of operation (by April 1, 1928); not to exceed 300,000,000 feet, log scale, at the end of 6 years of operation; not to exceed 450,000,000 feet, log scale, at the end of 9 years of operation; not to exceed 600,000,000 feet, log scale, at the end of 12 years of operation; and not the exceed 750,000,000 feet, log scale, at the end of 15 years of operation.

There is to be, however, specific provision in the contract to the effect that whenever the district forester is satisfied that the total amount which shall be cut from the sale area will exceed the 890,000 000 board feet which the Forest Service now estimates this stand will cut the district forester shall make such increase in the amounts which may be cut by each of the dates specified above as will enable the purchaser to complete the cutting of the Government timber in 18 years of operation, or, if the dates remain as specified in the sample contract previously issued, by April 1, 1943.

I told you that I believed the advertisement could be started so that this 30-day period of advertising, required as a minimum law, would end on April 2, the bids to be opened on the morning of April 3, 1923. Your agreement to bid is to be considered void if the final date for receipt of bids is later than April 5. No extension of the advertising period will be made.

It was my understanding that you were willing to have the $25,000 check which accompanied your letter of February 17 considered as the deposit to accompany bid, which is called for in all advertisements of national-forest timber. This call be arranged readily by the Forest Service, although the advertisement will specify that the deposit must be made with our Portland office.

Yours very truly,

E. E. CARTER, *Assistant Forester*.

The foregoing substantially expresses my understanding of the results of my conferences with Messrs. Carter and Ames of the Forest Service.

D. F. BROOKS
President Brooks-Scanlon, Lumber Co.

WITH MEMORANDUM FOR FILES OF MARCH 5, 1923

Sales D-6, Malheur Bear Valley unit. Changed second paragraph of section 3, Bear Valley unit sample contract:

Unless such amounts are changed in writing by the district forester, at least 60,000,000 feet, board measure, and not more than 150,000,000 feet, board measure, shall be cut prior to April 1, 1928: at least 120,000,000 feet, board measure, and not more than 300,000,000 feet, board measure, shall be cut prior to April 1, 1931; at least 200,000,000 feet, board measure, and not more than 450,000,000 feet, board measure, shall be cut prior to April 1, 1934; at least 320,000,000 feet, board measure, and not more than 600,000,000 feet, board measure, shall be cut prior to April 1, 1937; at least 420,000,000 feet, board measure, and not more than 750,000,000 feet; board measure. shall be cut prior to April 1, 1940; and at

least 520,000,000 feet, board measure shall be cut prior to April 1, 1943.

Provided: That whenever the district forester is satisfied that the cut from this sales area will exceed 890,000,000 feet board measure, he shall increase the maximum amounts which may be cut prior to each of the above-named dates which have not previously passed by such amounts sufficient to complete the cutting of the remaining timber covered by this sale, as the remaining cut may be estimated at that time, by April 1, 1943.

MARCH 5, 1923

Sales, D-6, Malheur, Bear Valley unit. Memorandum for files:

In accordance with instructions from the Forester, I met Mr. Ames, of the Portland office, in Minneapolis on the evening of February 26, and during the subsequent three days he and I discussed the terms of readvertisement of the Bear Valley unit with Dr. D.F. Brooks, president of the Brooks-Scanlon

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Lumber Co. It was soon obvious that Doctor Brooks was unwilling to consider any change in the minimum price to be named in the advertisement of per thousand for yellow pine, as given in his letter of February 17 to the forester. In fact, he stated definitely to Mr. Ames and myself that he would not consider agreeing to bid if a higher price were named, even if the contract permitted cutting at a rate as high as 80,000,000 feet a year, or if specific reservation of additional timber was made. Apparently hie had agreed with other members of the Brooks-Scanlon Co. that under no conditions would they consider a higher price. This may have been partly because of the necessity for purchasing a considerable amount of private timber adjacent to the sale area, for which they do not propose to pay any more than is necessary.

The discussion thereafter centered on the maximum rate of cutting with Dr. Brooks emphasizing the very heave investment necessary in railroad and the necessity for any purchaser having a large cut to pay expenses of operation and depreciation. Doctor Brooks apparently appreciated the great advantages of regulation for the Silvies Working Circle, and finally agreement was reached that the contract should provide that the maximum amount to be cut should increase by 150,000,000 feet every three years of operation, with specific provision for the increase of these amounts by the district forester if any time when he was satisfied that the total cut from the sale area would exceed the estimated total cut of 890,000,000 board feet, log scale. As nearly as I can judge, it was the inclusion of this proviso which led him finally to agree to the maximum cut figures.

Mr. Ames and myself explained to Doctor Brooks the great desirability from his viewpoint and from ours of having the advertisement contain provision for extension of the period of advertising on application from responsible parties. Doctor Brooks insisted that, if the period were to be extended he would have to withdraw the bid which he agreed to submit on the basis of a 30-day period for advertising. The wire to the Forester apparently did not make it clear that if extension were made possible by the terms of the advertisement Doctor Brooks would still submit a bid which would be withdrawn if the period were actually extended. At all events, the Forester's wire gave specific instructions for the 30-day period of advertising, and consequently the district was wired to begin the advertising with the final date April 2.

Mr. E. W. Barnes was in Minneapolis during the time these negotiations were being conducted. He did not participate in them. He was called to the office of the Brooks-Scanlon Lumber Co. twice to answer questions by Doctor Brooks in regard to the private timber options on right of way, and, of course, he talked to Mr. Ames and myself in the hotel at various times. In passing, it may be noted that Doctor Brooks stated that the terms of the offer to the Forester in the letter of February 17 were agreed on among the officials of the company before the expiration of the original period of advertising, and Mr. Barnes was therefore under a misapprehension in claiming that the offer was due wholly to his action in interviewing Doctor Brooks immediately after February 15 when it was known that no bids were submitted under the original advertisement. Mr. Barnes probably knew nothing in regard to this plan of the company.

E. E. CARTER, *Assistant Forester*,

(For Washington file copy only.)

Attached are —

1. A memorandum of conferences signed by Doctor Brooks and myself.
2. Form to replace second paragraphs, section 3, of a sample contract, as agreed Upon between Ames and myself.

Mr. MCGOWAN. Now, Mr. Carter, at the time of your negotiations with Doctor Brooks, was Mr. Barnes

present?

Mr. CARTER. Mr. Barnes was in Minneapolis—perhaps, if you don't mind, Mr. McGowan, I would like to start back of that.

Mr. MCGOWAN. Go ahead. Tell us in your own way.

Mr. CARTER. Mr. Barnes carne to Washington before the letter from Doctor Brooks which has just been identified here was received. He stated that such a letter was on the way. He was told that if it were received that in all probability a conference would be held in Minneapolis, and my best recollection is that be stayed in Washington until he found out when such a conference would be held.

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He was in Minneapolis at the time of these conferences. He did not participate in the discussions with Doctor Brooks directly, but he was called in, my recollection is, twice, it may have been more, to talk with Doctor Brooks in regard to some matters about the rights of way for the railroad and the patented timber in the vicinity, but he did not participate directly in the negotiations. Mr. Ames and I saw quite a little of Mr. Barnes around the hotel in the one or more evenings we were there and at other times, and Mr. Barnes knew, at least in a general way, of the discussions that were in progress with Doctor Brooks. I can not swear that he was given at that time a copy of the revised section 3 or the second paragraph thereof, but I do not know—I can swear that he knew what the subject lender discussion was.

Mr. MCGOWAN. Do you recall whether or not you told Mr. Barnes at that, time what concessions had been made by the Forest Service to appease Doctor Brooks? In substance, you don't need the exact words.

Mr. CARTER. I can not recall the exact words, but Mr. Barnes was told, in substance, of the changes in section 3.

Mr. MCGOWAN. Now, following the conference in Minneapolis between Doctor Brooks and yourself, what was the next step in connection with putting this timber on the market?

Mr. CARTER. During the conferences, or when we had apparently gotten as far as we could in the conferences, I wired the substance of the discussion to Colonel Greeley, and received a wire back from him instructing me to close; that is, to promise to advertise on the basis of that offer. I immediately wired to the district forester at Portland to begin advertising. Haste was necessary because Doctor Brooks had told us —

Mr. MCGOWAN (interposing). Just a minute, before you get away too far.
Mr. CARTER. Yes, Sir.

Mr. MCGOWAN. During your negotiations with Doctor Brooks, did you have any instructions from Colonel Greeley with reference to the common-carrier clause; and if so, what were they?

Mr. CARTER. I had gone to Minneapolis with instructions from Colonel Greeley that the common-carrier clause was to stay in the contract. I took pains, in wiring him in regard to these discussions, that the offer from the Brooks-Scanlon Co. as we had discussed it with Doctor Brooks, included the provision that the common-carrier clause was to remain in the contract.

Mr. MCGOWAN. I will offer you a telegram, Mr. Carter, and ask you to identify that [handing paper to the witness].

Mr. CARTER. That is the wire which I sent to Colonel Greeley, dated February 28, 19–; it should be 1923. It is.

Mr. MCGOWAN. We would like to read this telegram to the record [reading]:

MINNEAPOLIS, MINN., *February 28, 1923.*

W. B. GREELEY,
Forest Service, Washington, D. C.:

Brooks will bid if sale advertised $2. Common carrier clause retained. Mixed optional. Maximum cut

Government hundred fifty million every three years. With adjustment if cut shows estimate low. Have tried for agreement advertising period may be extended to 90 days on application responsible parties furnishing financial showing and promising to bid if conditions as

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represented. Brooks insists must withdraw bid if period extended. Ames and I recommend offer of extension in advertisement because readvertisement reduced price 30 days when field examination impracticable bad public policy if no requests for extension from responsible parties can accept best bids with clear case. Wire decision on offer to extend time care West Hotel.

CARTER

The CHAIRMAN. You may proceed, Mr. McGowan.

Mr. DE NEFFE. Go right ahead.

Mr. MCGOWAN. I hand you a second telegram, Mr. Carter, and that is very brief. You may read it yourself, if you will.

Mr. CARTER. This is the wire which I received back from Colonel Greeley while I was in Minneapolis [reading];

WASHINGTON, D. C., March 1, 1923.

E. E. CARTER,
Care West Hotel, Minneapolis, Minn.

Accept Brooks offer to bid without agreement to extend advertising period beyond 30 days other conditions as stated your telegram satisfactory.

GREELEY.

Mr. MCGOWAN. You heard Mr. Knappen's testimony this morning ?

Mr. CARTER. Yes, sir.

Mr. MCGOWAN. Did you give Mr. Knappen the data on which his article was compiled to the lumber trade in connection with the Bear Valley timber?

Mr. CARTER. I can not swear that I did; and it is possible that I did. I can neither affirm nor deny. I simply don't recollect any particular discussion.

Mr. MCGOWAN. What particular steps, Mr. Carter, did the Forest Service take to get to the trade the information in connection with the changed provisions of the prospectus to change paragraph 3? Just generally.

Mr. CARTER. Particular attention was called to that point by the paragraph, or the sentence, which was added to the first paragraph of the advertisement.

Mr. MCGOWAN. Now, if you will look at Exhibit 9, a copy of which you have in front of you —

Mr. CARTER (interposing). Have I?

Mr. MCGOWAN. Yes.

Mr. CARTER. I think not.

Mr. DE NEFFE. You have it there.

Mr. MCGOWAN. I have it right here, Mr. Carter.

Mr. CARTER. I am sorry for this delay, Mr. Chairman, but I was not familiar with these exhibits.

Mr. MCGOWAN. I hand you a copy of the first advertisement, which is dated August 5, 1922, which appears in Exhibit 9.

Mr. CARTER (interposing). Yes, Sir.

Mr. MCGOWAN. In which the Bear Valley timber was first advertised.

Mr. CARTER. Yes, Sir.

Mr. MCGOWAN. Now, turn to the next page. That, apparently, is a copy of the advertisement. What is the date?

Mr. CARTER. That is dated March 6. The date at the top of this, March 5, 1923.

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Mr. MCGOWAN. In connection with the readvertisement of the Bear Valley timber?

Mr. CARTER. Yes, sir.

Mr. MCGOWAN. Now, what specifically was included in that readvertisement with reference to the minimum stumpage and the cutting rate, following your conference with Doctor Brooks?

Mr. CARTER. This sentence was added to the paragraph [reading]:

> The contract will permit the cutting of Government timber at an average rate of 50,000,000 feet, log scale, annually.

In the second paragraph, under the heading "stumpage prices" [reading]:

> Lowest rates considered $2 per thousand for western yellow pine.

"$2" was substituted for $2.75 per thousand. Those are the only changes.

Mr. MCGOWAN. There is a concluding paragraph.

Mr. CARTER. In both advertisements the concluding paragraph reads [reading]:

> Before bids are submitted full information concerning the character of the timber, condition of sale, deposits, and the submission of bids should be obtained from the district forester, Portland, Oreg., or the forest supervisor, John Day, Oreg.

Mr. MCGOWAN. I hand you a letter dated March 3, 1923, and ask you if you can identify that [handing letters to the witness].

Mr. CARTER. Not personally. I can not. I know —

Mr. MCGOWAN (interposing). Do you know it is from the official files of the department?

Mr. CARTER. I know this is from the official files of the department.

Mr. MCGOWAN. This letter is dated March 3, 1923 [reading]:

> MARCH 3, 1923.
>
> HON. C. N. MCARTHUR,
> *House of Representatives.*
>
> DEAR MR. MCARTHUR: Your letter of March 1, together with the telegram accompanying it, is received. Colonel Greeley is absent from the office.

The timber concerning which your constituents write is unquestionably the 890,000,000 feet of timber known as the Bear Valley unit, Malheur National Forest. This timber has been advertised during the past six months at a price of $2.75 for yellow pine and 50 cents for mixed species. Yellow pine formed about 80 per cent of the stand. The chief requirements were that 80 miles of common carrier railroad be built and that the cut be held to a maximum figure stated in the contract, which would insure operation on a scale commensurate with the forest resources available, and therefore result in a permanent industry. Unfortunately, no bids were received as a result of this advertisement. Immediately following advertisement, however, an informal offer was received from a reliable lumber company offering $2 per thousand feet under certain conditions, some of which could not be accepted by the Forest Service. After a period of negotiations the offer of the lumber company at $2 per thousand feet, but with substantially no other change in the original conditions as advertised, has been accepted. This includes the provision that the 80 miles of railway be made a common carrier. It will be necessary to readvertise the timber for a period of 30 days. This will set the date for the opening of bids on this second advertisement at about April 1. We are, therefore, definitely assured that at least one bid will be received and a sale will therefore certainly result from this advertisement.

Very sincerely yours,

E. A. SHERMAN,
Acting Forester.

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I would like to offer that if there is no objection, Mr. De Neffe.

Mr. DE NEFFE. No objection.

Mr. MCGOWAN. Mr. Carter, I hand you a letter addressed to Hon. Charles L. McNary from the Acting Forester, E. A. Sherman, dated March 2, 1923. Can you identify that letter as having come from official files?

Mr. CARTER. Yes, sir.

Mr. MCGOWAN. I would like to read that for the record [reading]:

MARCH 2, 1923

HON. CHARLES L. MCNARY,
United States Senate.

DEAR SENATOR MCNARY: You will be interested in the developments concerning the sale of the Bear Valley tract of timber on the Malheur National Forest. As you already know, no bids were received at the termination of the six-months advertising period. An informal offer was, however, received from the Brooks-Scanlon Lumber Co. for $2 per thousand. After considerable negotiations and some concessions on both sides, the Brooks-Scanlon Co. has agreed to submit a bid for the timber at the rate of $2 per thousand feet for the yellow pine and the Forest Service will begin readvertising for a 30-day period immediately. This assures a sale at this price and under substantially the same conditions as the original advertisement, including 80 miles of common-carrier railroad from Crane to Seneca.

I can not tell you now the exact date for receiving bids but it will be approximately April 1. When this information is received from the district forester at Portland, who is placing the advertisement, I will be glad to inform you.

Very sincerely yours,

E. A. SHERMAN, *Acting Forester.*

I would like to offer that, Mr. De Neffe.

Mr. DE NEFFE. No objection.

Mr. MCGOWAN. I would like to offer, in connection with this readvertising, a press release of the Department of Agriculture of March 17, 1923, headed "U. S. Department of Agriculture, Office of the Secretary, Press Service," as follows [reading]:

MARCH 17, 1923.

GOVERNMENT READVERTISES LARGE BLOCK OF TIMBER

WASHINGTON, March 17.—Timber on the Bear Valley unit of the Malheur National Forest, Oregon, amounting to 890,000,000 board feet, is being resubmitted for bids, according to the Forest Service, United States Department Of Agriculture. The period for receiving bids ends April 4.

The lowest bid which will be considered is $2 per thousand board feet for yellow pine, which makes 85 per cent of the stand, instead of $2.75 under the previous appraisal. A change is made in the maximum cut allowed in the first three-year periods from 110,000,000 feet to 150,000,000 feet, and providing for an increase in this amount if the timber exceeds the estimate, to enable a purchaser to complete cutting in 18 years.

February 15, the final date for receiving bids under the previous advertisement, passed without a bid having been received, but much interest was evident, and the Forest Service is confident that with the lower stumpage and an increase in the limitation of cut at the start of the contract a satisfactory bid will be received. The handling of this timber will require a large initial investment for equipment and improvements including 80 miles of railroad.

We would like to offer that.

Mr. DE NEFFE. No objection.

Mr. MCGOWAN. Now Mr. Carter, I hand you a letter dated March 5, 1923, and ask you if you identify that letter [handing paper to the witness].

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Mr. CARTER. Yes; I recognize it.

Mr. MCGOWAN. What is it, if you please?

Mr. CARTER. It is a letter to the district forester, informing him of the placing of the readvertisements in the Bear Valley.

Mr. MCGOWAN. Attached to that letter is a copy of the readvertisement. I will ask you to state whether or not the copy which you have there is a copy of the readvertisement as it appeared in the papers?

Mr. CARTER. As corrected so as to make the final date for the receipt of bids April 4, instead of April 2, it is.

Mr. MCGOWAN. Now, what trade journals did that ad go to?

Mr. CARTER. That appeared in the American Lumberman, Lumber, Southern Lumberman—the three of them.

Mr. MCGOWAN. I would like to offer this ad and this letter. I do not want to take the time to read them.
The CHAIRMAN. They may be made a part of the record.

MARCH 5, 1923.

DISTRICT FORESTER
Portland, Oreg.

DEAR SIR: I have to-day requested the publication of the readvertisement of the Bear Valley Unit, copy inclosed, in the following trade papers on the dates indicated:

The American Lumberman, of March 10.
Lumber, of March 16.
Southern Lumberman, of March 17.

I am wiring you to furnish copy to the Timberman for its march issue and the West Coast Lumberman for its issue of March 15, and am writing those papers confirming the placing of copy with them by your office. This is because it seems doubtful whether it is possible to get copy to these two West Coast trade journals in time for insertion in the issues indicated.

Very truly yours,

E. E. CARTER, *Assistant Forester.*

[Release]

890,000,000 FEET NATIONAL FOREST TIMBER FOR SALE—THE FIRST UNIT OF ONE OF THE LARGEST UNDEVELOPED TRACTS OF YELLOW PINE IN THE UNITED STATES

Location and amount.—All the merchantable dead timber standing or down, and all the live timber marked or designated for cutting on an area embracing about 67,400 acres in Twp. 15 S., ranges 29, 30, and 31 E., Twp. 16 S., ranges 29, 30, 31, and 32 E., and Twp. 17 S, ranges 29, 30, and 31 E., W. M., Silvies River watershed, Malheur National Forest, Oreg., estimated to be 770,000,000 feet b. m., more or less, of western yellow pine and 120,000,000 feet b. m., more or less, of Douglas fir, western larch, white fir, lodgepole pine, and other species of timber. The cutting of other species than western yellow pine to be optional with the purchaser. The contract will permit the cutting of Government timber at an average rate of 50,000,000 feet, log scale, annually.

Stumpage prices.—Lowest rates considered, $2 per thousand for western yellow pine and $0.50 per thousand for other species. Rates to be readjusted April 1, 1928, and at three-year intervals thereafter.

Deposit.—$25,000 must be deposited with each bid to be applied on the purchase price, refunded, or retained in part as liquidated damages, according to conditions of sale.

Final date for bids.—Sealed bids will be received by the district forester, Portland, Oreg., up to and including April 4, 1923.

The right to reject any and all bids is reserved. Before bids are submitted, full information concerning the character of the timber, conditions of sale, deposits, and the submission of bids should be obtained from the district forester, Portland, Oreg., or the forest supervisor, John Day, Oreg.

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Mr. MCGOWAN. Mr. Carter, I hand you another paper, which seems to be a mimeographed letter, dated March 6, 1923, and I ask you if that is from the official records of the department?

Mr. DE NEFFE. What is the date?

Mr. MCGOWAN. March 6, 1923.

Mr. CARTER. Yes, sir; March 6.

Mr. MCGOWAN. Can you identify this?

Mr. CARTER. Yes; this is from our official files.

Mr. MCGOWAN. Do you know if that is a copy of a mimeographed letter that was sent out to a number of lumber men in connection with the readvertising of the Bear Valley unit, in addition to the readvertisement that appeared in the newspapers and the trade journals?

Mr. CARTER. It was.

Mr. MCGOWAN. We would like to offer that for the record.

Mr. DE NEFFE. Just a minute. Let me see it. [After a pause.] No objection.

The CHAIRMAN. It may be made a part of the record.

(The letter last referred to is as follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
NORTH PACIFIC DISTRICT,
Post Office Building, Portland, Oreg., March 6, 1923.

BEAR VALLEY TIMBER READVERTISED

No bids having been received as a result of the six months' advertisement terminating on February 15, the timber is again being offered for sale under more attractive terms. The price of pine is now $2 per thousand, and the contract terms are modified to permit a maximum average annual cut of 50,000,000 feet b. m. of Government timber.

The following advertisement is now appearing:

890,000,000 FEET NATIONAL FOREST TIMBER FOR SALE—THE FIRST UNIT OF ONE OF THE LARGEST UNDEVELOPED TRACTS OF YELLOW PINE IN THE UNITED STATES

Location and amount.—All the merchantable dead timber standing or down, and all the live timber marked or designated for cutting on an area embracing about 67,400 acres in Twp. 15 S., ranges 29, 30, and 31 E., Twp. 16 S., ranges 29, 30, 31, and 32 E., and Twp. 17 S, ranges 29, 30, and 31 E., W. M., Silvies River watershed, Malheur National Forest, Oreg., estimated to be 770,000,000 feet b. m., more or less, of western yellow pine and 120,000,000 feet b. m., more or less, of Douglas fir, western larch, white fir, lodgepole pine, and other species of timber. The cutting of other species than western yellow pine to be optional with the purchaser. The contract will permit the cutting of Government timber at an average rate of 50,000,000 feet, log scale, annually.

Stumpage prices.—Lowest rates considered, $2 per thousand for western yellow pine and $0.50 per thousand for other species. Rates to be readjusted April 1, 1928, and at three-year intervals thereafter.

Deposit.—$25,000 must be deposited with each bid to be applied on the purchase price, refunded, or retained in part as liquidated damages, according to conditions of sale.

Final date for bids.—Sealed bids will be received by the district forester, Portland, Oreg., up to and including April 4, 1923.

The right to reject any and all bids is reserved. Before bids are submitted, full information concerning the character of the timber, conditions of sale, deposits, and the submission of bids should be obtained from the district forester, Portland, Oreg., or the forest supervisor, John Day, Oreg.

Mr. MCGOWAN. I hand you a letter, Mr. Carter, dated Portland, Oreg., March 19, 1923, with the initials "E. E. C." on the bottom,

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the letter apparently sent to F. J. & A. H. Smith, Merrill, Wis., and ask you if you recognize that letter [handing letter to the witness].

Mr. CARTER. Yes, sir.

Mr. MCGOWAN. That has to do with the readvertising of the Bear Valley timber?

Mr. CARTER. Yes, Sir.

Mr. MCGOWAN. And calls attention to the changes that are made in the clauses of the contract?

Mr. CARTER. It does.

Mr. DE NEFFE. What is the date of that, Mr. McGowan?

Mr. MCGOWAN. March 19, 1923.

There are two accompanying letters from the Smith firm that I would like to have in the record, in connection with those from the Forest Service.

The CHAIRMAN. They may be made a part of the record.

PORTLAND, OREG., MACH 19, 1923.

F. J. & A. H. SMITH, *Merrill, Wis.*

GENTLEMEN: Your letter of 14 larch 15 is received.

Inclosed is a mimeographed statement relating to the readvertisement of this unit, and under separate cover a 2-inch scale map of the area with a tabulation of the estimate is being sent you. You will note that the filial date for the receipt of bids is April 4; the advertisement which you apparently saw giving the date as April 2 was in error and the date had to be extended.

The same conditions in regard to the railroad still obtain. It has been the assumption that the railroad would connect with the Union Pacific at Crane and extend through Burns to Seneca, and the Forest Service will require that the railroad development shall be via Burns. The second paragraph of section 3 of the contract has been changed to read as follows:

"Unless such amounts are changed in writing by the district forester, at least 60,000,000 feet board measure, and not more than 150,000,000 feet, board measure, shall be cut prior to April 1, 1928; at least 120,000,00 feet, board measure, and not more than 300,000,000 feet, board measure, shall be cut prior to April 1,1931; at least 220,000,000 feet, board measure, and not more than 450,000,000 feet, board measure, shall be cut prior to April 1, 1934; at least 320,000,000 feet board measure and not more than 600,000,000 feet, board measure. shall be cut prior to April 1, 1937; at least 420,000,000 feet, board, measure, and not more than 750,000,000 feet board measure, shall be cut prior to April 1, 1940; and at least 520,000,000 feet, board measure, shall be cut prior to April 1, 1943;

Provided, That whenever the district forester is satisfied that the cut from this sale area will exceed 890,000,000 feet, board measure, be shall increase the maximum amounts which may be cut prior to each of the above named dates which leave not previously passed, by such amounts as will permit the purchaser to cut thereafter an average annual amount sufficient tar complete the cutting of the remaining timber covered by this sale, as the remaining cut may be estimated at that time, by April 1, 1943."

Bearing upon the question of the maximum possible cut there is as the prospectus states, a considerable amount of private timber immediately adjacent to the unit of national forest timber which can be acquired and operated in connection with it. Assuming an estimated amount of 210,000,000 feet of such timber to be cut during the first nine years of the operating period, the total Government and private timber cut within that period would be 660,000,000, an average of over 70,000,000 feet a year. Aside from this feature of the contract and the price, the stipulations remain unchanged.

It is hoped that you may find yourself in a position to submit a bid for this timber. If there is further information which I can supply you by wire or correspondence I shall be glad to do so.

Very truly yours,

FRED AMES, *Assistant District Forester*.

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F. J. & A. H. SMITH, LAWYERS,
Merrill, Wis., March 15, 1923.

DISTRICT FORESTER,
U. S. Forest Service,
Portland, Oreg.

DEAR SIR: Some Wisconsin lumbermen interested with us have been giving some attention to the sale of the timber unit in the Malheur National Forest in astern Oregon. Due to the conditions, price, etc., attached, we made no bid. Recently we have been advised through advertisement of the forestry department in the American Lumberman and otherwise, that another sale is advertised to close April 2. We have noted the terms stated in the ad, but the time is so short that we assume that you must have some particular bid ready for that short time or you would have given more time for consideration of this proposition.

Do the same conditions on the new advertised offer of sale obtain in reference to the railroad? We have been advised that the railroad would have to be built from a certain point to a certain point to be a common carrier throughout the entire length of construction. We would also like to inquire the total maximum amount of timber that may be cut before the first adjustment of price. This is important, as it bears directly on the carrying charges in getting out as much of the investment as possible at as early a date as practical.

We have the sale prospectus of this sale of 890,000,000 feet of timber, and we would like to have you send us any other information which seems pertinent. We were advised by the Interior Department that no bids were submitted for the February 15 sale and that the timber could be sold at a private sale thereafter, and we then planned to give the matter more and immediate consideration. In any event, we would be pleased to hear from you and if the matter does not go through on bids to be submitted April 2, we then may be able to take this matter up with your department. We do not see now how it is possible for us to do anything by April 2 but nevertheless would like to have all of the information indicated submitted to us as

promptly as convenient.

We inclose copy of letter sent to your district supervisor at John Day, Oreg.

Yours truly,

F. J. & A. H. SMITH,
By F. J. SMITH.

F. J. & A. H. SMITH,
Merrily Wis., March 29, 1923.

U. S. DISTRICT FORESTER,
Post Office Building, Portland, Oreg.

DEAR SIR: Replying to your recent letter of March 6, will say that we received the map mentioned therein.

As you can readily see, that due to the short time of the present advertisement for bids to be submitted by April 4, we will probably be unable to submit a bid on the proposition offered at that time.

We had no idea that this second offer on this proposition would be limited to so short a period.

There are some things which will be absolutely necessary for us to determine, concerning some of the contract features before we can submit any bid. We are now getting some information but do not think that we will be ready to submit. If the proposition does not go through on a bid submitted by April 4, we would be glad to leave you notify us promptly, and we will take the same up for consideration.

Yours truly,

F. J. & A. H. SMITH.

Mr. CARTER. May I make a statement right there? Mr. McGowan has pointed out my initials. That went out from the Portland office. Those initials mean simply that I initialed it as it came in, and not that I prepared it.

Mr. MCGOWAN. Well, it is a copy of the official record —

Mr. CARTER (interposing). It is a copy of the official record.

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Mr. MCGOWAN (continuing). That went to the gentlemen or the firm to whom it was addressed?

Mr. CARTER. Yes, sir.

Mr. MCGOWAN. Do you know from the files, Mr. Carter, whether any specific firms were notified especially of the readvertising of the Bear Valley timber?

Mr. CARTER. Yes, sir.

Mr. MCGOWAN. I hand you a telegram dated March 5, 1923, at Portland, Oreg., to the Shevlin-Hixon Lumber Co., First National Soo-Line Building, Minneapolis, Minn., and ask you if you know about that telegram?

Mr. CARTER. Yes; that is from our official files.

Mr. MCGOWAN. And the telegram was sent out in the ordinary course of business to the firm to whom it is addressed?

Mr. CARTER. It was sent out under instructions from the Forester to give publicity in that matter.

Mr. MCGOWAN. Now, I hand you another telegram dated March 5, 1923, from Portland, Oreg., to the Edward Hines Lumber Co., Chicago, Ill., and ask you if you know about that telegram?

Mr. CARTER. Yes; that is from our official files. That is another one of the same sort.

Mr. DE NEFFE. Mr. McGowan, you are putting them in so fast. Just let me look at them.

Mr. MCGOWAN. All right. Now, I hand you another telegram dated March 5, 1923, addressed to the Winton Lumber Co., Gibbs, Idaho, signed by Fred Ames, and ask you if you recognize that telegram?

Mr. CARTER. That is another one of the same sort.

Mr. MCGOWAN. From your official files?
Mr. CARTER. From our official files.

Mr. MCGOWAN. We would like to offer these into the record, together with the letter from the firms attached thereto.

The CHAIRMAN. They may be made a part of the record.

(The telegrams and letters referred to are as follows:)

PORTLAND, OREG., *March 5, 1923.*

SHEVLIN-HIXON LUMBER CO.,
First National Soo-Line Building,
Minneapolis, Minn.:

Referring my letter February 19, which Mr. Hennessy forwarded you: Readvertisement Bear Valley timber, Malheur National Forest, just begun. Final date for bids, April 4. Price, $2 for pine. Cut of Government timber increased to average of 50,000,000 annually. Other terms the same as in printed prospectus. Further information sent on request.

FRED AMES.

SHEVLIN-HIXON CO.,
Minneapolis, Minn., March 2, 1923.

MR. FRED AMES,
Assistant District Forester,
Portland, Oreg.

DEAR SIR: Yours of February 19, in regard to the Malheur Bear Valley unit, addressed to our office at Bend, has been referred to us here.

It is true we were interested in this proposition, but we did not see our way clear to pay the minimum price of the timber with all the surrounding conditions.

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If there are modifications made in the terms of contract and the timber is readvertised, we will be interested in looking into the matter further.

Yours truly.

SHEVLIN-HIXON CO.,
R. W. WETMORE, *Secretary.*

SHEVLIN-HIXON CO.,
Bend, Oreg., February 21, 1923.

ASSISTANT DISTRICT FORESTER,
Portland, Oreg.

DEAR SIR: This will acknowledge receipt of your letter of the 19th pertaining to the Malheur Forest bid. Would advise that we are not interested in this, but understanding that the head office in Minneapolis is interested and are forwarding your letter to them requesting that they reply to you direct.

Yours very truly,

SHEVLIN-HIXON CO.,
J. P. HENNESSY, *General Manager.*

FEBRUARY 19, 1923.

SHEVLIN-HIXON LUMBER CO., *Bend, Oreg.*

GENTLEMEN: As you are perhaps informed, no bids were received by the Forest Service for the unit of timber in Bear Valley in the Malheur Forest. You have shown some interest in this prospective sale, but apparently some features of it were not attractive to you. I am writing to inquire whether you would be interested under any conditions, and if so, what modification of the terms of the contract would be necessary before you would consider submitting a bid. I should be glad to discuss this matter with you in person or by correspondence if there is a possibility of enlisting your interest.

Very truly yours,

FRED AMES,
Assistant District Forester.

PORTLAND, OREG., *March 5, 1923.*

EDWARD HINES LUMBER CO.,
Chicago, Ill.:

Your letter February 28: Readvertisement Bear Valley timber, Malheur National Forest, just begun. Final date for bids, April 4. Price, $2 for pine. Cut of Government timber increased to average of 50,000,000 annually. Other terms the same as in printed prospectus. Further information sent on request.

AMES.

EDWARD HINES LUMBER CO.,
Chicago, Ill., February 28, 1923.

FOREST SERVICE,
Portland, Oreg.

GENTLEMEN: Referring to your favor of the 19th: The way conditions are now shaping themselves in our affairs, we do not think at this time we would be interested in the timber referred to. Hence it is not necessary to go into the modifications of the terms of the contract.

Thanking you for your letter, we remain,

Very truly yours,

EDWARD HINES LUMBER CO.

FEBRUARY 19, 1923.

EDWARD HINES LUMBER CO.,
Chicago, Ill.

Gentlemen: As you are perhaps informed, no bids were received by the Forest Service for the unit of timber in Bear Valley in the Malheur Forest. You have shown some interest in this prospective sale, but apparently some features of it were not attractive to you, I am writing to inquire whether

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you would be interested under any conditions, and, if so, what modification of the terms of the contract would be necessary before you would consider submitting a bid. I should be glad to discuss this matter with you if there is a possibility of enlisting your interest.

Very truly yours,

FRED AMES,
Assistant District Forester.

PORTLAND, OREG., *March 5, 1922.*

WINTON LUMBER CO.,
Gibbs, Idaho:

Referring my letter February 19: Readvertisement Bear Valley timber, Malheur National Forest, just begun. Final date for bids, April 4. Price $2 for pine. Cut of Government timber increased to average of 50,000,000 annually, Other terms the same as in printed prospectus. Further information sent on request.

FRED AMES.

WINTON LUMBER CO.,
Gibbs, Idaho, February 22, 1923.

MR. FRED AMES,
Assistant District Forester,
Portland, Oreg.

DEAR SIR: Your letter of February 19 at hand and in reply would say that our people would not at all be interested in figuring on the Bear Valley unit in the Malheur Forest on account of the great initial expense of opening up that timber. We question very seriously whether you would be able to make a price on the timber that would warrant anyone making the investment necessary to start an operation there. It appears to us that it would be advisable for the Government to hold that timber until such time as means of transportation were available for taking it out.

Very truly yours,

S. ROSENBERRY, *Manager.*

FEBRUARY 19, 1923.

WINTON LUMBER CO.,
Gibbs, Idaho.

GENTLEMEN: As you are perhaps informed, no bids were received by the Forest Service for the unit of timber in Bear Valley in the Malheur Forest. You have shown some interest in this prospective sale but apparently some features of it were not attractive to you. I am writing to inquire whether you would be interested under any conditions and, if so, what modification of the terms of the contract would be necessary before you would consider submitting a bid. I should be glad to discuss this matter with you in person or by correspondence if there is a possibility of enlisting your interest.

Very truly yours,

FRED AMES,
Assistant District Forester.

Mr. MCGOWAN. You mentioned, Mr. Carter, something about the change in the date of advertisement. Will you explain that for the record, if you please?

Mr. CARTER. The readvertisement was started in the Portland Oregonian with the final date for the receipt of bids to be April 2. It was discovered after that first appearance that one of the statements in the original advertisement, in regard to the optional removal of species other than pine, had been omitted. It was, therefore, necessary to start afresh with a new advertisement in order to cover the

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full 30 days, and to correct the advertisement, and to advance the final date for the receipt of bids to April 4 in order to have the sect6nd advertisement run the full 30 days required by law. That was the reason for the change in date from April 2 to April 4.

Mr. MCGOWAN. What have you to say, Mr. Carter, with reference to whether or not the Fred Herrick Lumber Co., or Fred Herrick, or anybody connected with him could have had any advantage by reason of the redrafting of this clause 3 in connection with the selling
contract that he actually entered into with the Forest Service.

Mr. DE NEFFE. What is that question?

Mr. CARTER. I didn't understand it.

Mr. MCGOWAN. Strike the question. What have you to say with reference to whether or not Fred Herrick, or anybody connected with him, had any advantage over anybody else—any other lumberman, in connection with this clause 3 as it was finally incorporated in this contract?

Mr. CARTER. He had absolutely no advantage in any way, shape, or manner. If there was any advantage it lies with the Brooks-Scanlon Lumber Co., with whom the revision of that clause was worked out.

Mr. MCGOWAN. You may cross-examine.

(Cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. Mr. Carter, you prepared a number of reports here, didn't you, in this Herrick matter?

Mr. CARTER. From time to time.

Mr. DE NEFFE. That have been introduced in evidence here. For instance, one of February 20, 1925. Do you remember that?

Mr. CARTER. Yes, Sir.

Mr. DE NEFFE. And all the data and information contained in those reports and letters and wires was correct, wasn't it?

Mr. CARTER. Why, correct—absolute correctness is a thing that is very rare in any work.

Mr. DE NEFFE. Yes; I know. I am not holding to infallibility, but at the same time you gathered data and information, didn't you, always before you made any report or wrote any letter on the subject.

Mr. CARTER. When I wrote any letter or report, I tried to label guesses as such.

Mr. DE NEFFE. Yes. And then embodied in your reports and telegrams the facts as you found them?

Mr. CARTER. Yes, Sir.

Mr. DE NEFFE. Then in many of your reports or letters pertaining to this Herrick matter you sometimes made recommendations, did you?

Mr. CARTER. Certainly.

Mr. DE NEFFE. And the question of whether those recommendations should be adopted was entirely within the province of Colonel Greeley, your superior; isn't that right?

Mr. CARTER. Certainly.

Mr. DE NEFFE. And it was necessary that he make the final decision; is that right?

Mr. CARTER. Except where he had delegated authority —

Mr. DE NEFFE (interposing). Yes.

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Mr. CARTER. Had delegated authority to make decisions on such minor points sometimes as he did delegate such authority.

Mr. DE NEFFE. And Colonel Greeley had the final word in saying whether any modifications or extensions of the Herrick contract should be made, didn't he?

Mr. CARTER. He always gave decisions.

Mr. DE NEFFE. The final decisions?

Mr. CARTER. He always gave decisions.

Mr. DE NEFFE. And he was not bound to follow any recommendations that you made or that any other official or anyone connected with the service made, was he?

Mr. CARTER. No; he is the chief.

Mr. DE NEFFE. He was not bound to follow your recommendations?

Mr. CARTER. No.

Mr. DE NEFFE. He could follow it or not as he pleased; isn't that right?

Mr. CARTER. Why, certainly; as he saw the occasion demanded.

Mr. DE NEFFE. Yes.

Mr. CARTER. Whatever was best and right to do on the basis of the facts presented and known to him.

Mr. DE NEFFE. Now, referring to the Brooks memorandum dated March 1, 1925, which is in the form of a letter addressed by you as assistant forester to Dr. D. F. Brooks at Minneapolis, Minn. —

Mr. MCGOWAN (interposing). Might the witness have the advantage of looking at a copy of that while the examination is going on?

Mr. DE NEFFE. Yes. I find at the bottom appears this language (reading):

> The foregoing substantially expresses my understanding of the results of my conference with Messrs. Carter and Ames of the Forest Service.

And signed "D. F. Brooks, president Brooks-Scanlon Lumber Co." This memorandum embodied the understanding that was reached between you and Doctor Brooks at that time; is that right?

Mr. CARTER. That is what it was intended for.

Mr. DE NEFFE. And then you came—let's see. That was signed in Minneapolis or in Washington?

Mr. CARTER. In Minneapolis.

Mr. DE NEFFE. And it embodied the understanding that you had reached there; is that what you say?

Mr. CARTER. I think I have answered that twice in the affirmative.

Mr. DE NEFFE. And then it was readvertised soon after that?

Mr. CARTER. Readvertised, and the advertising started as promptly thereafter as possible.

Mr. DE NEFFE. In order to come within the time limits that he had fixed there. He had spoken something about it —

Mr. CARTER (interposing). Doctor Brooks was anxious, for reasons known to himself, that the bids be opened as near April 1 as possible. In fact he stated that he would have to withdraw any bid if the period of advertising went beyond April 5.

Mr. DE NEFFE. And that understanding that you arrived at with Doctor Brooks there eliminated the provision which was in the contract appearing in the In prospectus requiring a compulsory cut of a certain amount over every three-year period: isn't that right?

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Mr. CARTER. The contract was changed—this agreement was reached, for a change in section 3, specifying maximum cuts as they are given in the final—in the agreement that was afterwards signed with the Fred Herrick Lumber Co., or with Fred Herrick after Mr. Herrick had proved to be the successful bidder.

Mr. DE NEFFE. You are familiar with paragraph 3 in the form of contract, and the prospectus; aren't you ?

Mr. CARTER. I am.

Mr. DE NEFFE. And it provided that not later than April 1, 1928, minimum of 60,000,000 feet must be cut. Do you remember that?

Mr. CARTER. Yes, sir.

Mr. DE NEFFE. And not, later than April 1, 1931, at least a minimum of 120,000,000 feet should be cut, and that every three-year period thereafter there must be cut a minimum of 100,000,000 feet; do you remember that?

Mr. CARTER. Yes, Sir.

Mr. DE NEFFE. Now, in the Doctor Brooks memorandum that provision was omitted, wasn't it?

Mr. CARTER. Section 3 was changed to specify a certain minimum and maximum of cuts as given in the final contract. There was a change there.

Mr. DE NEFFE. So the way it was changed there would not be that continuous operation during every three-year period, is not that right ?

Mr. CARTER. There is no requirement, for a cut by by {*sic*} three-year periods, if that is what you are trying to make me say.

Mr. DE NEFFE. No, I did not mean any arbitrary, but the people in Harney and Grant Counties were wanting continuous operations there, so that the pay roll would be steady.

Mr. CARTER. We always looked forward to a reasonably steady operation.

Mr. DE NEFFE. Was not that the reason why they wanted this timber put on the market, so they would have a stabilized industry there every year, an operating industry?

Mr. CARTER. Oh, I think, Mr. De Neffe, it goes much broader than that. The people of that region, as I talked with them in 1922, were primarily interested in getting railroad communication into that country, and in getting a lumber industry established. They were attracted by the idea, which was explained to them by the representatives of the Forest Service, that that timber would be put on the market in such a way as to give a permanent industry there.

Mr. DE NEFFE. That is, they wanted a permanent industry?

Mr. CARTER. So far as I can remember there was no discussion at that time as to whether the saws would screech every day of every year or whether they would not.

Mr. DE NEFFE. Whether they screeched one year and shut down for six years, or otherwise, you never heard that discussed?

Mr. CARTER. So far as I can remember that was not discussed.

Mr. DE NEFFE. Would you say that that is not what the people down there understood? That is, that they would have a continuous operation from year to year?

Mr. CARTER. That, was the natural expectation, of course.

Mr. DE NEFFE. Yes: naturally.

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Mr. CARTER. Whenever any lumber company goes in and invests $3,000,000 or more, or any very large investment, the expectation is that they are going to operate whenever the economic conditions will permit them to do so without heading straight for bankruptcy.

Mr. DE NEFFE. Under this paragraph 3 of the Herrick contract there would not be any continuous operation if Mr. Herrick chose to shut down when the market was bad, would there?

Mr. CARTER. Just a second. I think you are omitting some of the essential facts.

Mr. DE NEFFE. Very well; will you call them to my attention?

Mr. CARTER. If Mr. Herrick had operated at the maximum rate, or at any considerable quantity larger than the minimum rate specified in that contract, it might be possible, it would be theoretically possible for him to shut down for a time or for some period—that has been brought out in the prior testimony—that might run into several years, but —

Mr. DE NEFFE (interposing). Well, but —

Mr. CARTER (continuing). If you will kindly let me finish?

Mr. DE NEFFE. Certainly. Go ahead. It is pretty hard for me to tell when you have finished.

Mr. CARTER. It would be theoretically possible for him to shut down under those circumstances, yes; or if market conditions got so bad that he would have to shut down, why, he could do so. But, as a matter of fact, I regard that as of no practical application for the reason that if conditions got so bad, and I mean economic conditions, that an investment of several millions of dollars would lie idle, in all probability the Forest Service would recognize that even if the clause had been worded the other way and not provided for such a shut down. My experience in the Forest Service has been to the effect that we should recognize the existence of such abnormal economic conditions as will force an operator into bankruptcy if he continues operations.

Mr. DE NEFFE. Are you now through?

Mr. CARTER. Yes.

Mr. DE NEFFE. Would not you think as a matter of good business practice if he had to cut a $10 log and get receipts merely on the basis of a $5 log that it might be good business for him to shut down for a while, for a year or two?

Mr. CARTER. Are you making a point of the two to one?

Mr. DE NEFFE. Well, I am taking Mr. Herrick's own statement that it does not pay to cut a $10 log when you can only get $5 for it.

Mr. CARTER. Well, there is a question of degree in there somewhere, and I do not know just exactly where it comes in, as has been previously stated by other witnesses as to the experience of the lumber industry, and that is that it sometimes pays to keep running even when you are losing some money in order to avoid the disorganization of your industry, in order not to lose contact with your purchasers; but, of course, there eventually comes a point where the loss from continued operation will be so great that it will outweigh those considerations, and make it really necessary for a man to shut down for a while and wait for better times.

Mr. DE NEFFE. And is not that what a man would naturally do under those circumstances?

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Mr. CARTER. Why, I think it is perfectly right that he should.

Mr. DE NEFFE. From the standpoint of the operator.

Mr. CARTER. From the standpoint of general economics. What is the use of forcing anybody into bankruptcy. That does not bring back a pay roll.

Mr. DE NEFFE. Well, you are assuming that he is going into bankruptcy. That is an assumption that is not based on any evidence here. But do you not think that the communities have a right to be considered ?

Mr. CARTER. Yes; the communities have a right to be considered.

Mr. DE NEFFE. Is the Forest Service solicitous merely for the operator ?

Mr. CARTER. No; I think our history in this case demonstrates that we are solicitous for the community. Colonel Greeley stated that very clearly the other day. There are three parties in interest.

Mr. DE NEFFE. If he should shut down for three or four years, of course a lot of people who have bought homes there and were buying homes on contract, or had homes, if they had no way of earning a living, would have to move away.

Mr. CARTER. Yes; and they would have to move away in case of any other disaster which might necessitate a shutdown. You are considering the probability of a shutdown which I believe could only occur in the case of some great economic disaster, and the same thing would be true, for example, in case of some terrific flood that would take out all of the improvements through there, interrupt railroad connections; or suppose there were a terrific earthquake that plugged up the valley of the Malheur River and blocked railroad connection in there.

Mr. DE NEFFE. Are you through ?

Mr. CARTER. Yes.

Mr. DE NEFFE. Are you sure that there has never been any large milling operation that shut down except on account of earthquakes and floods and things of that kind?

Mr. CARTER. Oh, no. Large milling operations have shut down repeatedly because they have run out of timber, and sometimes they have suspended temporarily, for short periods, because of overproduction, or because of severe depressions in the market. But there has not been any permanent shutdown or long-time shutdown that has involved tremendous investments long idle, for long periods, from any mere whim, if that is what you are thinking about.

Mr. DE NEFFE. The lumber market has had an overproduction.

Mr. CARTER. Yes, Sir.

Mr. DE NEFFE. It has been so testified.

Mr. CARTER. And during these periods of depressed market conditions usually the smaller and weaker concerns, those which have relatively small amounts of capital rather than large amounts of capital invested, are most apt to shut down. They can shut down without having the large interest on investment and taxes running on into large figures; without having the same degree of loss from disruption of their productive organization, their personnel, I will say, if I may be permitted to substitute that word; without having the same interruption in their relations with their own customers, customers for their products.

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Mr. DE NEFFE. This Herrick contract allows a very large maximum cut, does it not?

Mr. CARTER. It allows a maximum cut of 150,000,000 feet at a tinge every three years.

Mr. DE NEFFE. There is between June 1, 1928, and June 1, 1931, 300,000,000 feet?

Mr. CARTER. That is the total.

Mr. DE NEFFE. Yes; that is the maximum amount.

Mr. CARTER. It is cumulative.

Mr. DE NEFFE. Would not it be possible for Mr. Herrick to cut the maximum while the market is good and

have a big stock in his yard; and if the market dropped, he could keep in contact with his customers by disposing of the big stocks on hand?

Mr. CARTER. Well, my contact with the lumber industry leads me to believe that a man is apt to sell his lumber when he can get a good price for it, rather than to hold it until the price drops.

Mr. DE NEFFE. But he does not know when it will drop; and if he has cut the maximum, he has a large stock on hand.

Mr. CARTER. Mr. De Neffe, I am trying to get your picture of the situation. Is it that a lumber company will cut as fast as they can during a period of good times, and then just deliberately hold a large part of that cut for several years for the purpose of shutting down and working off that large yard stock that they have accumulated? I am afraid I do not get your picture.

Mr. DE NEFFE. I do not say that they would have it all in their yard, but they always have some in their yard. No lumber yard is always kept cleaned up. They cut it and load it and sell it.

Mr. CARTER. That is their business. They wish as quick a turnover on their investment as they can get.

Mr. DE NEFFE. In connection with the other statement that you made, that he probably would keep on operating, Mr. Herrick has a good many other mills, has he not?

Mr. CARTER. Yes; he has some other mills, as he testified the other day.

Mr. DE NEFFE. And on this Bear Valley timber he does not pay any taxes or interest, does he?

Mr. CARTER. No. But he paid a price for it on that basis.

Mr. DE NEFFE. He has no money invested in the timber at the present time, has he?

Mr. CARTER. No.

Mr. DE NEFFE. There is no interest or taxes accumulating at all.

Mr. HALLOCK. You mean not in the Government timber.

Mr. CARTER. He has some other timber.

Mr. DE NEFFE. He has a small amount of other timber. Then, if there came a big depression, would it not be natural that if he was going to shut down any operation that he would shut down Bear Valley, where there are no taxes, while his other timber is subject to taxation and where he would have a large slim of money invested in the timber itself?

Mr. CARTER. Not necessarily from that cause alone, but that aright be the case.

Mr. DE NEFFE. Would not any good business man do it?

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Mr. CARTER. No; not necessarily. He might have other operations where he was incurring what would be a lesser opportunity even for coming out with a profit. It might work out that way and might not. Incidentally, I might say that Mr. Herrick has some other operations involving national-forest timber.

Mr. DE NEFFE. I think that is all I wish to ask.

Mr. HALLOCK. I have one or two questions on cross-examination; or, Mr. McGowan, do you prefer to finish?

Mr. MCGOWAN. I should like to connect this up.

(Redirect examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. Just to get the policy proposition straightened out in the record, let me ask, Mr. Carter, this

question: The Forest Service has to look after the interests of the Government, the interests of the local folks, and the interests of the operator. Can the Forest Service ever lay down as an administrative policy, to be incorporated in its contracts, the basic proposition that the operator will be required to run for the benefit of the local community, irrespective of the loss he would have to sustain by reason of that situation?

Mr. CARTER. I should say not.

Mr. MCGOWAN. In other words, the local community has got to take its good years and lean years along with the other people, is that the substance of it?

Mr. CARTER. The local community has to run the risk that any industry within its borders will find it impossible to continue in the face of extremely bad economic conditions.

Mr. MCGOWAN. As to the basic proposition underlying this Bear Valley sale to Herrick: Is it one that contemplates a continuous cutting out of the timber, or is it one that contemplates a sustained yield and a continuous operation for all time?

Mr. CARTER. It is one that contemplates a permanent operation.

Mr. MCGOWAN. As distinguished from what?

Mr. CARTER. As distinguished from timber mining, a cutting out of the timber as fast as possible and then leaving a sawdust pile and an abandoned town behind it.

Mr. MCGOWAN. Mr. Carter, did you have a memorandum in connection with some of your analyses of this clause 3, that you had prepared?

Mr. CARTER. Yes.

Mr. MCGOWAN. I should like to offer that in connection with your testimony, if Mr. De Neffe has no objection. I think it covers substantially what you have said already.

Mr. DE NEFFE. It looks like a big brief.

Mr. CARTER. You better use this one that I have.

The CHAIRMAN. Mr. Carter has testified to the most of this, I take it.

Mr. MCGOWAN. It is an analysis of this clause that has been under so much discussion. I did not want to take up the time of the subcommittee in going into all of it, and therefore should like to offer this for the record in connection with Mr. Carter's testimony, which is along the line that Mr. Biggs put in a memorandum.

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Mr. DE NEFFE. I have not read it, and I am not going to admit that what he offers is in the line of his testimony. It may be a good deal more for all I know.

Mr. MCGOWAN. Do you want to insist that I go into all this matter?

Mr. DE NEFFE. I am not trying your case. The reason I put this other matter in was because Colonel Greeley had admitted everything that Mr. Biggs had testified, which was the same as this document.

Mr. HALLOCK. Oh no, no.

Mr. MCGOWAN. Oh, no; Colonel Greeley's testimony is in and will speak for itself.

Mr. DE NEFFE. I read it on yesterday word for word, and it is all there.

Mr. MCGOWAN. I do not want to go into an examination in detail of all of these matters. If this may go in subject to your objection, then that will suit me.

Mr. DE NEFFE. I object to your putting in any brief by way of argument. I thought you had brought out all of the important things through your examination of the witness. Now you want to file a brief.

Mr. MCGOWAN. It is not a brief.

Mr. HALLOCK. It gets right to the proposition that I submitted the other day when I discussed the offer of Mr. Biggs. That I contended was not substantive evidence; that the record contained his testimony, but the analysis went in regardless.

The CHAIRMAN. That was a very brief analysis, and one that was to a degree enlightening. Now, there are two methods by which these hearings might have been conducted: (1) Where statements would be made by various witnesses and their briefs or analyses of what they had to say might be offered for the record; or (2) that attorneys might interrogate witnesses and their testimony go into the record. I am opposed to making this record any more voluminous than is necessary.

Mr. MCGOWAN. I withdraw the request. I only wanted to speed things along.

The CHAIRMAN. Of course if there are some particular parts of that brief that have not been brought out, if you will summarize them and not have a duplication, the committee will be glad to have them in the record.

Mr. MCGOWAN. Mr. Carter, with reference to paragraph 3, about 890,000,000 feet, and the readjustment of the cutting provisions there, what have you to say about that clause, briefly?

Mr. CARTER. That clause is simply to take up possible slack.

Mr. MCGOWAN. And does not in any way change the amount of timber that is on the area?

Mr. CARTER. It does not change the amount of timber to be cut on the area. The contract provides that the purchaser gets all the market timber on a certain acreage.

Mr. MCGOWAN. Where was the genesis of that, what originated it, what was behind that?

Mr. CARTER. Behind what?

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Mr. MCGOWAN. Providing that the District Forester might agree that a cut might be over 890,000,000 feet, where did it originate?

Mr. CARTER. In connection with a discussion with Doctor Brooks at Minneapolis.

Mr. MCGOWAN. Did you consider it of any importance at that time?

Mr. CARTER. I considered it of very little importance, because it simply carried out and put in writing as a part of the agreement, the policy which the Forest Service would be prepared to carry out in any event.

Mr. MCGOWAN. That is all.

Mr. DE NEFFE. I have no other questions.

(Cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Guard and Frank J. Klobucher:)

Mr. HALLOCK. Mr. Carter, I direct your attention to the fact that subdivision (d) of section 1 of the contract, as it appears in the prospectus, reads —

Mr. CARTER. Section 1, did you say?

Mr. HILLOCK. Subdivision (d) of the first section.

Mr. CARTER. Well, go ahead and read it.

Mr. HALLOCK. Reads as follows:

> It is further agreed that the Secretary of Agriculture will, upon written application from the purchaser showing good and sufficient reasons therefor, and specifically the existence of an emergency arising through change in market conditions since the last appraisal, at his option, when action of either character is necessary to relieve the purchaser from hardship, either —

And then there is another section in there, and then I come to this:

> Grant an extension of time within which the respective amounts of timber specified in section 3 shall be removed, not to exceed the total period allowed for cutting all the timber.

Now, let us suppose that the Herrick contract with respect to the cutting requirement was identical with clause 3 as appears in the prospectus bearing upon that feature, and the very market conditions which counsel has directed to your attention had presented themselves, is it not a fact that under the provision to which I have directed your attention it would be quite just and proper for the Secretary of Agriculture, or the Forester, to grant reasonable extensions with respect to the cutting, and is it not likely that such extensions would be granted?

Mr. CARTER. Yes.

Mr. HALLOCK. In that connection is there, then, any practical difference between the cutting provisions as they appear in the prospectus, and those as they were worked out in the modified clause, when you have in mind a period of depression, bad market conditions, and things of that sort?

Mr. CARTER. Well, Mr. Hallock, there is a distinction in that. Very frankly, I do not think anyone premeditated or thought of shutdowns in connection with the drafting of section 3 as it appears in the final contract with Mr. Herrick. On the other hand, the provision which you have just read is in all of our long-time contracts which involve reappraisals and is intended to meet specifically, or give opportunity for meeting, extremely bad economic conditions which may arise.

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Mr. HALLOCK. The very contingencies that counsel has indicated in his questions, is that it?

Mr. CARTER. Well, I have been somewhat puzzled to know what contingencies counsel was trying to conjure up.

Mr. HALLOCK. If he has any concern about a shutdown during depressed market conditions, it would seem that the prospectus itself would afford relief similar to that afforded by the modified clause, practically under his construction of it.

Mr. CARTER. Or at least the possibility thereof.

Mr. HALLOCK. Just a question or two and then I am through. I was interested in one statement you made when counsel was interrogating you regarding a certain matter that had appeared in your memorandum for the forester, dated February 20, 1925, from which he has quoted rather voluminously, and which appears in the proceedings of this hearing under date of February 17, 1927. I think you said something to the effect that where a man makes a mere guess it should not be treated otherwise than as a guess. Do you recall the statement I refer to?

Mr. CARTER. I think my statement was that I tried—I can not quote my exact language, but I tried to indicate or label guesses as such.

Mr. HALLOCK. I notice in this communication you say:

> On the basis of the little evidence available —

And it would seem from that that you had not made any effort to assemble any vast amount of evidence on that point —

> the best guess seems to be that Mr. Herrick is trying to finance the Malheur project out of the profits of his Idaho projects, which would mean a delay of five or more years before logging and milling were actually under way. * * *

As I understand it, you never attempted to label that idea otherwise than on the basis of a guess, is that correct?

Mr. CARTER. At that tune that was all it was.

Mr. HALLOCK. You did not intend, as I understand it, to treat it otherwise than as you have very frankly indicated it—a guess.

Mr. CARTER. That is what it was at that time.

Mr. HALLOCK. Now, Mr. Carter, just one more question: Would you have any hesitancy in saying that had you known at the time this report was prepared that Mr. Herrick would go ahead and spend the money he has spent, and had you known that he would bring the project to the extent of completion that it possesses to-day, and had you known of his plans for offering a bond issue and completing the structure during the present year if permitted to do so had all these things been known to you then, do you think you would have still concluded that Mr. Herrick was not acting in good faith in the matter of ultimately completing the structure?

Mr. CARTER. That involves a pretty —

Mr. DE NEFFE (interposing). That is calling upon the witness to prophesy. I do not know that his report was based on prophesy; I thought it was based on what he found to be the facts at the time.

Mr. HALLOCK. I will withdraw that question and put it in this way: Mr. Carter, knowing what you do of the situation to-day, with respect to the extent of Mr. Herrick's investment there, and the development to date, and his plans for financing, and so forth, do

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you hesitate in saying that you now believe he is acting in good faith on his desire to complete that structure ?

Mr. CARTER. Why, apparently he is anxious to go ahead in good faith and carry out the contract upon the basis of present indications.

Mr. HALLOCK. And, as I understand it —

Mr. CARTER (continuing). He has spent considerable money since February, 1925, down there.

Mr. HALLOCK. I appreciate that. I was just wondering if we could get the benefit of your views, whether you do think at this time that Mr. Herrick is acting in good faith.

Mr. CARTER. Apparently he is anxious to go ahead in good faith.

Mr. HALLOCK. That is all.

(Recross-examination, by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.)

Mr. DE NEFFE. When Colonel Greeley sent you out to get the facts, he did not want you to come back and give him guesses, did he?

Mr. CARTER. I should like to make a rather indirect reply to that question, if I may.

Mr. DE NEFFE. In any way you want.

Mr. CARTER. At the time this memorandum was written it was a report to the Forester, and I certainly never expected that it would become public. I had a certain recommendation to make, namely, that for the first time in the history of the Forest Service an extension of time be granted contingent upon acceptance by the purchaser of certain specific construction requirements. For that purpose I wished to set forth to the Forester as concisely as possible the unusual conditions which in my judgment made it necessary to place as stipulations and as a part of the contract the performance of those specific construction requirements.

I therefore wrote this memorandum in the form in which it is placed here, and of course it was written for the perusal of the Forester, knowing how his mind works—I worked with Colonel Greeley for a great many years—and knowing the things that I thought would interest him.

You asked me if the Forester wanted guesses. He wants guesses, yes, on the basis of whatever information is

available. Guesses in the form of conclusions as to intent, in exactly the same way that any man handling the administration of an organization at times has to guess, if you will, what the intent of those with whom he is doing business really is.

Mr. DE NEFFE. Well, in your report on page 4, under the heading, "General," you make a statement there: " There is not now and has not been any cause for serious delays due to right of way matters." That is a statement of a positive fact. There isn't any guess about that, is there?

Mr. CARTER. No. There is no guess about that. It is perhaps possibly expressed a little bit too strongly. There unquestionably had been delays here and there due to difficulties in getting right of way, but in general I think it is correct. Certainly the development could have gone a great deal farther than it had at the time this report was written, and could have done so in spite of some difficulties in connection with the acquisition of rights of way.

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Mr. DE NEFFE. And when you say "The failure last summer was due to Mr. Herrick's refusal or inability to put up the cash," that was not a guess?

Mr. CARTER. No.

Mr. DE NEFFE. That was a positive statement, was it not?

Mr. CARTER. That is right; yes.

Mr. DE NEFFE. There are a good many positive statements in there, are there not?

Mr. CARTER. Yes; and I think they are correct. I would like to make one statement right in that connection, however, since you wish to go into this memorandum in particular.

Mr. DE NEFFE. I did not go into it. Your counsel went into it.

Mr. CARTER. In the paragraph on page 3 of that memorandum —

Mr. MCGOWAN. Just identify that memorandum as to date, will you, please?

Mr. CARTER. My memorandum of February 20, 1925, to the forester. Under the heading "Financial ability and customs of Mr. Herrick," it would have been far better had I made a separate paragraph beginning with "Checks to employees have been protested for lack of funds in the bank." That statement did not refer to any checks drawn by the Fred Herrick Lumber Co. or the Malheur Railroad. It did refer to checks drawn by Mr. Herrick himself.

Mr. DE NEFFE. Personally?

Mr. CARTER. Yes.

Mr. DE NEFFE. Well, go ahead.

Mr. CARTER. That is all; go ahead.

Mr. DE NEFFE. Well, the only way that the Malheur Railroad Co. or the lumber company had of getting money was from Fred Herrick, wasn't it?

Mr. CARTER. Well, they were incorporated.

Mr. DE NEFFE. But he was behind both of those companies, was he not, in furnishing the money for them?

Mr. CARTER. Yes.

Mr. DE NEFFE. And he did it quite a while before they were incorporated?

Mr. CARTER. The record shows.

Mr. DE NEFFE. Yes; that is what the record shows. I have only just one more question. You say this was the first time in the history of the service where it was necessary to consider granting an extension on the basis of a contractor fulfilling certain requirements?

Mr. CARTER. Specific structural requirements which were embodied in that first modification.

Mr. DE NEFFE. You had more difficulty with this contract of Mr. Herrick's than any others, isn't that a fact?

Mr. CARTER. Why, that is a very difficult question, and always dangerous to use the superlative. I can put it this way, that there had been no other case with which I am familiar where the situation was the same as in this case.

Mr. DE NEFFE. That is all.

(Redirect examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Mr. Carter, there has been a suggestion in this record of some collusion. Now, following your report that you have

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just referred to, what was your specific recommendation with reference to the Herrick contract?

Mr. DE NEFFE. Well, the report speaks for itself.

Mr. CARTER. That an extension be given.

Mr. MCGOWAN. That an extension be given, and that construction requirements be imposed?

Mr. CARTER. Yes.

Mr. MCGOWAN. Did Colonel Greeley hesitate for a moment to accept your recommendation in that respect?

Mr. CARTER. He did not. He approved the report.

Mr. MCGOWAN. Did Colonel Greeley hesitate later, when the situation arose, to require the imposition in the form of liquidated damages of $50,000 against Mr. Herrick?

Mr. CARTER. He did not.

Mr. DE NEFFE. It was about a year before that liquidated damages was exacted though, was it not, after it was due?

Mr. HALLOCK. No.

Mr. DE NEFFE. Was it not, Mr. Carter?

Mr. CARTER. I thought you made a statement there, Mr. De Neffe.

Mr. DE NEFFE. Well, I was just asking you. It was not?

Mr. CARTER. Well, the form of your question was a statement, Mr. De Neffe.

Mr. DE NEFFE. Well, I was asking you if it was not a fact. Now, if I was wrong, I want to be corrected.

Mr. MCGOWAN. Well, that is not the best evidence. The record speaks for itself.

Mr. DE NEFFE. Well, we will leave it go on the record then. That is all.

The CHAIRMAN. You will be excused, Mr. Carter.

(Witness excused.)

(The following letter and memoranda were presented by Mr. De Neffe for the record, and are here printed in full, as follows:)

MARCH 7, 1923.

Sales, Malheur, Bear Valley Unit.
FOREST SUPERVISOR,
John Day, Oreg.

DEAR MR. REID: I inclose a copy of a memorandum embodying the understanding reached at a recent conference with the Brooks-Scanlon Lumber Co. officials in Minneapolis. You will note that the only changes in the contract are price, and the stipulation as to the maximum rate of cutting. The advertisement now running places the final date for the receipt of bids as April 4.

Very sincerely yours,

FRED AMES,
Assistant District Forester.

MARCH 1, 1923.

DR. D. F. BROOKS,
Minneapolis, Minn.

DEAR SIR: Reference is made to your letter of February 17 to W. B. Greeley, Forester, and to your conference with Mr. Ames and myself, in regard to the readvertisement of the timber in the Malheur National Forest.

Our discussions, as I understand it, led to your agreement that your company would submit a bid, if the timber were readvertised, under the following conditions:

1. The minimum price for western yellow pine which will be considered to be $2 per thousand feet, log scale, and for other species, to be taken at the option of the purchaser, $0.50 per thousand feet, log scale.

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2. The maximum rate of cutting the Government timber, to be described in the contract, is not to exceed 150,000,000 feet, log scale in the first 3 years of operation (by April 1, 1928); not to exceed 300,000,000 feet, log scale, at the end of 6 years of operation; not to exceed 450,000,000 feet, log scale, at the end of 9 years of operation; not to exceed 600,000,000 feet, log scale, at the end of 12 years of operation; and not to exceed 750,000,000 feet, log scale, at the end of 15 years of operation.

There is to be, however, specific provision in the contract to the effect that whenever the district forester is satisfied that the total amount which shall be cut from the sale area will exceed the 890,000,000 board feet which the Forest Service now estimates this stand will cut, the district forester shall make such increase in the amounts which may be cut by each of the dates specified above as will enable the purchaser to complete the cutting of the Government timber in 18 years of operation or if the dates remain as specified in the sample contract previously issued, by April 1, 1943.

I told you that I believed the advertisement could be started so that this 30-day period of advertising, required as a minimum by law, would end on April 2, the bids to be opened on the morning April 3, 1923. Your agreement to bid is to be considered void if the final date for receipt of bids is later than April 5. No extension of the advertising period will be made.

It was my understanding that you were willing to have the $25,000 check which accompanied your letter of February 17 considered as the deposit to accompany bid, which is called for in all advertisements of national forest timber. This can be arranged readily by the Forest Service, although the advertisement will specify that the deposit must be made with our Portland office.

Yours very truly,

Assistant Forester.

The foregoing substantially expresses my understanding of the results of my conferences with Messrs. Carter and Ames, of the Forest Service.

President Brooks-Scanlon Lumber Co.

Changed second paragraph of section 3, Bear Valley unit sample contract:

"Unless such amounts are changed in writing by the district forester, at least 60,000,000 feet, board

measure, and not more than 150,000,000 feet, board measure, shall be cut prior to April 1, 1928; at least 120,000,000 feet, board measure, and not more than 300,000,000 feet, board measure, shall be cut prior to April 1, 1931; at least 220,000,000 feet, board measure, and not more than 450 000,000 feet, board measure, shall be cut prior to April 1, 1934; at least 320,000,000 feet, board measure, and not more than 600,000,000 feet, board measure, shall be cut prior to April 1, 1937; at least 420,000,000 feet, board measure, and not more than 750,000,000 feet, board measure, shall be cut prior to April 1, 1940; and at least 520,000,000 feet, board measure, shall be cut prior to April 1 1943;

"*Provided*, That, whenever the district forester is satisfied that the cut from this sale area will exceed 890,000,000 feet, board measure, log scale, he shall increase the maximum amounts which may be cut prior to each of the above-named dates which have not previously passed, by such amounts as will permit the purchaser to cut thereafter an average annual amount sufficient to complete the cutting of the remaining timber covered by this sale, as the remaining cut may be estimated at that time, by April 1, 1943."

The CHAIRMAN. We will recess until 10 o'clock Thursday morning.

(Thereupon, at 4.40 p. m., a recess was taken until 10 o'clock a. m., Thursday, February 24, 1927.)

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HERRICK TIMBER CONTRACT, MALHEUR NATIONAL FOREST, OREG.

THURSDAY, FEBRUARY 24, 1927

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE
ON PUBLIC LANDS AND SURVEYS,
Washington, D. C.

The subcommittee met at 10 o'clock a. m., pursuant to the recess on Tuesday, February 22, 1927, in the committee room, Capitol, Senator Robert N. Stanfield presiding.

Present: Senator Stanfield (chairman).

Present also: Colonel Greeley, Chief of the Forest Service, and D. F. McGowan, attorney representing United States Forest Service; Blaine Hallock, attorney representing Fred Herrick, James W. Girard and Frank J. Klobucher; Frederick M. De Neffe, attorney representing Grant County, Oreg.

The CHAIRMAN. Are you ready to proceed, Mr. McGowan? I note at Mr. Hallock has not arrived.

Mr. MCGOWAN. Yes; I am ready, Senator.

The CHAIRMAN. Very well. The committee will come to order, and you may call your witness.

Mr. MCGOWAN. Mr. Hoffman.

TESTIMONY OF B. E. HOFFMAN, PORTLAND, OREG., LOGGING ENGINEER, DISTRICT 6, UNITED STATES FOREST SERVICE

(The witness was duly sworn by the chairman.)

(Direct examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. State your name, age, post-office address, and occupation.

Mr. HOFFMAN. B. E. Hoffman, I am 38 years old. Address, Portland, Oreg. Logging engineer, District 6,

Forest Service.

Mr. MCGOWAN. Mr. Hoffman, who made the appraisal of the timber covered by the Herrick sale?

Mr. HOFFMAN. The appraisal was made by Mr. Girard and myself, assisted by Mr. George L. Drake, a lumberman in that district of the Forest Service.

Mr. MCGOWAN. Mr. Girard was a logging engineer of District 1at that time?

Mr. HOFFMAN. Yes.

Mr. MCGOWAN. Working jointly with you in the making of the appraisal?

Mr. HOFFMAN. Working jointly with me, and with our responsibilities 50-50.

Mr. MCGOWAN. In other words, Mr. Girard did not have any more to do with that appraisal than you did, as far as the final responsibility for it was concerned?

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Mr. HOFFMAN. No. I was considered. I believe, equally responsible with Mr. Girard for the field work as well as the compilation of the report.

Mr. MCGOWAN. Have you been closely associated with the Herrick matter as a logging engineer since the contract was entered into—or since the appraisal was made? Let us put it that way.

Mr. HOFFMAN. I have.

Mr. MCGOWAN. Connected with the Forest Service in the district office at Portland?

Mr. HOFFMAN. Yes.

Mr. MCGOWAN. Have you at any time since this contract was entered into heard of any intimation of any nature whatsoever that the Forest Service intended to abandon or modify the common carrier clause?

Mr. HOFFMAN. I have not.

Mr. MCGOWAN. Cross-examine. You may ask him, Mr. De Neffe, any question that you may care to, irrespective of the questions that I have asked.

(Cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.:)

Mr. DE NEFFE. Mr. Hoffman, you checked up this Herrick matter after the different modifications were made?

Mr. HOFFMAN. Three check-ups. About. July 1, 1925, was the first check-up.

Mr. DE NEFFE. And on that basis of that check-up you wrote to Mr. Ames, district forester at Portland, did you not, on July 3, 1925?

Mr. HOFFMAN. I transmitted my report to the Portland office, and in addition wrote Mr. Ames at Spokane.

Mr. DE NEFFE. On July 3, 1925, you wrote to the district forester giving some kind of report, on the Herrick work? Isn't that right?

Mr. HOFFMAN. Yes.

Mr. DE NEFFE. And then again on July 19, 1925, you wrote Mr. Ames at Spokane giving a fuller report, I believe?

Mr. HOFFMAN. I believe that was July 9.

Mr. DE NEFFE. You think that was July 9?

Mr. HOFFMAN. I would not be positive as to the exact date. It was very shortly after I had made my report, the first week of July.

Mr. DE NEFFE. In that letter and report you stated just what you had found after checking it up? Isn't that right?

Mr. HOFFMAN. Yes.

Mr. DE NEFFE. And what you expressed there was the situation as you found it?

Mr. HOFFMAN. As I found it: yes.

Mr. DE NEFFE. That is all.

Mr. MCGOWAN. Mr. Granger.

Mr. DE NEFFE. Mr. Chairman, I wanted to clear up the matter of Exhibit 9. Exhibit 9 was introduced on February 11, is not that right, Mr. McGowan?

Mr. MCGOWAN. Yes. It was offered on February 11.

Mr. DE NEFFE. Yes. So that when the reporters return it to the clerk of the committee, he will then insert it in the proper place in the hearing.

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Mr. MCGOWAN. Yes; that is right.

Mr. DE NEFFE. Following Exhibit 8.

Mr. HALLOCK. In that connection, the Barnes draft of the Oregon memorial—I assume you will give that to the reporter so that it can get in the record at the proper place?

Mr. DE NEFFE. Yes.

Mr. HALLOCK. Then we will not bother with that any further.

Mr. DE NEFFE. Yes. I was not able to find the letter from Colonel Greeley to Senator MCNARY, dated February —

Mr. MCGOWAN. Do you mean the one you offered?

Mr. DE NEFFE. I offered two, but I could not find one of them in the record. The one I could not find was dated February 27, 1925. I will make another search, and if I can not find it I would like to have permission to have that written into the record.

The CHAIRMAN. I believe there is no objection.

Mr. DE NEFFE. I think that is all.

'TESTIMONY OF C. M. GRANGER, DISTRICT FORESTER IN CHARGE, NORTH PACIFIC DISTRICT N0. 6, UNITED STATES FOREST SERVICE, PORTLAND, OREG.

(The witness was duly sworn by the chairman.)

(Direct examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. State your name, age, post-office address, and occupation.

Mr. GRANGER. C. M. Granger; age 41; Portland, Oreg.; district forester in charge of the North Pacific District No. 6, United States Forest Service.

Mr. MCGOWAN. Mr. Granger, when did you become district forester at Portland?
Mr. GRANGER. January 1, 1925.

Mr. MCGOWAN. Since that time have you had charge of various matters in connection with the Fred Herrick timber-sale contract, in addition to your other duties as district forester?

Mr. GRANGER. I have.

Mr. MCGOWAN. Have you at any time considered the question of the common-carrier clause, section 38 of the contract, with the idea of possibly modifying that clause or eliminating it?

Mr. GRANGER. In no way whatever.

Mr. MCGOWAN. What would you say with reference to the statements made to the Oregon Legislature in connection with the passage of the Oregon memorial, in which it was stated that there was some danger of the Forest Service eliminating the common-carrier clause?

Mr. GRANGER. The statements which appeared in the press came as a complete surprise to me, and I was wholly unable to understand any possible ground for such a belief on the part of anyone that the common-carrier clause was in any danger whatever.

Mr. MCGOWAN. The Oregon memorial on that point states the following:

> Whereas it is further charged by said citizens that an attempt is being made by said Herrick to secure a modification of said contract eliminating the clause therein providing that said railroad shall be a common carrier.

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Was any attempt ever made by Herrick to you to have the said clause changed or eliminated?

Mr. GRANGER. No; it was never discussed with me by Mr. Herrick or by any of his representatives at any time.

Mr. MCGOWAN. What would you say, then, as to the truth or falsity of the representations made by these "said citizens" to the Oregon Legislature in connection with this provision of the memorial on this common-carrier clause?

Mr. GRANGER. Of course, I can not pass on the intent of those making that claim, not being familiar with the basis for their belief, except that it has appeared in the testimony here. As to the fact, there is no question whatever that the Forest Service, so far as my jurisdiction extends, has never considered for a moment the elimination of the common-carrier clause or its modification.

Mr. MCGOWAN. Mr. Granger, state whether or not on or about April 22, 1926, you received in your office for consultation a delegation from Burns, Oreg., in connection with this Herrick matter.

Mr. GRANGER. That was on April 21, 1926, that a delegation from Burns and three men from Canyon City and John Day came into my office to discuss, particularly, the matter of some proposed extensions of the Herrick contract, which they understood he was asking for at that time.

Mr. MCGOWAN. Was there a gentleman by the name of James J. Donegan with one of the delegations?

Mr. GRANGER. I do not recall the initials, but a Mr. Donegan was present. I think those are his initials.

Mr. MCGOWAN. Was Mr. Biggs, the gentleman sitting here, who has appeared as a witness in the case, with Mr. Donegan?

Mr. GRANGER. He attended the meeting. Whether he came in as a part of Mr. Donegan's delegation or as the head of another delegation I am not absolutely sure. But he was present at the meeting.

Mr. MCGOWAN. I hand you a document signed James J. Donegan, and ask you if that document was presented to you at the time of this meeting to which we have just referred?

Mr. GRANGER. Yes; it was.

Mr. MCGOWAN. I would like to offer this for the record [handing document to Mr. De Neffe]. May I go ahead with the heading of it, Senator, while Mr. De Neffe is examining it?

The CHAIRMAN. Go ahead.

Mr. MCGOWAN (reading):

> In the spring of 1923 the Government entered into a contract with Fred Herrick for the sale of 890,000,000 feet of yellow-pine timber located in Bear Valley, 50 miles north of Burns. One of the conditions of the contract was that Mr. Herrick was to build a railroad from Crane to Burns, and a railroad from Burns to the timber within a period of two years after the date on which the contract was signed.
>
> In the fall of 1923 Mr. Herrick began construction of the railroad from Crane to Burns and soon discovered that it would be necessary for him to ask for an extension of time in which to complete his contract with the Government. Forester Greeley sent his assistant forester William Carter, to Burns to make an investigation of local conditions, and after conferring with Mr. Herrick's representatives and the people of Burns, Forester Greeley modified the contract with Mr. Herrick on condition that Mr. Herrick should spend at least $100,000 on grade construction between April 1 and July 1, 1925; that by October 1, 1925, railroad grade construction must have been completed on specified sections of the route, totaling 30 miles, and work on the sawmill foundations and log

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> pond excavations must have begun; that on December 31, 1925, additional specific sections of the railroad grade, totaling some 9 miles, must have been constructed and the foundations for the sawmill and the excavations of the log pond must have been completed, and by April 1, 1926, the railroad grade, including all cuts, fills, tunnels, bridges, trestles, etc., should be completed from Burns to Bear Valley. The statement of Forester Greeley ends by saying, "This will leave available the summer of 1926 for the laying of steel on the railroad, the construction of the sawmill building, and the installation of machinery. {Quote not closed.}
>
> Mr. Herrick has not met these conditions, but did do a very considerable amount of work during the year of 1925. Since January 1, 1926, work on this project has practically ceased, and the people of this section of the State feel that the time has come for a "show-down" and that Mr. Herrick should be compelled to finish his contract with the Government no later than December 31, 1926.
>
> In view of the fact that Mr. Herrick has expended over a million dollars on this timber development, the business men of the city of Burns would like to see Mr. Herrick fairly treated, but do insist that both the Government and the people have been patient with Mr. Herrick, and, as stated before, he should give ample evidence that he is both able and willing to complete the railroad and sawmill by the end of the present year.
>
> The people of Burns have confidence in both the ability and integrity of Colonel Greeley and the Forest Department, and we feel that our interests are in safe hands, but want to say again that the time has come when Mr. Herrick should either be compelled to move on with his work or move out and let some responsible lumbering company work out this important timber development.
>
> JAMES J. DONEGAN.

We offer that.

Mr. DE NEFFE. No objection.

Mr. MCGOWAN. Was Mr. Biggs present at that conference?

Mr. GRANGER. He was.

Mr. MCGOWAN. Did he subscribe to the sentiments expressed in this document that I have just read, or was there any objection to the position that was taken by Mr. Donegan by Mr. Biggs at the time he was there?

Mr. GRANGER. I can answer the question in this way. When these gentlemen—there were six of them in the so-called Burns delegation, three of them, I believe, living in Portland—came into the office, my recollection is that there were two different sets of credentials that they presented to me as evidencing their authority to speak for the community of Burns. I asked them if their views were divergent. They said that they were not, that they were there for the same purpose and represented the same interests in general. Then Mr. Donegan, as I recall it, read this statement which has been read here, and presented that as the view of his delegation. There was no dissent whatever from the position taken in this statement on the part of any of the gentlemen present in my office, and from what was said it was made clear to me that their views were practically identical on the subject.

In the elaboration of this statement in the discussion some of the gentlemen present said that they would not object, and they did not think the community would object, to reasonable extensions of time over the dates set out in the contract at the time, provided the work was prosecuted steadily by Mr. Herrick.

Mr. MCGOWAN. There was no intimation at that time of any lack of confidence in the integrity of the members of the Forest Service?

Mr. GRANGER. None whatever. On the contrary, as far as I was able to judge, there was material evidence of confidence.

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Mr. MCGOWAN. Now, Mr. Granger, what has been the object, in connection with these modifications of the Herrick contract, with reference to the desire on your part to expedite the work?

Mr. GRANGER. Our object at all times has been to secure as early completion of the railroad and the mill as was practicable under all circumstances. Our motives in that respect were controlled chiefly through a desire to keep faith with the communities that were interested in this development.

Mr. MCGOWAN. Now, the first modification of the contract that appears in Exhibit 9, which the Forest Service has offered here, sets up certain requirements in connection with the construction work to be done by Mr. Herrick. Was that in conformity with your desire to expedite the construction of the railroad?

Mr. GRANGER. It was, decidedly.

Mr. MCGOWAN. Is that a usual provision in Forest Service contracts?

Mr. GRANGER. I know of no other Forest Service timber sale contract in which such a procedure has been adopted or followed.

Mr. MCGOWAN. No, in the second modification, which also appears in Exhibit 9 and in which the $50,000 liquidated damage clause was set out—what have you to say with reference to that modification and the basic underlying desire of the Forest Service as a reason for the inclusion of that $50,000 liquidated damage stipulation?

Mr. GRANGER. That provision of the $50,000 liquidated damages was incorporated in there on my recommendation, for the purpose of giving greater strength to the effort of the Forest Service to insure early completion of the improvements.

Mr. MCGOWAN. What have you to say with reference to the requirements that were imposed upon Mr. Herrick in the third modification of the contract in furtherance of that same desire?

Mr. GRANGER. With reference to the requirement that he deposit certain sums of money to be expended on the railroad ?

Mr. MCGOWAN. Yes.

Mr. GRANGER. That was going into even greater refinement, as I see it, in the way of bringing to bear on him pressure, if you want to call it such, to expedite the work.

Mr. MCGOWAN. Directing your attention specifically to the third modification and the stipulations attached thereto, there appears the requirement imposed by the Forest Service upon Mr. Herrick that by August 7, 1926, he would be required to spend $ 70,000; and by September 1, 1926, he would be required to spend an additional

$70,000; and by October 1, 1926, still a third $70,000; and by November 1, 1926, a fourth $70,000, or an aggregate of $280,000 under that paragraph 1 of the third modification. Just briefly, what was the purpose of these money requirements with reference to the construction work? Why did you put them in there?

Mr. GRANGER. I think, Mr. McGowan, that does not require that he expend those sums, but that he make those sums available on the dates you have given there for expenditure by his Burns representative on the railroad construction.

Mr. MCGOWAN. For what purpose?

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Mr. GRANGER. The purpose was to give us adequate assurances that the necessary money would be forthcoming to complete the railroad in an orderly and economical manner, and promptly.

Mr. MCGOWAN. You may cross-examine.

(Cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.:)

Mr. DE NEFFE. Mr. Herrick did not deposit those sums, did he, as he agreed to?

Mr. GRANGER. Mr. Herrick deposited the required sums for August and September, as I recall it, and for October and November he deposited the required sums partly in the form of bank credits and partly in the form of checks which were to be cashed as needed. and some of those checks were tardy in collection.

Mr. DE NEFFE. So he did not comply with those requirements at all, did he? That is, he did to a certain extent, but not as was provided in the third modification?

Mr. GRANGER. He did not comply in full with those requirements, but our examination by a logging engineer disclosed the fact that what we may call his technical failure to comply in small measure with the requirements had no influence on the ability of the Burns representative to carry along the railroad work. In other words, the Burns representative of Mr. Herrick, so far as we could tell, had ample funds with which to carry on the work in an efficient manner.

Mr. DE NEFFE. Mr. Granger, were not all of these extensions and modifications granted to Mr. Herrick on the explicit and definite understanding that the requirements would be carried out to the letter? Was not that what was always impressed upon him?

Mr. GRANGER. That was certainly the understanding, written and implied that these requirements would have to be met.

It was always understood, however, that unforeseen conditions, things over which Mr. Herrick might have little or no control, might operate to prevent a 100 per cent compliance with any or all of tale requirements.

Mr. DE NEFFE. Well, what did you have in mind there? Would you have in mind a flood or some unforeseen thing like that?

Mr. GRANGER. We had in mind perhaps—not floods, because there is not as much danger of floods there as there is of some other interferences, unusual snow conditions or unusual rains which might make the ground very difficult to get over, and such difficulties as were encountered there in the summer of 1926 in connection with his steam shovel, and bad powder which he got hold of and which resulted in the death of four men and the injury of some of the machinery, which materially delayed progress.

Mr. DE NEFFE. His failure to comply with the requirements in the first instance that he spent $100,000 between April 1 and July 1, 1925, was not due to snows or weather conditions or anything of that kind, was it?

Mr. GRANGER. No. I might say this in that connection that he fell down, in our judgment, quite materially in not making available for expenditure the sums agreed upon in the first modification. However, it appeared from the examination of our logging engineer that even if the full $100,000 had been available it would have been

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difficult for his representatives to have expended efficiently more than, say, $80,000. Furthermore, the money which

was available was used to excellent advantage, and during the period from April 1 to July 1, 1925, there was completed. approximately 7 miles of grade, of which 1 mile was quite heavy construction.

Mr. DE NEFFE. Well, he only spent about $44,000 between April 1 and July 1, 1925?

Mr. GRANGER. Yes. Our records show that there was expended for the purposes enumerated in the modification slightly over $44,500.

Mr. DE NEFFE. Isn't it a fact, Mr. Granger, that Mr. Herrick's failure all along here to comply with these requirements in the original contract and in the modifications has been due to lack of sufficient funds?

Mr. GRANGER. No; that cannot be said. Some of the delay—I think in nearly every case of a default some of the default has been due to those circumstances which we have taken as partly or entirely beyond his control. But it has been very clear that a material part of the delay has been due to inadequate funds made available to his local representatives.

Mr. DE NEFFE. On July 24, 1925, you made a report to the Forester, didn't you?

Mr. GRANGER. You refer to a letter I wrote him following our conference with Mr. Herrick on the 23d?

Mr. DE NEFFE. Yes; at Spokane.

Mr. GRANGER. That is right.

Mr. DE NEFFE. In that you did not make any reference to his delay being caused by anything other than lack of finances, did you?

Mr. GRANGER. I do not recall exactly what was said in that letter on that point, but we presumably transmitted a report of the logging engineer with that letter, and that logging engineer's report covered the matter I have mentioned of the difficulty which would have been had in expending more than $80,000 efficiently on account of the late spring.

Mr. DE NEFFE. You say he couldn't have spent $80,000, don't you?

Mr. GRANGER. Oh, yes; I think there is no doubt about that, but to the extent that he did not expend that amount he certainly could not comply with the terms of the contract as modified.

Mr. DE NEFFE. So wouldn't you say that the chief difficulty with Mr. Herrick all along was that he was not. efficiently financed?

Mr. GRANGER. I would say that we have felt that Mr. Herrick's method of financing was not suited to the requirements of the contract.

Mr. DE NEFFE. And you knew about his methods of financing along in the spring of 1925, didn't you, before the first extension was granted ?

Mr. GRANGER. Broadly speaking, yes. We knew at that time that he was planning, or actually financing the work from returns from his other operations.

Mr. DE NEFFE. Yes. He had written to the Forester on September 30, 1924, that he was getting the money with his right hand out of his left-hand pocket. You remember that?

Mr. GRANGER. I do. I might say this, Mr. De Neffe, that at no time have I been in any doubt as to Mr. Herrick's financial ability

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carry on this work as agreed, nor to carry the project through to completion and to operate it. The trouble that we have encountered has been due chiefly to his desire to carry this along from current income rather than through a loan.

Mr. DE NEFFE. You thought that he would finally carry it through if he were allowed to do it in his own way

and during the period of time that he wanted to? Is that the way you people felt?

Mr. GRANGER. We did not contemplate giving him his own way, nor all the time that he wanted, but we felt that if he did pursue his own methods it would result in longer delay than we would be justified in granting. Therefore we adopted these measures which have been discussed here to expedite action on his part.

Mr. MCGOWAN. You say you adopted these measures. What do you mean by that?

Mr. GRANGER. The stipulations which were embodied in the modifications of the contract and the things which those stipulations required to be done.

Mr. DE NEFFE. Did I understand you to say, Mr. Granger, that you knew of no other timber sale contract where in the matter of modifications the procedure was followed that was followed here in the Herrick matter? Did I understand you correctly?

Mr. GRANGER. I know of no other timber sale contract in which definite construction requirements, or a provision for forfeiture to cover liquidated damages, or the set-up of definite sums to be expended by a representative of the purchaser have been required, or anything approaching it.

Mr. DE NEFFE. You do not know of any other sale where there has been so much difficulty and delay and failure on the part of the contractor to live up to his stipulations either, do you, Mr. Granger ?

Mr. GRANGER. We have a number of large sales in my district in which expenses {extensions?} have been granted covering the date by which operations were to have been started. That is, the length of time allowed for the installation of improvements has been extended very materially in a number of cases.

Mr. DE NEFFE. Yes; but there were not three modifications like here, were there?

Mr. GRANGER. I can not say whether or not more than one extension in any case was granted. There may or max not have been: I do not know.

Mr. DE NEFFE. After the first extension they complied, did they, with the contract as modified?

Mr. GRANGER. I can not answer that question.

Mr. DE NEFFE. At this meeting when Mr. Donegan presented this statement Mr. Donegan did not assume to speak for Mr. Biggs, did he?

Mr. GRANGER. My recollection is that Mr. Donegan spoke for the part of the delegation which he represented, but as I have said, it was made quite clear to me that the sentiment expressed by Mr. Donegan and this presentation which has been read here represented the sentiment of all present. In fact, when Mr. Donegan got through reading that I looked it over, and I said., "Well, there is not any-

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thing which you have written down here to which I would not be willing to sign my own name, because my views are just the same as yours." And that seemed to be greeted with general satisfaction on the part of everyone present.

Mr. DE NEFFE. In regard to the common-carrier clause, do you remember that the press reported Colonel Greeley as calling this road north of Burns a logging road?

Mr. GRANGER. I can not recall having read that in the press myself, but I was told that the press did so quote him by using a copy of a letter which he wrote to Senator MCNARY, I believe.

Mr. DE NEFFE. And in the second and third modifications, you remember, this road is again referred to as a logging road and the word "passengers" is eliminated?

Mr. GRANGER. I think that is right. That has been brought out here in the testimony.

Mr. DE NEFFE. And then it contains a provision that would enable Mr. Herrick to keep the road under construction for a long period of time so that it would not be a common carrier during that period? Do you

remember that provision?

Mr. GRANGER. No; I know of no such provision as that. You will recall, Mr. De Neffe, that the original contract, before it was modified, contained no requirement as to when the road would be completed. The modifications have not operated to give him greater leeway in that respect but rather to require the completion of the railroad by a specified date.

Mr. DE NEFFE. Wouldn't you construe the contract to mean that he had to have it completed by April 1, 1925?

Mr. GRANGER. Not as to the terms of the contract specifically. But naturally we expected that he would have the railroad completed at or before the time he began cutting the timber.

Mr. DE NEFFE. That would be the reasonable construction?

Mr. GRANGER. Oh, naturally.

Mr. DE NEFFE. He was to build a mill, to mill the timber, and in order to get the timber to the mill he would have to a railroad?

Mr. GRANGER. Naturally; yes.

Mr. DE NEFFE. And that would naturally be the reasonable construction, and I think the records show that Colonel Greeley stated so a number of times.

Mr. GRANGER. Oh, Yes; I can not gainsay that.

Mr. DE NEFFE. That never was disputed by you people at all?

Mr. GRANGER. Not at all.

Mr. DE NEFFE. In your report: to the Forester on July 24, 1925—that report was based on information and data which you had gathered before you wrote it? Right?

Mr. GRANGER. That letter was based on two conferences with Mr. Herrick and the report by our logging engineer and very likely on recommendations made to us by Forest Supervisor Dutton.

Mr. MCGOWAN. For the sake of the record, may we identify that letter as to where it appears? That is a part of Exhibit 9, isn't it?

Mr. DE NEFFE. Yes; that begins on page 3 of Exhibit 9.

Mr. MCGOWAN. And the date of the letter?

Mr. E NEFFE. July 24, 1925. Everything that you embodied in this letter stated facts, did it?

Mr. GRANGER. To the best of my knowledge.

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Mr. MCGOWAN. We object to the form of the question. If he wants to inquire about facts in the letter very well and good, but the form of the question is improper, I submit.

Mr. DE NEFFE. Then I will withdraw it and ask it this way. This is a true and correct report, is it—this letter that we have been referring to?

Mr. GRANGER. I believed it was at the time I wrote it and I have had no reason to change my opinion as to the facts since then.

Mr. DE NEFFE. That is all.

(Redirect examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. Has this Herrick timber sale contract, as these Forest Service timber contracts go, been a simple one to handle from an administrative standpoint, or otherwise?

Mr. GRANGER. Well, it has been the most difficult contract to handle of any that I have ever had anything to do with.

Mr. MCGOWAN. In the handling of this matter what three major propositions has it been necessary for you and the Forest Service to keep mind?

Mr. GRANGER. Every time we have been called upon to consider a modification of the contract or the enforcement of any of the provisions respecting the construction of the railroad and mill we have given consideration to the interests of the Government, what would best serve those interests, to the interests of the communities that are particularly interested in this development, and to what would be fair and equitable toward Mr. Herrick.

Mr. MCGOWAN. In other words, notwithstanding the fact that Mr. Herrick was in some respects in default you felt that he had equities there that had to be regarded? Is that the situation, as I understand it?

Mr. GRANGER. Yes: We felt at all times that Mr. Herrick had certain very definite equities which could not be lightly dismissed. And as Colonel Greeley stated in his testimony we felt that in arriving at any decision or taking any action we ought to determine as accurately as possible what action would best promote the combination of the three interests, and particularly would insure the most rapid completion of these improvements for the benefit of the interested communities.

Mr. MCGOWAN. Do you know of your own personal knowledge what became of the $50,000 liquidated damages?

Mr. GRANGER. I can not say that I followed that $50,000 check into the Treasury, no; but I know from records kept and furnished by the officers in my organization that the $50,000 went to the Treasury.

Mr. DE NEFFE. That is all.

(Cross-examination by Mr. Blaine Hallock. attorney representing Fred Herrick, James W. Guard, and Frank J. Klobucher:)

Mr. HALLOCK. Mr. Granger, you were discussing the requirement that was imposed on Mr. Herrick which involved an expenditure by him of $100,000 in the spring of 1925. Do you recall whether or not over in that country they had an extremely wet spring that year?

Mr. GRANGER. That is my recollection. And that, I believe is the reason given by the logging engineer for his statement that it would have been very difficult to expend more than $80,000 efficiently.

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Mr. GRANGER. I do not recall that, Mr. De Neffe. I remember a very brief statement of credentials presented by those gentlemen, but I do not recall ever seeing this. No, I do not recall seeing that. It may be in the files, but I do not recollect it.

Mr. DE NEFFE. I want to introduce this in evidence, and I will connect it up with Mr. Biggs. That is along the line of the protests signed by those gentlemen as expressing the sentiment of the communities which they represented and reviewing the whole ground of this Herrick matter.

Mr. MCGOWAN. Are you stating that as a fact or asking him as to whether or not that represents the view of the community?

Mr. DE NEFFE. I am making that statement based on what Mr. Biggs will testify to.

Mr. MCGOWAN. You are referring to the three names attached to the petition?

Mr. DE NEFFE. Yes.

Mr. MCGOWAN. Namely, Woldenberg, Trowbridge, and Biggs?

Mr. DE NEFFE. Yes.

Mr. GRANGER. You understand, Mr. De Neffe, that the three gentlemen you have just named there were at this meeting and had every opportunity to express themselves fully as to their views or the interests that they purported to represent. As I lave previously indicated, they did not dissent from the position taken in this otter statement by Mr. Donegan.

Mr. DE NEFFE. Yes. That is all.

(The document referred to by Mr. De Neffe is here printed in full, as follows:)

APRIL 22, 1926.

HON. W. B. GREELEY,
Chief Forester of the United States,
Washington, D. C.

DEAR SIR: Pursuant to suggestion made by you to the honorable Chas. L. MCNARY, Senator from Oregon, that the people of Grant and Harney Counties familiar with the activities of Mr. Fred Herrick of St. Maries, Idaho, relating to his contract with the Forest Service for development of the Bear Valley unit of timber in the Malheur National Forest, we, the undersigned chosen representatives by citizens of the two counties for a conference with District Forester Granger at Portland. Oreg., to-day, respectfully present the following facts and requests for your earnest consideration.

Grant and Harney Counties in Oregon are blessed with extensive forest, mineral and agricultural resources which, by reason of lack of transportation and industrial activity have remained undeveloped. Use of millions of acres in the two counties was restricted to grazing and the production of forage crops, and the depression following the close of the war forced liquidation and depletion of cattle, sheep and other live stock bringing our section of country to the verge of bankruptcy.

Such conditions and want of confidence also prevented the financing of three large irrigation districts, and the people represented herein, locally and through their Representatives in Congress, as well as other agencies, asked that the United States Forest Service aid in restoring confidence in the development of agricultural and other natural resources by offering for sale a large block of timber in the Malheur National Forest.

The Chief Forester, at a meeting held at Portland on July 25, 1922, recognized that the Government had any interest in the welfare of the community and promised to advertise 890,000,000 feet of timber for sale. This promise was faithfully kept and the sale prospectus issued stated that "It is the policy of the Forest Service to make the timber resources of the national forests available for use and to have the sale of the timber aid in the development of the neighboring agricultural territory."

Bids in response to the advertisement were opened April 6, 1923, and the timber was awarded to Mr. Herrick. On June 14 following he executed a con-

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tract with the United States, paragraph 3 of which provides that "cutting and removal of timber from the tract included in this agreement or from the adjoining private lands within the same operating unit shall begin not later than April 1, 1925, and the cutting and removal of Government timber shall begin not later than October 1, 1925." It is a matter of record before your department that Mr. Herrick utterly failed to comply with the terms of the contract executed by him June 14, 1923, except as to the construction of 30 miles of railroad from Crane to Burns, for which he has been largely reimbursed by the Union Pacific Railway system; and it being apparent in February, 1925, that it was beyond possibilities to complete the plant and commence operations, as required by the contract, Mr. Herrick was granted an extension of one year, on certain definite conditions, in which to comply therewith.

Investigations made by the Forest Service will disclose that Mr. Herrick failed to comply with the terms of the modified contract on July 1, 1925, and that he is in default on April 1, 1926, to such an extent that it is hopeless to look for anything but default on October 1, 1926, and for an indefinite period thereafter.

We therefore respectfully represent:

1. That Mr. Herrick is either unwilling or unable to comply with the terms of the contract entered into with the Forest Service on behalf of the United states.

2. That be is not operating in a spirit of candor and sincerity, and therefore not free from the elements

of speculation and deception.

3. That every promise made by him to the community has been broken.

4. That after three years of "promise but no performance" and dilatory tactics employed the community has lost faith and confidence in him.

5. That the community has many serious problems to solve dependent upon the Herrick contract, and is therefore vitally interested in his reasonable compliance therewith.

6. That he has no adequate force on any portion of the works and only one contract for 1¼ miles of grade to be finished in four months has so far been entered into this spring.

7. That approximately 15 miles of railroad grade remain to be completed, of which many miles are "heavy construction" without any work thereon whatever.

8. That only 35 miles out of 50 in disconnected sections of the railroad grade have been practically completed.

9. That he is, and has persistently refused to consider bids by any responsible firm, and as a result merchants of Burns are carrying small contractors on the works for many thousands of dollars which will be a total loss to them, because the contractors are financially irresponsible people, induced to take contract for lower than a reasonable compensation.

10. That no work on foundation for mill nor buildings of any kind has been commenced to date.

11. That we seriously question the financial ability of Mr. Herrick to proceed in a businesslike manner on the project. Financial agencies appear unable to furnish satisfactory or definite reports. Payment of a number of his checks issued in connection with this enterprise has been refused by the banks drawn upon for want of funds, and attempts to borrow money from banks in sums from $1,000 to $50,000 have been unsuccessful because of his inability to furnish satisfactory collateral.

12. That although certain suits are pending involving property connected with or necessary in this undertaking, Mr. Herrick has in no wise been enjoined from proceeding with any work at any place. It is so understood by us that the real purpose of said suits was to stimulate action by Herrick, and to all appearances it had the desired effect. Inasmuch as work on disputed ground commenced immediately after suits were filed and is yet in progress. Offers of compromise on the basis of speeding up work has been declined by Herrick.

13. That an oral offer has been made to the district forester to take over Mr. Herrick's contract; to place the railroad and mill in operation within 14 months and reimburse Mr. Herrick for every dollar expended by him on milt pond and roadbed from Burns to Seneca, together with the offer of $100,000 bond to be filed immediately. Such offer, if accepted, will protect Mr. Herrick, the community, and the Government against loss.

14. That Mr. Herrick is arbitrarily attempting to terminate the common-carrier railroad 1½ miles south from Seneca, and we ask that you insist

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upon the road being built to Seneca, the point specified in the contract, so as to connect with the road built by the Bureau of Public Roads, the Forest Service, and Grant County.

15. That inasmuch as the Government, through Mr. Herrick's bid, secured full value for the timber, and that it was sold to aid in the development of neighboring agricultural territory, and not for private or personal benefit nor for speculation, and for the further reason that the situation of Herrick is of his own making, we rely upon the Forest Service for relief and request that action be taken forfeiting his bond and canceling the contract in the absence of absolute guarantee to complete construction and commence milling operation without further delay.

Respectfully submitted.

L. Woldenberg, *Canyon City, Oreg.*
H. H. TROWBRIDGE, *Seneca, Oreg.*
J. W. BIGGS, *Burns, Oreg.*

Mr. HALLOCK. Just one more question, Mr. Granger. I do not know whether the record is sufficiently clear yet on this or not. Is the $2.80 price which appears in Mr. Herrick's contract as the stumpage price of the pine the minimum price for all time in connection with his operations there?

Mr. GRANGER. Yes, Sir.

Mr. HALLOCK. All right.

Mr. MCGOWAN. On that reappraisal matter. The reappraisal provision of the contract gives the Government

the right to set a figure higher than the $2.80, is that correct?

Mr. GRANGER. That is right.

Mr. MCGOWAN. And there is no assurance, unless the market conditions justify it, that the $2.80 price would be raised? Is that correct? That is dependent on something that may be in the future?

Mr. GRANGER. Yes. The Forest Service representatives in reappraising the timber at three intervals take into account all of the factors which bear on the cost of getting out the timber, manufacturing it, disposing of it, the labor element, and all that sort of thing.

Mr. MCGOWAN. And of course the inclusion in the contract of that right on the part of the Government to reappraise it at a different figure does not necessarily mean that the $2.80 would be raised —

Mr. GRANGER. No.

Mr. MCGOWAN. Unless the market conditions should justify it?
Mr. GRANGER. That is right.

Mr. MCGOWAN. That is all.

Mr. DE NEFFE. That is all.

The CHAIRMAN. You are excused, Mr. Granger.

Mr. MCGOWAN. Mr. Ames.

TESTIMONY OF FRED E. AMES, ASSISTANT DISTRICT FORESTER IN CHARGE OF FOREST MANAGEMENT, UNITED STATES FOREST SERVICE, PORTLAND, OREG,

(The witness was duly sworn by the chairman.)

(Direct examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. W hat is your mane?

Mr. AMES. Fred E. Ames.

Mr. MCGOWAN. And your age?

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Mr. AMES. Forty-six.

Mr. MCGOWAN. Occupation?

Mr. AMES. Assistant district forester in charge of forest management, Portland, Oreg.

Mr. MCGOWAN. When did you first become acquainted with the timber now covered by the Herrick timber-sale contract?

Mr. AMES. In October, 1921.

Mr. MCGOWAN. Under what circumstances?

Mr. AMES. I received word to go to Burns—I was at the time on the Fremont Forest—and meet Mr. Barnes there and go over the contract which he was applying for at that time.

Mr. MCGOWAN. Now, just to expedite matters. Following that talk with Mr. Barnes it is a fact that the Forest

Service appraised the timber and put it on the market, under a six-months ad. which was productive of no bids?

Mr. AMES. Yes.

Mr. MCGOWAN. Who made the appraisal under which the timber was first put on the market?

Mr. AMES. Logging engineer Bruce Hoffman and logging engineer James Girard, assisted somewhat by logging engineer Drake.

Mr. MCGOWAN. The timber was first advertised, the pine, at a minimum of $2.75?

Mr. AMES. Yes.

Mr. MCGOWAN. And the period for the advertisement expired along about February 15, 1923, as I understand?

Mr. AMES. Yes.

Mr. MCGOWAN. And no bids received as a result of that ad.?

Mr. AMES. No.

Mr. MCGOWAN. Then what was the next step in connection with the putting of this timber on the market, Mr. Ames?

Mr. AMES. We were naturally very anxious to find out why we had received no bids, and made inquiries of various operators and others, such as the association secretaries, and very shortly we received word from Portland that the Brooks-Scanlon Lumber Co. had made an offer, and I was instructed to go to Minneapolis to meet Assistant Forester Carter for a conference with Doctor Brooks.

Mr. MCGOWAN. Did you have such a conference?

Mr. AMES. Yes.

Mr. MCGOWAN. In substance, what was the result of the conference?

Mr. AMES. It was agreed that we would readvertise the timber at $2 a thousand.

Mr. MCGOWAN. Was any change made in the cutting requirements as a result of the conference between yourself and Mr. Carter and Doctor Brooks?

Mr. AMES. Yes.

Mr. MCGOWAN. There has been some discussion with reference to paragraph 3 of the contract as signed by Mr. Herrick. State, if you know, where that clause was originally drawn and who drew it?

Mr. AMES. The clause was drawn by Mr. Carter and myself in Minneapolis at the time of that conference.

Mr. MCGOWAN. Approximately, what was that date?

Mr. AMES. The latter part of February, 1923.

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Mr. MCGOWAN. You say, in conference. Who were you in conference with?

Mr. AMES. Mr. Carter and I were in conference with Doctor Brooks.

Mr. MCGOWAN. Did Mr. Herrick or Mr. Girard or anybody connected with Mr. Herrick's organization have anything to do with the drafting of that modified clause which later became a part of the Herrick contract?

Mr. AMES. Absolutely nothing.

Mr. MCGOWAN. Following the redrafting of clause 3, what action was next taken in connection with putting the timber on the market?

Mr. AMES. Mr. Carter wired to the Portland office to start the readvertisement immediately, because Doctor Brooks's offer was contingent upon the receipt of bids very early in April. I started back to Portland immediately, and the advertisement had started before I got there. I secured a copy of *The Oregonian* at Paradise, Mont., and noted at that time that the sentence in regard to the making of inferior species optional was omitted from the advertisement. That had not been made clear to the Portland office, whether the offer was on that basis or not, so I wired immediately to make that correction so that the corrected advertisement came out
March 5.

Mr. MCGOWAN. And the corrected advertisement ran then for how long'?

Mr. AMES. Until April 4.

Mr. MCGOWAN. Were you present here yesterday when Mr. Carter was on the stand?

Mr. AMES. Yes.

Mr. MCGOWAN. Did you have a personal familiarity with the steps taken by the Forestry Service with reference to the change that was made in paragraph 3 of the contract as against the prospectus?

Mr. AMES. Yes. I would corroborate Mr. Carter's testimony on that point.

Mr. MCGOWAN. Then in fact that modified clause was fully and amply carried to the members of the lumber trade, so that they had an opportunity to gain full information with reference to that change as against the prospectus?

Mr. AMES. Yes.

M. MCGOWAN. When did you first become acquainted with Mr. Flood?

Mr. AMES. The last day for the receipt of bids.

Mr. MCGOWAN. And under what circumstances?

Mr. AMES. Assistant District Forester Kavanagh brought him into my office and introduced him.

Mr. MCGOWAN. Did he tell you who he was?

Mr. AMES. He told me he was a banker from Spokane.

Mr. MCGOWAN. Did he indicate in any, way, directly or indirectly, by intimation or otherwise, that he was interested in submitting a bid on this timber?

Mr. AMES. He made general inquiries in regard to timber sales, and the conversation related somewhat to the Bear Valley unit. He did not say that he was going to submit a bid.

Mr. MCGOWAN. Did he disclose to you that he was acting in the interests of Fred Herrick?

Mr. AMES. He did not.

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Mr. MCGOWAN. When did you first know that Mr. Herrick was interested in the timber?

Mr. AMES. The next day, when we opened the bids.

Mr. MCGOWAN. Was that the time that Mr. Flood first disclosed to you that he was in Portland in connection

with the submission of a bid for Mr. Herrick?

Mr. AMES. Yes.

Mr. MCGOWAN. Now, as to Mr. Flood's presence there, Mr. Ames, and his non-disclosure of his principal; was that an unusual thing in connection with the making of bids for Forest Service timber?

Mr. AMES. It happens occasionally.

Mr. MCGOWAN. Do you know why that course was pursued in this case?

Mr. AMES. Yes. We have had other instances in other sales where the bidder has employed a third party, or a second party, to make inquiries in regard to the sale and to get the bid forms even and we have not been informed as to whom they were representing.

Mr. MCGOWAN. When it was ascertained that Mr. Herrick was the high bidder, and in connection with the award of the contract to him, did Mr. Herrick file a financial statement as required by the prospectus

Mr. ARIES. He did.

Mr. MCGOWAN. I hand you what purports to be a financial statement, and ask you if you identify that.
Mr. AMES. That is the statement filed by Mr. Herrick.

Mr. MCGOWAN. Substantially, what does that disclose with reference to his financial ability at the time he filed the statement with the Forest Service?

Mr. AMES. The statement shows net assets of $1,250,000,000.

Mr. MCGOWAN. Now, in addition to the filing of this statement by Mr. Herrick, did you take, any steps to check up what he had said; and if so, what did you do?

Mr. AMES. Yes. Shortly, after we had informed the Forest Service as to the result of the bidding we received a letter which gave some information about Mr. Herrick mentioning that he had operated in District 1. It suggested that we might inquire of the district forester of district 1, or ask the district forester of district 1 to make any inquiries which he thought necessary as to Mr. Herrick's financial standing.

Mr. DE NEFFE. Whom were you speaking of?

Mr. AMES. Mr. Morrill, at the Missoula office. We referred the financial statement to the financial statement to Mr. Morrill and we received a letter from him, or from the acting district forester, saying that Mr. Herrick was well known there as being the principal owner in three large sawmills and having interests in the South, and stating that they did not consider it necessary to make any more detailed investigation as to his financial standing. We did, however, send wires of inquiry to two banks, one the First National Bank of Mobile, Ala., and the Exchange Bank of Coeur d'Alene, Idaho. Both banks replied that they considered Mr. Derrick fully able to undertake the operation, which we had briefly described in our wire of inquiry.

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Mr. MCGOWAN. Mr. Ames, in the financial statement which I have just handed to you for examination, are there attached copies of those telegrams that you sent to the banks to which you have just referred and their replies covering Mr. Herrick's financial status?

Mr. AMES. Yes.

Mr. MCGOWAN. We would like to offer in connection with Mr. Ames's testimony this financial statement, with the accompanying memorandum containing the telegrams.

Mr. DE NEFFE. No objection.

(The memorandum referred to and accompanying financial statement, have heretofore been incorporated in this record, in connection with the cross-examination of Colonel Greeley by Mr. De Neffe. See page 453.)

Mr. MCGOWAN. Now. Mr. Ames, you have been closely associated with the Herrick contract ever since it was signed? Is that correct?

Mr. AMES. Yes.

Mr. MCGOWAN. State whether or not at any time since the contract was signed it has ever been considered by the Forest Service that the common carrier clause should be eliminated or modified?

Mr. AMES. There has never been any suggestion of that sort from any one.

Mr. MCGOWAN. All right. Now, come back and answer my question specifically.

Mr. AMES. Not that I am aware of. I can not speak for the whole Forest Service, but I know as far as the district office is concerned it has not been.

Mr. MCGOWAN. And if there were to be a modification of this clause you in the ordinary course of business would be the man to handle it in the district office? Is not that correct?

Mr. AMES. Yes.

Mr. MCGOWAN. When did you first know of Mr. Guard being connected with Mr. Herrick?

Mr. AMES. I can not say exactly, but it was in the sprint of 1923.

Mr. MCGOWAN. After the bids were opened?

Mr. AMES. Yes.

Mr. MCGOWAN. Have you been connected with the modifications that have been made in the contract?

Mr. AMES. Yes.

Mr. MCGOWAN. What has been the underlying purpose of the Forestry Service in connection with those modifications?

Mr. AMES. In all the actions which we took we have been governed by three, considerations: First, the interests of the Government; secondly the equities of the operator: and third our desire to protect the interests of the local communities.

Mr. MCGOWAN. Were the requirements placed upon Mr. Herrick by the Forest Service in connection with the modifications of the agreement usual or unusual?

Mr. AMES. It was the only case I have known where there has been any requirement of this nature at all.

Mr. MCGOWAN. You say "of this nature." Just explain that.

Mr. AMES. Of the nature of the specified construction requirements, or regulating in any way the manner in which the expenditures and preparations for the beginning of cutting were made?

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Mr. MCGOWAN. Has it been within the desire and the purpose of the Forest Service in connection with these modifications, to drop into the vernacular, to bear down on Mr. Herrick to try to have him expedite the construction of the railroad?

Mr. AMES. Absolutely.

Mr. MCGOWAN. Do you know of any occasion in the history of the Forest Service where the damages have been liquidated as they were in this case?

Mr. AMES. I know of no case.

Mr. MCGOWAN. And what was the amount of the liquidated damages in this case that were exacted of Mr. Herrick?

Mr. AMES. $50,000.

Mr. MCGOWAN. That is all, but I would like to make this specific request of Mr. De Neffe. There has been made a suggestion here—I think Mr. Barnes intimated that Mr. Ames was in collusion in this matter. If I am correct, will you please examine Mr. Ames fully on anything that might be in your mind with reference to that particular point.

Mr. DE NEFFE. Yes; I intend to. Are you through ?

Mr. MCGOWAN. Yes; that is all.

(Cross-examination by Mr. Frederick M. De Neffe, attorney representing Grant. County, Oreg.)

Mr. DE NEFFE. On page 10 of the prospectus, paragraph 4 reads as follows, under the heading "Requirements preliminary to railroad":

> The plan which will be followed in securing the remainder of the capital required by sales of stock, bond issues, mortgages, etc., should also be set forth hi the financial statement.

Now, in this financial statement which you say Mr. Herrick furnished, do you find any such financial plan set forth?

Mr. AMES. No. We subsequently made inquiry of Mr. Herrick in regard to that point, and he replied to the effect that he expected to get his additional resources from his other assets.

Mr. DE NEFFE. Whom did you inquire of?

Mr. AMES. Mr. Herrick.

Mr. DE NEFFE. And have you any letter that he wrote you; or any letter that you wrote to him?

Mr. AMES. It is in the files.

Mr. DE NEFFE. Can you get that?
Mr. AMES. Surely.

Mr. DE NEFFE. Let them look it up, and we will go on.

Mr. MCGOWAN. What was it you asked for?

Mr. DE NEFFE. He said that after receiving Mr. Herrick's statement he made inquiry of Mr. Herrick as to the plan for raising the money and that Herrick wrote him, I understood, giving the plan.

Mr. DE NEFFE. This financial plan was not set forth in the financial statement, was it?

Mr. AMES. Well, the financial statement does not necessarily mean one document. The whole thing may be taken together.

Mr. DE NEFFE. You will find that, will you, Mr. McGowan?

Mr. MCGOWAN. 1 shall be very glad to look for it. Mr. Hoffman is making a search for it now.

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Mr. DE NEFFE. When you saw Mr. Flood in the Forest Service office in Portland the day before bids were opened, you say there was some conversation relating to the Bear Valley unit.

Mr. AMES. Yes, sir; I said that.

Mr. DE NEFFE. Do you remember what the talk was.

Mr. AMES. No; I do not. Mr. Flood's talk was very general. As he testified he was there under cover to submit a bid. He was not disclosing just what he was there for, and no one could have gathered from his conversation what the purpose of his visit was, to the best of my recollection.

Mr. DE NEFFE. Did not you suspect that he was going to bid on the Bear Valley unit?

Mr. AMES. I testified that he gave no indication of that intent.

Mr. DE NEFFE. He got some blanks from you for bids, did he not?

Mr. AMES. I do not know whether he got those blanks from us or not. I call not tell. He would not necessarily get them from me if he did. But which blanks do you refer to?

Mr. DE NEFFE. The blanks on which he made the bid?

Mr. AMES. No; he did not get that one, I know, because the bid is dated April 2, written on the bid.

Mr. DE NEFFE. You had known Mr. Flood before that?

Mr. AMES. I had never met him before that.

Mr. DE NEFFE. Then, when the bids were opened the next morning, Mr. Flood testified that you asked whether there was anybody there representing Mr. Herrick. Do you remember his stating that?

Mr. AMES. Yes.

Mr. DE NEFFE. Why did not you ask whether Mr. Herrick was there instead of whether there was a representative of Herrick's there, do you remember why that was?

Mr. AMES. No; I do not remember asking him that; as a matter of fact.

Mr. DE NEFFE. Mr. Flood stated that you did in his testimony.

Mr. HALLOCK. I do not remember it, but maybe he did.

Mr. DE NEFFE. Then, I will look up the record.

Mr. HALLOCK. Oh, it is all right with me if you say he did.

Mr. DE NEFFE. Did you expect that Mr.. Herrick had a representative there instead of being there himself ?

Mr. AMES. I say, I do not remember asking the question.

Mr. DE NEFFE. Well, if Mr. Flood states that you did, was that right or wrong?

Mr. AMES. I do not know whether he is right or not.

Mr. MCGOWAN. Mr. De Neffe, you asked me a moment ago for a paper from Mr. Herrick, and it has been looked up and I am now handing it to you. These papers, of course, have been available to you all through the hearing, and I should like to have the record show that.

Mr. DE NEFFE. Well, I could not anticipate what Mr. Ames was going to testify to until he came on the stand.

Mr. MCGOWAN. I understand that, but I wanted the record to show the situation.

Mr. DE NEFFE. It has been shown a good many times during this hearing, and I want to say that you leave

been kind and patient in the matter. I should like to introduce this in evidence.

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Mr. MCGOWAN. That is all right as far as we are concerned. We shall be glad to have this made a part of the record if you feel that it is material.

Mr. HALLOCK. I have not seen these papers. At your leisure I should like to look at them.

Mr. MCGOWAN. I have not looked at them myself, but you may go ahead and put them in.

Mr. DE NEFFE. I refer to a letter from Fred Ames, assistant district forester, to Fred Herrick, St. Maries, Idaho, in which Mr. Ames states:

> The papers will be ready for your signature when you come to Portland; in fact, they are ready now. There is one additional statement which I should like as a part of your financial statement and that is information in regard to your plans for raising the additional capital which will be required to finance this operation. This is mentioned in paragraph 4 under "requirements preliminary to awards," page 10 of the prospectus.

Now, did he furnish that plan? I do not see it attached here.

Mr. AMES. I mentioned his letter, and his letter is there.

Mr. HALLOCK. Just let the witness look at the papers. It may help him.

Mr. DE NEFFE. Certainly: you may have them.

Mr. AMES. This is the letter that I refer to on top of this file.

Mr. DE NEFFE. The letter referred to is dated May 8, 1923, signed Fred Herrick, and addressed to the district forester, Portland, Oreg.:

> In response to your request in Mr. Ames's letter of April 26, asking for information in regard to my plan for raising the additional capital required to finance the Bear Valley operation (see par. 4 on p. 10 of the printed prospectus), I will say that it is my plan to furnish the additional capital needed by drawing upon my personal resources not included in the financial statement already furnished you.

Is this all that he furnished in the way of a financial plan?

Mr. AMES. Yes.

Mr. DE NEFFE. I ask that these letters be made a part of the record.

(Thereupon three letters, the first one dated April 24, 1923, from Fred Herrick to Fred Ames, and Mr. Ames's reply of April 26, 1923, and Mr. Herrick's reply thereto of May 8, 1923, are here made a part of the record, as follows:)

MILWAUKEE LUMBER CO.
St. Maries, Idaho, April 21, 1923.

MR. AMES,
Forestry Office, Portland, Oreg.

DEAR SIR: I will be at Portland May 3 or 4, and please have contract and all papers ready for signature, and if any further statement is wanted, wire me, and if Scotch Lumber Co. bond will do, will have Scotch Lumber Co. man with me to sign same. If you insist on surety bond, will provide that also.

I any leaving here the 29th with James Gerard to begin locating and commence railroad construction, and want to get these papers cleaned up. I mean business from the start.

Yours respectfully,

FRED HERRICK.

APRIL 26, 1923.

Sales, Malheur, Bear Valley unit:
MR. FRED HERRICK,
St. Maries, Idaho.

DEAR MR. Herrick: Your letter of April 24 is received.

The papers will be ready for your signature when you come to Portland; in fact, they are ready now. There is one additional statement which I should

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like as a part of your financial statement, and that is information in regard to your plan for raising additional capital which will be required to finance this operation. This is mentioned in paragraph 4, under "Requirements preliminary to award," page 10 of the prospectus.

In regard to your suggestion to having one of your companies as surety upon the bond, the following is quoted from an opinion of the assistant to the solicitor in this office as to such a plan:

"The laws of Oregon, section 6438 (Olson's Laws), provide that a company to execute a surety bond must be authorized under its charter and under the laws of the State where it is incorporated to become surety upon a bond, undertaking, obligation, recognizance, or guaranty; it must file with the insurance department a certified copy of its articles of incorporation and a written application for authority to do business under the act, and if not incorporated under the laws of this State it must appoint a resident general agent on whom legal service can be made, file such power of attorney with the insurance department and do the other formalities which are required. It is also provided that no foreign or alien insurance company, transacting the business of surety and fidelity insurance, shall be authorized to transact such business in this State except during such time as all the requirements of the Federal Government relative to such company are complied with. This evidently refers to foreign corporations in regard to the country, not the State. All companies doing business in the State are required to file certain evidence as to its liability and limit the liability on one surety to 10 per cent of its capital and surplus.

"The act of August 13, 1894, permits bonds to be executed by corporations, incorporated under the laws of the United States or of any State. It also provides that any company doing business outside the limits of the state in which it is incorporated shall not do any business until it has filed a written power of attorney within the State of a person who resides in the State where the business is desired to be transacted must file with the Attorney General of the United States a copy of its charter, articles of incorporation and a statement of assets and liabilities and be authorized by the Attorney General to do business, under the act.

"It would therefore appear that before a bond executed by one of the companies in which Mr. Herrick is interested would be accepted it would be necessary to comply with the above conditions and others not set forth. In other words, it would have to show by its charter and the laws of the State under which it was incorporated that it was authorized to execute surety bonds."

From this it would appear that it would be perhaps rather difficult to do as you suggest. However, I am not informed as to the authority provided for in the articles of incorporation of your companies of the laws of the States where they were incorporated.

Very sincerely yours.

FRED AMES,
Assistant District Forester.

MAY 8, 1923.

Sales, Malheur, Bear Valley Unit:
DISTRICT FORESTER.
Portland, Oreg.

DEAR SIR: In response to your request in Mr. Ames's letter of April 26 asking for information in regard to my plan for raising the additional capital required to finance the Bear Valley operation (see par. 4 of p. 10 of the printed prospectus), I will say that it is my plan to furnish the additional capital needed by drawing upon my personal resources not included in the financial statement already furnished you.

Very truly yours,

FRED HERRICK.

Mr. DE NEFFE. Mr. Ames, what method did you think Mr. Herrick would from that statement of May 8, 1923? Did you think that he would make the money out of his operations from his other mills?

Mr. AMES. One would naturally think that from that letter. But in the case of a man worth from $8,000,000 to $10,000,000, as had been reported to use {us?}, he was amply able to take care of this operation.

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Mr. MCGOWAN. Might I clear the record up right there: Did the prospectus call for a financial plan or did it merely call for a showing of assets?

Mr. DE NEFFE. Well, read paragraph 4 on page 10 and that will show you.

Mr. AMES. He has read it.

Mr. MCGOWAN. Very well, never mind.

Mr. DE NEFFE. So You went ahead and gave Mr. Herrick the contract just on his financial statement and the letter of May 8, 1923, is that right?

Mr. AMES. No; I had reports from come other inquiries.

Mr. DE NEFFE. That is what I meant, together with these other inquiries.

Mr. AMES. Yes.

Mr. DE NEFFE. Do you remember the first time you saw Mr. Girard in connection with this matter?

Mr. AMES. Yes.

Mr. DE NEFFE. When was that?

Mr. AMES. After he had made the appraisal.

Mr. DE NEFFE. And about what date was that?

Mr. AMES. I say, it was after be had made it. It was after he had done the field work and he was in the Portland office working up the appraisal with Mr. Hoffman.

Mr. DE NEFFE. That was in 1922, was it not?

Mr. AMES. In June, 1922.

Mr. DE NEFFE. How soon after the bids were opened did you see Girard ?

Mr. AMES. I believe May 8—no: wait a minute. I believe the first time I saw Girard was when he came clown to execute the contract in June, 1923. That is the best recollection now.

Mr. DE NEFFE. June 15, 1923, was it?

Mr. AMES. Yes; June 15.

Mr. DE NEFFE. Would you say that paragraph 3 of the Herrick contract protects the people?

Mr. MCGOWAN. We object to the form of the question as being too indefinite.

Mr. DE NEFFE. Mr. Ames stated in his direct examination that —

Mr. MCGOWAN (continuing). Certainly it affects the people.

Mr. DE NEFFE. I asked him if it "protects" the people.

Mr. MCGOWAN. Oh, I beg pardon. All right, go ahead.

Mr. DE NEFFE. It has been stated that there were three considerations in this whole Herrick hatter—(1) the interests of the Government, (2) the interests of the contractor, and (3) the interests of the people. I am asking you whether you think that paragraph protects the people of Harney and Grant Counties.

Mr. AMES. Yes: I do.

Mr. DE NEFFE. Then if it permits Mr. Herrick to shut down his mill from three to five ad six-year periods, how about that?

Mr. AMES. There has been a good deal of talk on that point, and my opinion coincides with that expressed by other witnesses, that the continuity of the operation would be fully protected by the pressure under which any operator would be with an investment of this size, and by his desire to make money out of it. Such an operator is bound to run as long as he can make money, and he is

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sometimes forced to run when he does not make money. That is the whole history of the lumber business in the Northwest.

Now, you draw comparisons between this clause and the clause in the prospectus as to the time which the operator might be allowed to shut down. Mr. Biggs has made an analysis of the clause in the final contract, but nobody has pointed out that the clause of the prospectus would permit a man to shut down for four years. We had no protest from the people out there in that respect at the time the timber was being advertised. In my opinion it was never in the minds of the people at Burns that the Government contract would compel the operator to operate except when economic conditions made it practicable for him to do so.

Mr. DE NEFFE. But Mr. Biggs has testified otherwise.

Mr. AMES. Do you mind telling me what he said?

Mr. DE NEFFE. Well, the substance was that the people in both of those counties, Grant and Harney Counties, Oreg., wanted continuous operation so that they would have continuous pay rolls, and that was one of the reasons why they wanted the timber marketed.

Mr. AMES. Certainly they wanted it, but they did not say that they expected the Government contract would compel it. Now, to my notion the mere suggestion that the Government contract world compel a man to operate at a loss in order to provide a pay roll for a community is idiotic. I do not believe that the people in Burns or in Grant County, ever thought of such a thing. I know they are too sensible for that. It would be equivalent to putting a clause in the contract saying that if the operator was compelled to shut down he should contribute $100,000 to the community to support it.

Mr. DE NEFFE. Well, in case there should be a vast difference between the price of lumber and the cost of production, you can conceive of a case where it would pay an operator to shut down, could you not, if he was going to lose a great amount of money on a low, market?

Mr. AMES. Certainly I do.

Mr. DE NEFFE. They often do that.

Mr. AMES Yes.

Mr. DE NEFFE. So if the depressed condition of the market continued for a long time, they naturally would shut down if they could make more money by keeping shut down than by running; than by cutting ten-dollar logs and getting only five dollars for them, as Mr. Herrick said.

Mr. AMES. It is the natural thing for an operator under those circumstances to shut down, and he should be allowed to shut down.

Mr. DE NEFFE. His interests come first.

Mr. AMES. No Government contract should compel him to operate, otherwise the minute you do you are providing in your contract that the operator shall distribute his wealth to the community.

Mr. DE NEFFE. Then the attitude of the Forest Service is that they should first of all protect the operator, no matter what effect it might have on the communities.

Mr. MCGOWAN. There is not such testimony as that in the record.

Mr. DE NEFFE. That is the effect of his statement made right now.

Mr. AMES. I will tell you what the attitude of the Forest Service is as far as I understand it, and that is that there shall be reasonably

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continuous operations, that is why the minimum cut is provided for in that clause, and that the operator should operate as long as economic conditions make it practicable for him to do so.

Mr. DE NEFFE. Would not you say, Mr. Ames, that paragraph 3 in the Herrick contract is very much more favorable than paragraph 3 in the contract appearing in the prospectus?

Mr. AMES. I have just told you one point in regard to that which you had not noticed.

Mr. DE NEFFE. And what was that?

Mr. AMES. That he could shut down for four years under the clause in the prospectus.

Mr. DE NEFFE. Yes; but the operator still has to cut 100,000,000 feet every three-year period after 1931.

Mr. AMES. Yes.

Mr. DE NEFFE. And he could not get out of that if he wanted to, could he?

Mr. AMES. We are often applied to to modify contracts in respect of the cutting requirements. I would venture the assertion that there has been no long-term sale in district 6 for the last 20 years in which we have not had to make some modifications of the agreement; and very often they are modifications of the cutting requirements, due to the fact that you can not foresee the conditions for 10, 15, or 20 years ahead. You can not lay down strict requirements in a contract which are going to be complied with under any and all circumstances.

Mr. DE NEFFE. Let me ask you this: Suppose an operator who had in contemplation bidding on this Bear Valley timber had submitted two contracts, one contract containing the provisions of paragraph 3 in the prospectus, and the other contract containing the provisions of paragraph 3 in the Herrick contract, which one of those contracts do you think he would select.

Mr. AMES. That is according to the operator.

Mr. HALLOCK. Mr. Chairman, I wish to say —

Mr. AMES (interposing). I should like to answer that.

Mr. HALLOCK. The proposition is that, as the record has so abundantly shown, the modified clause was communicated to the trades. I do not see where this leads us.

Mr. DE NEFFE. Well, there is very much dispute about that.

Mr. HALLOCK. I had not supposed there was.

Mr. DE NEFFE. Well, then, you have missed one of the points.

The CHAIRMAN. Let the witness answer. Mr. Reporter, read the question [which was done.].

Mr. AMES. I Will say that it would depend upon the operator. It has not been clearly brought out that although the clause in the prospectus permits a lower cut during the first six years, yet it also permits a higher cut during the last nine years of the contract, than the final clause does. In other words, in the prospectus clause the terms are

175,000,000 feet each three-year period during the last mile years of the agreement.

Mr. DE NEFFE. That is the maximum.

Mr. AMES. Whereas the final clause permits only 150,000,000 feet. Now, I think it would be quite questionable and very debatable as to whether an operator would select the final clause before

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he would select the prospectus clause. In fact, Jim Girard has already told me that he would prefer the prospectus clause. On the other hand Doctor Brooks preferred the final clause, and there you are. If an operator expected to operate at a low rate during the first years of his contract, and perhaps cut more private timber, I think the prospectus clause would appeal to him.

Mr. DE NEFFE. The Herrick clause permits an operator to cut considerable more as a maximum cut than the prospectus, does it not?

Mr. AMES. What was that question, exactly?

Mr. DE NEFFE. I say the maximum cut permitted in the Herrick clause is greater than is permitted in the clause in the prospectus, is not that right.

Mr. AMES. It is not right. As I have just told you the prospectus clause permits a maximum cut of 175,000,000 feet every three-year period during the last nine years of the contract.

Mr. DE NEFFE. That is, over each three-year period?

Mr. AMES. Yes; whereas, the final clause permits only 150,000,000 feet to be cut during that same nine years.

Mr. DE NEFFE. How do you figure out nine years? In the prospectus it takes it up by three-year periods, and there are two three-year periods, and that makes six years.

Mr. AMES. Yes.

Mr. DE NEFFE. And, subtracting 6 from 20 years would leave 14 years, would it not?

Mr. AMES. Well.

Mr. HALLOCK. Just look at this contract.

Mr. AMES. We are talking about maximum cuts. According to the maximum cut the total amount of timber could be cut out by 1941 in either contract.

Mr. DE NEFFE. How is that?

Mr. AMES. You asked me whether it permitted a greater maximum cut, but it permits exactly the same cut because both contracts are for the total amount of timber on the area, and both contractors would get exactly the same amount.

Mr. DE NEFFE. You say that neither Girard nor Herrick had anything to do with the drawing of the contract?

Mr. AMES. That is what I said.

Mr. DE NEFFE. And that they never suggested any of the terms at all?

Mr. AMES. I did not say that. I said about the contract—now do you mean this contract clause?

Mr. DE NEFFE. Yes, paragraph 3 of the Herrick contract.

Mr. AMES. Oh, well, that is more specific. They had nothing whatever to do with it.

Mr. DE NEFFE. Who drew it?

Mr. AMES. I testified that Mr. Carter and I drew it in Minneapolis.

Mr. DE NEFFE. But the final Herrick contract, who drew that up? Who actually did that?

Mr. AMES. Do you mean who actually wrote the papers?

Mr. DE NEFFE. No; not the typewriting; but who framed paragraph 3?

Mr. AMES. Paragraph 3 was framed by Mr. Carter and I in Minneapolis.

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Mr. DE NEFFE. And then it was incorporated in the Herrick contract when he came to sign it?

Mr. AMES. Yes, Sir.

Mr. DE NEFFE. Colonel Greeley was in Portland when the Herrick contract was signed, was he not?

Mr. AMES. Yes; the record shows that he was.

Mr. DE NEFFE. Yes; I understand that he said so. He was at your office on the morning of June 15, 1923, was he not?

Mr. AMES. I presume so, but I do not remember.

Mr. DE NEFFE. In the afternoon, was not he also there?

Mr. AMES. I do not remember.
Mr. DE NEFFE. He went over this contract, did he not, with Herrick?

Mr. AMES. I do not remember that there was any conversation between Mr. Herrick and Colonel Greeley.

Mr. DE NEFFE. Colonel Greeley saw this contract before it was delivered to Herrick, did he not?

Mr. AMES. Not that I know of.

Mr. DE NEFFE. Does not he have the final say as to these matters?

Mr. AMES. Why, this contract had already been agreed upon. We agreed upon the contract long before—we agree upon contracts before the timber to be covered is ever advertised.

Mr. MCGOWAN. When you use the word "we," who does that signify?

Mr. AMES. The Forest Service, those who are responsible for drawing up the contract and for approving it, finally pass upon it before the timber is ever advertised. After that there is no change unless it is all agreed upon by the purchaser and the one who is going to approve the contract.

Mr. HALLOCK. When you say "we agreed upon the contract," have you included Mr. Herrick or any of his people in that?

Mr. AMES. I say we agreed upon it, and I mean by "we " those of us in the Forest Service draw up the contract and its terms are known before the timber is advertised.

Mr. HALLOCK. But the word "we " does not include the prospective bidder at all.

Mr. AMES. No; I did not mean that.

Mr. DE NEFFE. You would not deny that Colonel Greeley saw this contract before it was signed, will you?

Mr. AMES. No; I would not, deny it.

Mr. DE NEFFE. Would not he naturally see it in a deal of this importance?

Mr. AMES. I do not think he would, because, as I say, the terms of the contract had been agreed upon before it was advertised. He had no further interest in it. It was just a matter of typewriting.

Mr. DE NEFFE. You say that this was the only instance where specific provision as to expenditures was made in the modifications?

Mr. AMES. Yes.

Mr. DE NEFFE. It is the only instance where so many modifications and extensions were required, is it not?

Mr. AMES. There have been only two extensions of this contract, and there have been two made in a number of other contracts which I could cite to you.

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Mr. DE NEFFE. And how many modifications were there in this contract?

Mr. AMES. Three.

Mr. DE NEFFE. And it will be necessary to grant a fourth, won't it?

Mr. AMES. Yes.

Mr. DE NEFFE. And a third extension, is not that right?

Mr. AMES. Yes.

Mr. DE NEFFE. And you say this is the only case where liquidated damages were required. It was the only case where a contractor has been in default so many times and to such a great extent, is it not?

Mr. AMES. Well, are you asking about district No. 6, or about the whole Forest Service?

Mr. DE NEFFE. Any place.

Mr. AMES. I do not know because I could not answer that.

Mr. DE NEFFE. Can you point to any other in district No. 6?

Mr. AMES. We have contracts which have been modified more than four times, I am very sure.

Mr. DE NEFFE. Can you name any of them?

Mr. AMES. I can name you two which were modified before cutting began and in the same manner. We have a contract with the Anderson-Middleton Lumber Co. on the Umpqua Forest which was approved July 18, 1924. That contract required the cutting and removal to begin October 1, 1925. We extended the date until June 1, 1926, and then we extended it again until December 1, 1926.

Mr. DE NEFFE. And they have complied with it?

Mr. MCGOWAN. Let him finish his answer.

Mr. DE NEFFE. I thought he had.

Mr. MCGOWAN. Go ahead.

Mr. AMES. I think I have finished that.

Mr. DE NEFFE. They have complied as to these two requirements?

Mr. AMES. Yes, sir.

Mr. DE NEFFE. That was not a case where any communities had requested that the timber be put on the market, was it?

Mr. AMES. That was not.

Mr. DE NEFFE. That was a case where the contractor made application himself because he was building toward Government timber, was not that it?

Mr. AMES. Yes. Then there is another case, the Hammond Lumber Co., on the Santa Anne Forest, where the time allowed them to begin cutting was 2½ months, but we extended it twice to a total of 24½ months. I cite these to show that we often have to make extensions because we can not foresee all that is going to happen in the future.

Mr. DE NEFFE. You only granted one, extension there.

Mr. AMES. To the Hammond Lumber Co.?

Mr. DE NEFFE. Yes.

Mr. AMES. No; two extensions.

Mr. DE NEFFE. And those extensions were not due to their not paying sufficient funds to carry on the operations, were they?

Mr. AMES. No. And there are any number of cases where the conditions may influence us.

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Mr. DE NEFFE. In the Hammond Lumber Co. case there were no communities interested, were there?

Mr. AMES. No.

Mr. DE NEFFE. Just a few more questions. This timber was first advertised during the 30-day period, and the advertisement stated that the last day for receiving bids was April 2, 1923; is not that right ?

Mr. AMES. Yes.

Mr. DE NEFFE. Instead of April 4, 1923?

Mr. AMES. Yes; and I have explained that.

Mr. DE NEFFE. Yes; I know you did. I should like to offer this paper in evidence, showing that fact.

Mr. MCGOWAN. Well, we will admit it. We will admit the change in date; but if you want to put the certificate of advertisement in the record, we have no objection to it.

Mr. DE NEFFE. I should like to put this document in.

The CHAIRMAN. That maybe done.

(The certificate furnished by the foreman of the Morning Oregonian, published at Portland, and dated February 17, 1927, is here made a part of the record, as follows:)

(Stamp:) MAR. 2, 1923.

890,000,000 FEET NATIONAL FOREST TIMBER FOR SALE
THE FIRST UNIT OF ONE OF THE LARGEST UNDEVELOPED
TRACTS OF YELLOW PINE IN THE UNITED STATES

Location and Amount.—All the merchantable dead timber standing or down and all the live timber

marked or designated for cutting on an area embracing about 67,400 acres in township 15 S., ranges 29, 30, and 31 E., township 16 S., range. 29, 30, 31, and 32 E., and township 17 S., ranges 29, 30, and 31 E. W.M., Silvies River watershed, Malheur National Forest, Oregon, estimated to be 770,000,000 feet B. M., more or less, of western yellow pine, 120,000,000 feet B. M., more or less, of Douglas fir, western larch, white fir, lodge-pole pine and other species of timber. The cutting of Government timber at an average rate of 50,000,000 feet annually will be permitted.

Stumpage prices.—Lowest rates considered, $2 per thousand for western yellow pine and $0.50 per thousand for other species. Rates to be readjusted April 1, 1928, and at three-year intervals thereafter.

Deposit.—$25,000 must be deposited with each bid to be applied on the purchase price, refunded; or retained in part as liquidated damages, according to conditions of sale.

Final date for bids.—Sealed bids will be received by the district forester, Portland. Oregon, up to and including
April 2, 1923.

The right to reject any and all bids reserved.

Before bids are submitted full information concerning the character of timber, conditions of sale. deposits, and the submission of bids should be obtained from the district forester, Portland, Oregon, or the forest supervisor, John Day. Oregon.

STATE OF OREGON,
County of Multnomah, ss:

I, D. Foulkes, being first duly sworn, say that I am the foreman of the printers of the Morning Oregonian; that the Morning Oregonian is a daily newspaper of general circulation, printed and published at Portland, in Multnomah County, Oregon; that said newspaper is made up of at least four pages, each page containing at least five columns, and each column 17¾inches or more in depth; that said newspaper was established and regularly and uninterruptedly published in said county and State during a period of 12 consecutive months and more immediately preceding the first publication of the advertisement, a printed copy of which is attached hereto, marked "Exhibit A"; that said advertisement was published in the Morning Oregonian on the

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following dates, to wit: March 2—all in the year A. D. 1923; and that during said term said paper was regularly published.

D. FOULKES, *Foreman,*

Subscribed and sworn to before me this 17th day of February,
A. D. 1927.

AXEL ANDERSON,
Notary Public for Oregon.

My commission expires March 30, 1928.

Mr. DE NEFFE. Herrick's bid was received by registered mail; was that right?

Mr. AMES. Yes, Sir.

Mr. DE NEFFE. And when was it received?

Mr. AMES. On the morning of the 5th.

Mr. DE NEFFE. Do you remember what time in the morning?

Mr. AMES. It was when I got there in the morning.

Mr. DE NEFFE. I understood Mr. Flood in his testimony to say that in effect the bid was mailed on the 6th, and that the bids were opened on the 7th. Is that correct?

Mr. AMES. No.

Mr. DE NEFFE. That is what he says in his testimony.

Mr. AMES. I can not help that. That does not make it right.

Mr. HALLOCK. If he has said that, it ought to be corrected. It is a clear error in dates.

Mr. DE NEFFE. Mr. Flood is the only one who can correct his testimony.

Mr. HALLOCK. It is obviously an error. But all right; go ahead.

Mr. DE NEFFE. Did Mr. Girard ever tell you that he was the one who was responsible for getting Herrick to make this bid?

Mr. AMES. Well, he might have, but I do not remember.

Mr. DE NEFFE. Did he tell you about finding Mr. Herrick, of getting Herrick to make a $2.80 bid, and then that he made no further effort to get any other bidders; do you remember that?

Mr. AMES. I have learned that story at some time, but I do not remember whether Girard told me that or not. He might have.

Mr. DE NEFFE. Did Girard ever tell you anything about Herrick's financial standing?

Mr. AMES. I never asked him about it. He never told me anything about it.

Mr. DE NEFFE. Did he ever tell you anything about his reputation as a responsible operator?

Mr. AMES. Well, I should like to modify my last answer there. You say "ever." I think during the life of the contract I have discussed with Girard more or less Mr. Herrick's financial ability; yes.

Mr. DE NEFFE. Do you remember when that was?

Mr. AMES. No; but at various time. I could not remember any dates.

Mr. DE NEFFE. Then about how soon after the bids were opened did you learn about Herrick's financial condition?

Mr. AMES. Do you mean did we make inquiries about Mr. Herrick?

Mr. DE NEFFE. Yes. And there got answers thereto.

Mr. AMES. We had those completed by April 24, 1923.

Mr. HALLOCK. At this juncture might I quote Mr. Flood's testimony in regard to the date of the opening of bids. Mr. Flood was asked this question by Mr. De Neffe:

> Mr. DE NEFFE. Do you remember the date the bids were opened?
> Mr. Flood. I do not remember that.

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> Mr. DE NEFFE. It was on the seventh of April, 1923, was it not?
> Mr. FLOOD. It must have been. It was in the spring.

Now, the inference is that Mr. Flood attempted to fix the date as April 7, when as a matter of fact he answered that he did not remember, and when the date of April 7 was suggested he said it must have been, that it was in the spring.

Mr. DE NEFFE. Well, I wanted to clear that up.

Mr. HALLOCK. Well, I think you befogged it.

Mr. DE NEFFE. It is not my fault that it was befogged, because he made the statement "It must have been."

Mr. HALLOCK. He only assumed that you were asking a fair question. He said it was in the spring, and when you asked him if it was April 7 he thought you were asking him a question that you knew about and a fair question, and he answered, "It must have been."

Mr. DE NEFFE. Well, I was asking him for information. I was not trying to mislead Mr. Flood. In fact, I can say this very frankly: I was not trying to mislead Mr. Flood at all, because I always have been under the impression that the bids were opened on April 7, and that the date for filing bids was on April 6. Other people in this case have had the same impression, and the first we knew that it was on some other date was after we saw the notice appearing in Exhibit 9. That is how I came to ask that question, and I sincerely thought that it was on April 7 that bids were opened, otherwise I never would have asked it. I was not trying to misdirect Mr. Flood or to mislead him at all.

The CHAIRMAN. You may go ahead with the examination.

Mr. DE NEFFE. Mr. Herrick's financial statement is dated April 11, 1923. So that was the first you knew anything about his financial condition, is that right; except what answers you got from telegrams and letters?

Mr. AMES. We got this before we got the telegrams, but I do not remember the date of the letter which we received from the Forester which gave us some information about it. Whether it was before April 11 or not I do not know.

Mr. DE NEFFE. It was some time after the bids were opened.

Mr. AMES. It was between April 5 and April 24 that all that took place.

Mr. DE NEFFE. But protests against Mr. Herrick at least began to come in strong in the fall of 1924, is not that right?

Mr. AMES. We had some protests at that time.

Mr. DE NEFFE. And then on November 6, 1924, you wrote James W. Girard, in which you said:

> I have received a letter from the Forester in which he says he is very glad that we arranged to have the announcement in regard to the application for an extension of time made by your company, and it appears to me that it is much better to have the information given out in that way. I would suggest therefore that this be done in whatever fashion it appears to you most advisable.

Do you remember that?

Mr. AMES. Yes.

Mr. DE NEFFE. And on November 26, 1924, you again wrote Mr. Girard in which you said:

> I would appreciate it if you would let me know what has been done in the way of letting it be known that the application of an extension of time

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> has been made by the company, since I suppose that if you should decide that you do not care to give out this information it will be up to us to do so in some manner.

The Forest Service was reluctant to take the initiative here. Were they not, and to let the public know that they were willing to grant an extension ?

Mr. AMES. We were not.

Mr. DE NEFFE. Why did you want the company to make this announcement that they would have to have an extension?

Mr. AMES. The answer is expressed very well in Mr. Carter's letter if you will read that, of October 31.

Mr. DE NEFFE. From Carter to Robert Duncan, do you mean?

Mr. AMES. No; you have the letter there, as you asked for it the other day.

Mr. DE NEFFE. Maybe you can explain it. I just want to ask for an explanation.

Mr. AMES. It was simply because we thought that if the announcement was made by the company it would give the people there at Burns an opportunity to make whatever protest, or to put in whatever statements they wished to in regard to the extension.

Mr. DE NEFFE. They could do the same thing if the Forest Service made the announcement, could they not?

Mr. ANTES. Yes; but we thought it would be a good thing for the company to take the people into their confidence and let them know what they were going to do.

Mr. DE NEFFE. And if the Forest Service made it, it might divert suspicion to the Forest Service.

Mr. MCGOWAN. We object to the form of the question, sir. Chairman. "Divert suspicion," he says. What do you mean by "diverting suspicion?"

Mr. DE NEFFE. Well, that the Forest Service had on its own initiative done this.

The CHAIRMAN. Let the question be read by the committee reporter [which was done]. And now you may answer, Mr. Ames.

Mr. AMES. No; that was not the reason.

Mr. DE NEFFE. You thought that the company ought to take the people into its confidence, was that it?

Mr. AMES. Yes.

Mr. DE NEFFE. And on December 1, 1924, the Herrick Lumber Co., by James W. Girard, wrote to the district forester, addressing you, and said:

> Reference is made to your letter of November 26. Upon my return to Burns I interviewed a few business men here on our application for one year's extension of time.

Did you consider that he was taking the people of those two counties into his confidence when he notified a few business men?

Mr. AMES. I certainly did when he notified the editor of the newspaper. I did not know of any better way to make a thing public than in that way.

Mr. DE NEFFE. The editor of the paper and someone else, one or two other men, he said.
Mr. AMES. He said a few.

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Mr. DE NEFFE. You attended that meeting at Burns on February 15, 1925, did you not?

Mr. AMES. Yes, Sir.

Mr. DE NEFFE. And then you saw Mr. Carter's report of February 20, 1925 ?

Mr. AMES. Yes.

Mr. DE NEFFE. You had it in your office all the time?

Mr. AMES. Yes.

Mr. DE NEFFE. On January 19, 1925, Mr. Carter wrote a letter to the district forester, do you remember it, saying that the reports were that Herrick was trying to dispose of the project, which did not indicate an intent to keep the promise to the Forest Service, do you remember that letter?

Mr. AMES. In a general way.

Mr. DE NEFFE. And did not that make you suspicious of Herrick's good faith in this matter, as to whether he might be speculating or not?

Mr. AMES. It did not make us suspicious. It was merely a suggestion.

Mr. DE NEFFE. You were in touch with this whole situation all the time, were you not, with the protests and the defaults by Mr. Herrick?

Mr. AMES. Quite closely.

Mr. DE NEFFE. In fact, they would come to your office first usually; before they would come to Washington to Colonel Greeley, would they not?

Mr. AMES. Some of them did, and some of them came directly here. I understand that a great many of them came directly to Washington.

Mr. DE NEFFE. Girard was very active, was he not, in negotiating these modifications and extensions?

Mr. AMES. The most of these negotiations were conducted with both Mr. Herrick and Mr. Girard.

Mr. DE NEFFE. And you also saw the Hoffman reports in the Spokane conference in July, 1925, did you not?

Mr. AMES. Yes.

Mr. DE NEFFE. In the third—or in the last modification—Colonel Greeley said that he fixed January 1, 1927, as the date when the cutting should begin, and he sent it out to you or your office, and that it was not put in by the Portland office. Can you explain that?

Mr. AMES. He explained it; and I would explain it in exactly the same was—as it was a fact. It was merely an error in drawing up the modification of the agreement. Naturally, the agreement with its modifications became rather complicated and I do not think it was an unusual thing. However, I might say in regard to that, that the leaving out of that requirement has absolutely no practical effect on the contract.

Mr. DE NEFFE. You think that the time for having the railroad finished is in the contract still?

Mr. AMES. It is in the contract still.

Mr. DE NEFFE. What date would you say the railroad had to be finished?

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Mr. AMES. December 15, 1926.

Mr. DE NEFFE. Well, that time is passed, is it not?

Mr. AMES. That is why I say that the leaving out of the time for beginning cutting has no practical effect, because we are in the same position that we would be in whether it was in there or not.

Mr. DE NEFFE. You have produced all the records here of your office on this matter, have you, Mr. Ames ?

Mr. AMES. Yes, sir.

Mr. DE NEFFE. That is all.

(Redirect examination by Mr. D. F. McGowan, attorney representing the United States Forest Service.)

Mr. MCGOWAN. Who is C. J. Buck?

Mr. AMES. He is the assistant district forester in charge of the office at Lands.

Mr. MCGOWAN. Now, as I understand it, when you and Mr. Carter adjourned your conference in Minneapolis with Doctor Brooks, the first date with reference to the conclusion as to the ad. was April 2, 1923. Am I correct in that?

Mr. AMES. That is right.

Mr. MCGOWAN. I hand you a telegram signed C. J. Buck to the Forest Service, Washington, D. C., dated March 5, 1923, and ask you if you are familiar with that, or have you any information in connection with it at all?

Mr. AMES. That is a paper from the official files.

Mr. MCGOWAN. I should like to read that into the record:

[Portland, Oreg., Postal Telegraph]

FOREST SERVICE
Washington, D. C.

Suggest you give whatever publicity Malheur timber sale you think necessary in territory you covered with prospectus, including eastern trade journals. Advertisement includes following sentence, end of first paragraph: "The cutting of Government timber at an average rate of 50,000,000 feet annually will be permitted; final date, April 4." Have furnished Timberman and two Portland newspapers with advertisement.

C. J. BUCK.

Mr. MCGOWAN. Now, I hand you a letter signed by E. E. Carter, to the district forester, Portland, dated March 6, 1923, and ask you if you are familiar with that?

Mr. AMES. Yes.

Mr. MCGOWAN. I should like to read that for the record:

UNITED STATES DEPARTMENT OF AGRICULTURE.
FOREST SERVICE.
March 6, 1923.

DISTRICT FORESTER.
Portland. Oreg.

DEAR SIR: 1 am completely puzzled by your telegram of March 5, which states that the final date for the receipt of bids in the readvertisement will be April 4. Previous to the receipt of your wire I had already sent advertising copy to three lumber trade journals, in which copy the final date for the receipt of bids was given as April 2, in accordance with my wire of March 1 from Minneapolis. The only reason of which I can think why the instructions in this wire were not followed was that the telegram failed to be delivered to you on the afternoon of March 1 or the morning of March 2 at the latest, or was garbled in transmission. Was that the case? Please inform me promptly.

An effort will be made to have the copy sent the lumber trade journals from here corrected.

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We shall endeavor to secure publicity in regard to the readvertisement of this sale in the East and have already arranged with the publicity bureau of the National Lumber Manufacturers' Association for a story which will be widely distributed. Here again, the statement has been made that the final date for the receipt of bids will be April 2, and it may be too late to make the necessary correction.

In the advertising copy sent out we have used substantially the same language in regard to the maximum rate of cutting as that given in your wire.

One modification of your suggestion in regard to the handling of publicity is, I believe, necessary. I

shall depend on you to place with those companies, both East and West, which indicated an interest in this offering during the period of the first advertisement, copies of the mimeographed statement which Mr. Ames told me it was his intention to issue. This would, of course, include such companies as the Hines Lumber Co., of Chicago, and the Shevlin-HIXON Lumber Co., of Minneapolis, both of which are east of the line of the Great Plains, roughly taken as the dividing line for publicity purposes during the first advertisement.

E. E. CARTER, *Assistant Forester*.

Mr. MCGOWAN. I hand you now a letter dated March 9, 1923, signed by C. J. Buck, to the Forester, Washington, D. C., initialed down in the left-hand corner "F. E. A.," and I ask you if you are familiar with that letter.

Mr. AMES. Yes.

Mr. MCGOWAN. What is it?

Mr. AMES. It is a letter which I wrote and which Mr. Buck signed, to the Forester, of March 9, 1923.

Mr. MCGOWAN. I should like to read this into the record:

MARCH 9, 1923.

The FORESTER,
Washington, D. C.

DEAR SIR: As I wired you on March 5, the final date for the receipt of bids was extended until April 4. This was necessary because the first insertion of the advertisement did not include the provision that the removal of inferior species would be optional with the purchaser. The advertisement is appearing in the Oregonian and Telegram of Portland, and has been sent to the Timberman and the West Coast Lumberman.

Very truly yours,

GEO. H. CECIL, *District Forester.*
By C. J. BUCK, *Acting.*

Mr. MCGOWAN. I hand you another letter dated March 12, 1923, addressed to the Forester, Washington, D. C., and signed Fred Ames, and ask you if you recall that.

Mr. AMES. That is an official letter.

Mr. MCGOWAN. Was that letter sent out as were the others?

Mr. AMES. Yes.

Mr. MCGOWAN. I should like to read that for the record

MARCH 12, 1923.

THE FORESTER,
Washington, D. C.

DEAR SIR: Referring to my letter of March 9.

To explain more at length in regard to this advertisement. Mr. Carter's wire from Minneapolis was received all right at this office and the advertisement started on March 2. It appears, however, that it was not clearly understood whether the inferior species were to be optional or not. Mr. Carter's wire of February 19, however, describing the offer put the inferior species required, this being based on Mr. Barnes's information. It was accordingly considered safer to start the advertisement on that basis. On Saturday Mr. Ames secured a copy of the Oregonian and wired Mr. Munger from Paradise to make the change in the advertisement. Mr. Munger did not receive this wire, however, until evening, when it was too late to get the change made in the Sunday issue.

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Mr. Ames arrived on Sunday morning and the change was made Monday, which necessitated making

the final date April 4 upon the advice of the assistant to the solicitor. It is hoped no serious complications will result.

Notice in regard to the readvertisement was wired to Shevlin-HIXON, Hines of the Hines Lumber Co., G. Elias and Bro. of Buffalo, N. Y., and the Winton Lumber Co. of Gibbs, Idaho, on March 5, and copies of the mimeographed statement have been sent to a considerable number of other firms, including all those whom it was thought might have some interest in the matter.

Very truly yours,

GEO. H. CECIL, *District Forester*.
By FRED AMES, *Acting*.

Mr. MCGOWAN. I see that it refers to a telegram sent by you to Mr. Munger from Paradise; that is in Montana, is it not?

Mr. AMES. Yes, Sir.

Mr. MCGOWAN. The bids were opened in your office on April 5, as I understand it.

Mr. AMES. Yes, sir.

Mr. MCGOWAN. Who was present there?

Mr. AMES. Mr. Flood, Mr. Barnes, Mr. Munger, and I.

Mr. MCGOWAN. Now, coming back to these sales that you said extensions had been granted on in district No. 6. Were they sales of any consequence, or were they matters of considerable importance?

Mr. AMES. They were good-sized sales.

Mr. MCGOWAN. With a considerable investment in them?

Mr. AMES. Yes, sir.

Mr. MCGOWAN. Now, in so far as the Herrick sale is concerned as I understand it, that involved the construction of a railroad of approximately 90 miles in length.

Mr. AMES. Yes, Sir.

Mr. MCGOWAN. Is the construction of such a length of railroad the common or ordinary or the unusual thing in connection with the sale of Government timber?

Mr. AMES. I think it is five times as long as any sale which we have ever made required.

Mr. MCGOWAN. I think that is all.

Mr. DE NEFFE. Just a question. Was not Arch McGowan there when the bids were opened?

Mr. AMES. Yes; I believe he was. I had forgotten him.
Mr. DE NEFFE. That is all.

(Cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. On the occasion when these bids were opened, do you know whether or not Mr. Flood and Mr. Barnes were sitting out there so that they could have had a quiet talk of the character that Mr. Flood has told us about; would they have had an opportunity to do so, in other words?

Mr. AMES. Well, there was quite a few people around there, and Mr. Cecil and Mr. Kavanaugh came in later, and it would have been possible.

Mr. HALLOCK. Mr. Cecil was the district forester, and Mr. Kavanaugh his assistant district forester.

Mr. AMES. He was the assistant district forester in charge of grazing.

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(Further redirect examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. One more question. When you were in Minneapolis with Mr. Carter in connection with the Doctor Brooks conference, was Mr. Barnes there?

Mr. AMES. Mr. Barnes was in Minneapolis, but he was not at the conferences except on, I think, two occasions, when he was called in to answer some questions which Doctor Brooks had in mind.

Mr. MCGOWAN. Did you have any conversation with Mr. Barnes in connection with the matter aside from the conference with Doctor T: Brooks?

Mr. AMES. Yes; we used to see Mr. Barnes frequently, and to keep him informed of the progress of the negotiations.

Mr. MCGOWAN. What was the substance of those conversations with Mr. Barnes?

Mr. AMES. Mr. Barnes knew the principal points upon which we were arguing with Doctor Brooks.

Mr. MCGOWAN. You say "the principal points," what do you mean?

Mr. AMES. The principal points were the price and the rate of cutting.

Mr. MCGOWAN. And then, Mr. Barnes, do I interpret you correctly, as far back as your conference with Dr. Brooks, knew of the proposed change in substance in paragraph 3?

Mr. AMES. He knew that there were changes which would have to he made in that paragraph.
Mr. MCGOWAN. That is all.

Mr. DE NEFFE. You do not know at what stage of the proceedings on the morning the bids were opened that Cecil and Kavanaugh came in, do you?

Mr. AMES. It was after the bids were opened, I think.

Mr. DE NEFFE. You do not know whether it was before or after this purported talk between Barnes and Flood.

Mr. AMES. No; I could not remember the comings and goings there. There was no little confusion and excitement.

Mr. DE NEFFE. That is all.

The CHAIRMAN. Mr. Ames, you are excused.

(The witness left the stand.)

Mr. HALLOCK. May I make one statement before I rest our case? The record does not show what I am sure counsel would admit the fact to be, that Mr. Ralph Hamilton, of Bend, Oreg., who made the talk for the Oregon memorial in the Oregon Legislature, is the record attorney for the Brooks-Scanlon Lumber Co. and the Burns Co., which has the town site at Burns. If counsel does not care to admit it, I can produce the Oregon Bar, an official document which evidences that fact.

Mr. DE NEFFE. Well, I have no knowledge of it. I think there has been an intimation of that heretofore, but I have no personal knowledge that he is the attorney for these companies.

Mr. HALLOCK. Very well. Mr. Chairman; I will produce the volume and want to get it in the record.

Mr. DE NEFFE. I have no objection to that. I should like to introduce at this time an affidavit from Archie

McGowan as bearing upon this alleged conversation between Flood and Barnes.

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Mr. HALLOCK. I have never seen it.

Mr. DE NEFFE. Here it is.

Mr. HALLOCK. Mr. Chairman, I object to the affidavit only for this reason: It is not substantive evidence. It is in the form of an affidavit, and we are deprived absolutely of the right of cross-examination of Mr. Archie McGowan, the subscriber to it, whom we consider a very important witness in this case. If he were here in person and we could interrogate him, we certainly would have no objection to his testimony with respect to anything he might care to cover. But it seems to us that by putting in an affidavit of a man 3,000 miles away, whose activities in this matter and whose identity to the transaction are as important as Mr. McGowan's puts us at a serious disadvantage.

Mr. DE NEFFE. There have been a number of affidavits introduced here without anybody objecting. Mr. McGowan is a member of the Oregon Legislature, and of course he could not get away to come here. If it had not been for that fact he would have been here and would have entered a vigorous denial to a lot of these things.

Mr. HALLOCK. I certainly wish he had been here.

The CHAIRMAN. I think counsel's objection is well taken, and would very properly be sustained if we were following the ordinary court procedure in the conduct of this hearing. But if there is anything in this affidavit that may be enlightening to the subcommittee, there is no reason why the subcommittee should be denied the right of perusal. Therefore the chair will permit the objection to stand on the record, and admit the affidavit to become a part of the record.

AFFIDAVIT OF Archie McGowan

STATE OF OREGON
County of Multnomah, ss:

I, Archie McGowan, being first duly sworn on oath do depose and say; that I am a resident of Burns, Harney County, Oreg., and have been for the past 25 years and have, as such resident and as a property owner, been interested in the sale of what is known as the Bear Valley unit of the Malheur Forest; that I became acquainted with Mr. E. W. Barnes at the time such sale was first contemplated; that when the Forestry Department was finally induced to offer this timber for sale, a call for bids was made by the forestry department, and my recollection that the time for opening such bids was set for some time in April, 1923; that at the time so set, I went with Mr. E. W. Barnes to the office of Mr. Fred Ames, one of the forestry officials, at the Portland, Oreg., office, at which place the bids were to be opened; that I was with Mr. Barnes constantly from the time he entered Mr. Ames's office and only a few minutes prior to the time set for opening the bids received, Mr. Flood came into the room and presented the bid of Mr. Fred Herrick; that while we were in the said room Mr. Flood and Mr. Barnes were introduced to each other, although I do not remember at this time whether it was before or after the bids were opened, I do know, however, that I heard every word of conversation between Mr. Barnes and Mr. Flood while they were in the office of Mr. Ames; that at no time during this conversation did Mr. Barnes make any suggestion that Mr. Flood either fail to present the bid of Mr. Herrick or to withdraw same if already made. It follows from this statement that Mr. Barnes did not attempt in any wise to bribe Mr. Flood in connection with this bid.

Following the opening of the bids Mr. Flood invited Mr. Barnes and me to go with him to his room in the Portland Hotel for a social visit. Never at any time during the conversation between Mr. Barnes and Mr. Flood after leaving Mr. Ames's office, or during the time that we were in the hotel room together, did Mr. Barnes make any such offer or suggestion to Mr. Flood. I finally left the hotel leaving Mr. Barnes and Mr. Flood in conversation.

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This affidavit is made voluntarily and without solicitation, and is occasioned entirely by reports in the press that charges have been made by Mr. Blame Hallock, attorney for Mr. Herrick, that Mr. Barnes tried to bribe Mr. Flood to withhold the bid of Mr. Herrick. I am a member of the Oregon Legislature and was present when similar charges were made by Mr. Hallock in an attempt to induce the Oregon Legislature to

rescind or modify the memorial which it had passed a few days before, in connection with this matter. At that time I stated to Mr. Hallock what I have stated above and I am surprised to learn that Mr. Hallock has reiterated this baseless charge.

I have no interest in this controversy except as a citizen send property owner of Harney County, Oreg.

ARCHIE MCGOWAN.

Subscribed and sworn to before me this 13th day of February, 1927.

JAMES C. CONLEY.
Notary Public for Oregon.
My commission expires June 2, 1928.

Mr. DE NEFFE. Mr. Chairman, I looked through the transcript on yesterday but could not find where Mr. Carter's report of February 20, 1925, had been copied in. I should like to have, that put in.

Mr. HALLOCK. What was that?

Mr. DE NEFFE. The Carter report of February 20, 1925. I could not find where it had been copied into the record, and I wide it to be in.

Mr. HALLOCK. I do not know anything about these documents, except to say that as they leave been called for and received from the Forest Service they have been handed to counsel.

Mr. DE NEFFE. I know, but I wish to have it in the record. However, I can not find it.

Mr. HALLOCK. Oh, that is in the record.

The CHAIRMAN. I know, that it was admitted.

Mr. HALLOCK. It begins on page 388 of the record.

Mr. DE NEFFE. Then that is all right.

Mr. MCGOWAN. Mr. Chairman, may I ask Mr. Ames one more question?

The CHAIRMAN. Yes; and he may sit where he is.

Mr. MCGOWAN. Mr. Ames, there seems to be some question about the presence of Archie McGowan at the opening of the bids. Have you a list of the persons who were present there, at the time of the opening of the bids?

Mr. AMES. Yes. This is the list and it is endorsed on the back of the bid immediately after it was opened.

Mr. MCGOWAN. What, does it show in the hatter of the names of the persons who were there at the opening of the bids and as to the time of the opening of the bids, and the date?

Mr. AMES. The bids were opened at 10 o'clock on the morning of April 5, 1923. The official witnesses were Thornton C. Munger and myself. The other witnesses were E. W. Barnes, E. E. Flood, and A. McGowan.

Mr. MCGOWAN. Then the official record does show that Mr. Archie McGowan was there.

Mr. AMES. Yes.

Mr. MCGOWAN. That is all.

Mr. DE NEFFE. I should like to ask Mr. Girard a question from where he is sitting. Mr. Girard, do you remember what the cost of the Crane-Burns Railroad was aside from the grade, which Mr. Herrick furnished ?

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Mr. HALLOCK. Are you referring to the whole cost or the cost of that portion which Mr. Herrick constructed ?

Mr. DE NEFFE. As I understand it Mr. Herrick constructed the roadway from Crane to Burns, is not that all, for the Union Pacific Railroad ?

Mr. HALLOCK. But perhaps I am interrupting.

Mr. GIRARD. Do you mean the total cost of that railroad?

Mr. DE NEFFE. Yes.

Mr. GIRARD. No; I could not give you that offhand.

Mr. DE NEFFE. Do you know approximately how much the Union Pacific has in it?

Mr. GIRARD. I would say offhand between $750,000 and $1,000,000.

Mr. DE NEFFE. You are talking about equipment and everything, are you?

Mr. GIRARD. No; I am talking about ties, steel, telegraph lines, stations, etc.

Mr. DE NEFFE. That is what I mean. Then the fencing and ballasting and everything?

Mr. GIRARD. That is included in our cost, the fencing.

Mr. DE NEFFE. That is all.

Mr. GIRARD. Our cost includes right-of-way, grade construction, bridges, pipes, fences, laying tracks, surfacing, and engineering.

Mr. DE NEFFE. There is another letter I have not been able to find in the transcript. It may be there and I have overlooked it, but that is a letter from Colonel Greeley to Senator MCNARY, dated the 27th of February, 1925. I should like to introduce that in case I do not find it already in the record. (See p. 583.)

The CHAIRMAN. Very well, that may be made a part of the record. Have you rested, Mr. Hallock?

Mr. HALLOCK. Yes; Mr. Chairman; we have rested.

Mr. DE NEFFE. We have some rebuttal but it will not take long.

The CHAIRMAN. Call your witness.
Mr. DE NEFFE. Mr. Biggs.

TESTIMONY OF JOHN W. BIGGS, OF BURNS, OREG., IN REBUTTAL

(The witness was duly sworn by the chairman when first put on the stand.)

(Direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.:)

Mr. DE NEFFE. Mr. Biggs, just briefly in regard to this meeting in Mr. Granger's office on the 22d of April, 1926: You were at that meeting, were you?

Mr. BIGGS. Yes, sir.

Mr. DE NEFFE. When Mr. Donegan was there?

Mr. BIGGS. Yes, sir.

Mr. DE NEFFE. Whom did you represent at that meeting?

Mr. BIGGS. As representing a part of the citizens at Burns and of Harney County, and also in Grant County.

Mr. DE NEFFE. And you heard Mr. Donegan's statement read here?

Mr. BIGGS. Yes.

Mr. DE NEFFE. There was testified to by Mr. Granger that there was no dissent from his statement and that it appeared to be the

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view of everyone present. I do not want to misquote him. Was there any dissent from the views expressed by Donegan?

Mr. BIGGS. Only in this respect at that time: From the data which had been furnished to Mr. Trowbridge, Mr. Woldenberg, and myself, we had drawn up a letter to Colonel Greeley, a copy of which we had there at that time. I do not remember positively whether it was left there, but it was looked over at the time. Our stand was this: That we wanted the contract canceled unless arrangements could be made for the proper and rapid construction of the works and the completion of it. There was only one suggestion that I made at the time when Mr. Donegan's proposal was stated, and that was this: If the Forest Service saw fit to grant an extension of time and could secure the proper assurance that it would be completed upon that, that I felt and the ones whom I was speaking for felt, that it should be made as short as possible, but with sufficient time given to build the works, and that on that extension to see that it was properly complied with.

Then this other question was raised and discussed, as to the time set forth in Mr. Donegan's proposal, and that was that we did not believe the work could be completed in that time; that we thought it was impossible for the mill to be completed; also that the winter months in our country made it almost impossible to do construction of that kind during the winter. If the extension was granted beyond January 1 it should be granted far enough along so that the contractor would have some good months in which to complete the work. But we did insist that the terms of that extension be made such that he could comply with them, and we wanted to see that they were complied with.

Mr. DE NEFFE. At that meeting you presented this letter which has been introduced in evidence here; is that right?

Mr. BIGGS. It was discussed some there at the time. I do not know whether a copy of it was filed with Mr. Granger or not, but it was there at the meeting, and I think was read by Mr. Conley as stating the exact position that the parties whom we represented had requested us to present at the time.

Mr. DE NEFFE. In regard to the work not going forward at Burns soon after Herrick got the contract. Do you know any contractor there who offered to organize a gang to work for Mr. Girard after the contract was signed?

Mr. BIGGS. Along in the latter part of the summer or in the early fall of 1923, and I do not remember the exact date, Mr. P. G. Smith stated that he could secure plenty of teams and workmen to put that grade up that fall. That was the fall of 1923, and all by local people.

Mr. DE NEFFE. Was he allowed to do it?

Mr. BIGGS. He did not do it. I do not know what the reason was.

Mr. DE NEFFE. Now, a great deal has been said about Mr. Barnes having obstructed the work down there. State what you know about that.

Mr. BIGGS. I know of nothing except as to matters of litigation.

Mr. DE NEFFE. Did that obstruct the work in any way?

Mr. BIGGS. Never to my knowledge, with the exception of one piece of work.

Mr. DE NEFFE. Just state briefly what there was to this litigation.

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Mr. BIGGS. Some time, I think, in September, and after the 15th of September, 1925, Mr. Barnes came into my office and requested me to commence action against Mr. Herrick for the recovery of the land upon which the mill site was to be placed. In that conversation or at the time I refused first to take it up for the reason that it might delay the work. I finally secured this agreement, or at least it was offered to me by Mr. Barnes, that if I —

Mr. HALLOCK (interposing). I do not want to interrupt except to get this into the record: That as counsel, who is a very good lawyer, knows, this is hearsay as far as we are concerned, and is not admissible as evidence, counsel being well versed in the law knows that, and I just want to leave that suggestion with him; and that it does take us at a decided disadvantage when he undertakes to talk about privileged communications between himself and his client, which we can not have any opportunity to combat.

Mr. DE NEFFE. He might connect it up with Girard's knowledge.

Mr. HALLOCK. He can not.

Mr. DE NEFFE. You may go ahead.

Mr. BIGGS. That I would have full authority at any time that they would give assurance that they would complete this in a reasonable length of time and construct the mill, to dismiss all proceedings.

Mr. DE NEFFE. Did you take it up with Girard then?

Mr. BIGGS. Not at that time. I did a little later on, at one time.

Mr. DE NEFFE. And told him of the Barnes proposition?

Mr. BIGGS. It was told to him in my presence, but I do not remember whether I told it or not.

Mr. DE NEFFE. All right, go ahead.

Mr. BIGGS. Further than that, after Mr. Barnes had spoken to me and prior to the time that I filed the complaint, I had heard that there was a contract let for the construction of the mill pond and the highway. I notified Mr. Barnes of this, or spoke to him of it, and he informed me that the contractor had said that while the contract provided for both mill pond and the construction of the highway, that he should do just as little work on the mill pond as possible that fall, but to go ahead and construct the highway. To verify that to a certain extent I knew a man there who wanted to place his teams at work, and I sent him to the contractor, who informed him that they would not need many teams.

Mr. DE NEFFE. Who informed him?

Mr. BIGGS. The contractor, that they would not need many teams. I went ahead then and filed the complaint. Prior to the filing of the complaint Mr. Barnes and myself and one or two other parties went down and looked over the ground, and saw that no work, no actual construction had been begun upon the property. The complaint was filed, and then within 48 hours they had large crews at work, and they sent for the party and for his teams who had been turned down the day before we filed the complaint.

Mr. DE NEFFE. Would you say that what Mr. Barnes did in filing the complaint delayed or stopped the work?

Mr. BIGGS. I will say that the work speeded up very rapidly from that time on, and that they did construct a great deal of work that fall on those grounds and near there.

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Mr. DE NEFFE. What can you say about Mr. Barnes preventing them from working over his land; that is, in the laying of tracks? Did he object?

Mr. BIGGS. He never checked them except on one piece.

Mr. DE NEFFE. Where was that?

Mr. BIGGS. That piece lay in the canyon just south of Seneca. It was a piece of ground that Mr. Barnes had

secured in which it was practically necessary to construct the railroad across those grounds; in fact, it would have been almost impossible for them to have built the railroad through the canyon without that. At the time he secured this negotiations were entered into for a right of way from Mr. Barnes. He submitted a deed to them which had two clauses in it: One was that the road should be constructed to Seneca. The other was that it should be a common carrier, and that at any time when they failed to operate as a common carrier that the land with the improvements should revert back to the grantor. They refused to accept that deed. We then refused to let them enter upon the land until they started condemnation proceedings.

Mr. DE NEFFE. With whom did you take that matter up about this deed ?

Mr. BIGGS. As far as I was concerned with the deed it was sent to Mr. Cattanach, associated attorney at Canyon City, and I think he took it up with Mr. Cook and Mr. Girard.

Mr. DE NEFFE. And did Mr. Barnes do anything else in connection with that piece of land which obstructed them?

Mr. BIGGS. He refused to allow them to begin work upon that land until after they had condemned.

Mr. DE NEFFE. Now, in regard to work being delayed across his land below Burns and between Burns and the mill site, did any action that he took delay the work there?

Mr. BIGGS. The litigation was started over that, but the work went ahead just the same.

Mr. DE NEFFE. Did the Herrick people lay down works across his land?

Mr. BIGGS. How is that ?

Mr. DE NEFFE. Did they lay tracks across his land?

Mr. BIGGS. I think the tracks were laid, but they did all the grading prior to the time that the compromise was had. The rails, I do not think, had been laid until after we had reached an agreement.

Mr. DE NEFFE. And do you know anything about this mill site controversy between Barnes and Herrick?

Mr. BIGGS. Only what has come out through the litigation.

Mr. DE NEFFE. Just what you have related?

Mr. BIGGS. Yes, Sir.

Mr. HALLOCK. He is his attorney in it.

Mr. DE NEFFE. Well, I said he had just told me in answer to the first question what the situation was there. In regard to Mr. Barnes's attitude towards Mr. Herrick and Herrick's projects down there, what would you say his attitude was?

Mr. BIGGS. To my personal knowledge he tried to reach an amicable settlement, and particularly in April, 1926, when we requested him at a meeting with Mr. Girard and his attorney. That meeting

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was held some time in April, I think, about the middle. There was Mr. Girard, Mr. Cook, his attorney, Mr. Barnes, Mr. Conley, Mr. George M. Walker, and myself present. At that time we tried to reach an agreement to settle these matters, and while there was a good deal of discussion back and forth as to the value of the damages, Mr. Girard and Mr. Cook took this attitude, that they were responsible to no one except the Forest Department in this and did not care to enter into any contracts or agreements as to what work should be done or when it should be done with anybody except the Forest Department.

Mr. DE NEFFE. And was a settlement had at that conference?

Mr. BIGGS. It was not.

Mr. DE NEFFE. Was there one had afterwards?

Mr. BIGGS. Yes; between Mr. Hallock and Mr. Barnes and I a settlement was reached on all except the mill property.

Mr. DE NEFFE. Do you know whether Mr. Barnes lent Mr. Herrick or his people any assistance in carrying on this work?

Mr. BIGGS. To start with I know that he did. And the only attitude that I had personal information of Mr. Barnes being in opposition was after the delays had occurred to such a point that it was known that the work would not be completed in accordance with the contract.

Mr. DE NEFFE. And then he shared the same views that a good many citizens there shared, was not that it, as to Herrick?

Mr. BIGGS. As to expressions I have heard from Mr. Barnes, they were the same as quite a number of others.

Mr. DE NEFFE. That is all.

(Cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher:)

Mr. HALLOCK. You were talking about a settlement of some six actions, as I recall it, that Mr. Barnes had instituted against the Fred Herrick Lumber Co., or in which he was interested as defendant in condemnation proceeding or otherwise, that were handled over in your office last summer.

Mr. BIGGS. That was at the time when the settlement was reached; yes.

Mr. HALLOCK. Now, do you not recollect, John, that you and Mr. Barnes were holding out there for something in excess of $4,000 in the way of damages and compensation, and later settled those very claims for $2,300?

Mr. BIGGS. I do not remember exactly what the claims were, as to each. My remembrance is this, that what you had offered us $650 for, and what we had asked something over $3,000, were finally settled at $2,300.

Mr. HALLOCK. Well, I think you are a little confused there if I may use the term. It may be that we were talking about $600 as to one or two of them, but my recollection is that in the aggregate your claims amounted to something over $4,000, is not that your best recollection?

Mr. BIGGS. I would not be positive, but my recollection was that it was just a little over $3,000.

Mr. HALLOCK. In any event we did not settle them on that occasion, but later Mr. Charles B. Foley, representing Mr. Barnes, and

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myself, and I think with some help from you, worked out a settlement on the basis of $2,300.

Mr. BIGGS. It was worked out within a short time after that.

Mr. HALLOCK. Did not Mr. Girard at all times, when Mr. Barnes was endeavoring to have him execute some indemnity bond to guarantee the performance, or to guarantee the work anyway, always take the position that he could not undertake to contract with Mr. Barnes as an individual in connection with this project, any more than he could with any other individual, and that he had a contract with the Federal Government which defined his rights and obligations; that he therefore felt that he was entirely justified in declining to commit himself, to tie himself up under contractual arrangements with Mr. Barnes, was not that about it?

Mr. BIGGS. I never had a conversation with Mr. Girard with regard to any of these matters that I can recall, except the one conversation when we were all present there.

Mr. HALLOCK. That was his attitude at that time, was it not?

Mr. BIGGS. That he had a contract with the Government and would enter into a contract with individuals with regard to the time of construction or manner of construction, but would deal solely with the Forest Service.

Mr. HALLOCK. Now, John, as a lawyer, you know it to be a fact, do you not, that where you take right-of-way deeds for a railroad company it is extremely bad to tie into them conditions and covenants with respect to the ultimate loss of property rights or obligations to operate your property in a particular manner or over a particular man's land, or to a particular point, or anything of that kind; that is true to your knowledge, is it not?

Mr. BIGGS. Well, I would say this, that unless we are going to fulfill all those it would be very bad indeed to have them in the deed, unless there was an intention to carry all those through.

Mr. HALLOCK. Obviously so, but I do not know whether you get my point or not. I was with the right-of-way department of a railroad company for a good many years myself, and in connection with the law department, and that has been my experience. I should like for you to tell me if it has been yours, that railroad managements generally want their right-of-way deeds clean and not tied in with covenants and obligations and stipulations which have any relation to the title of the property, is not that your observation?

Mr. BIGGS. All that I have known of them has been this, that they have always done their best to keep their deeds or get their deeds without any strings upon them at all.

Mr. HALLOCK. It is a pretty general railroad policy, is it not?

Mr. BIGGS. Yes; as far as I have known.

Mr. HALLOCK. And then if matters of the character such as you discussed have got to be covered by a deed or other instrument in writing, it is usually made the subject of a separate instrument; is not that true?

Mr. BIGGS. Well, either that, or my opinion has been—while I have tried not to offer any opinion at all in my testimony—that these things could be secured by condemnation where you could not secure them by agreement or reservations in the deed.

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Mr. HALLOCK. I got the impression in your direct examination in the first instance that your testimony was largely devoted to your opinions on the matter of construing section 3 of the contract, and I wondered if on would hesitate to give us some further opinions.

Mr. BIGGS. I failed to offer any opinion. I stated exactly what the terms of the contract could be, or what could be done under the terms of the contract, without giving any opinion as to any matter pertaining to it.

Mr. HALLOCK. I see. Now, John, as a lawyer, I wonder if you will tell me frankly whether or not you do not believe it to be a fact that there is not a scintilla of evidence in this case that would justify any litigant in going to court or to a jury on the proposition of fraud, collusion, or conspiracy against Mr. Herrick or any member of his organization, or the Forest Service or any of its people.

Mr. BIGGS. I refuse to answer that at all, entirely.

Mr. HALLOCK. Very well; that is all.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. Mr. Biggs, when you and Mr. Donegan and a delegation called upon Mr. Granger it was in 1926, was it not?

Mr. BIGGS. I remember it was about the 21st or 22d, or somewhere along there, of April, 1926.

Mr. MCGOWAN. The question of cancellation of the contract was considered at the time.

Mr. BIGGS. A request had been made either for a cancellation or that terms be made to compel the work to go

ahead.

Mr. MCGOWAN. And it was your position and the position, as I understand it, of the other gentlemen, that cancellation should in so far as possible be the last resort?

Mr. BIGGS. Yes.

Mr. MCGOWAN. You did not want cancellation in any event, did you?

Mr. BIGGS. Yes—well, I will state this a little further as a fact that came up at that time, inasmuch as you have entered upon it. I have been to a certain extent the peacemaker between both factions, and have never taken a decided stand on either one, and leave tried to get the two different factions together; and the report of Mr. Donegan's and the letter that we put in at that time were as near as we could get together. At the start it was quite radical on both sides.

Mr. MCGOWAN. It is a fact that cancellation was considered as a last-resort measure.

Mr. BIGGS. We did not want cancellation, or at least a large number of them did not, and I was representing a good many of those; provided definite terms for construction could be made and Mr. Herrick forced to live up to them.

Mr. MCGOWAN. That is all.

Mr. DE NEFFE. I have nothing more to ask.

The CHAIRMAN. You are excused.

(And the witness left the stand.)

Mr. DE NEFFE. Mr. Barnes.

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TESTIMONY OF E. W. BARNES, OF PORTLAND, OREG., IN REBUTTAL

(The witness was duly sworn when first put on the stand.)

(Direct examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.:)

Mr. DE NEFFE. Mr. Barnes, you heard Mr. Granger's testimony, did you?

Mr. BARNES. Yes.

Mr. DE NEFFE. At the time you went to the Portland office to get copies of the contract and all modifications and other information at the request of the Grant County court, did Mr. Granger offer to let you make a copy of any of those documents?

Mr. BARNES. No.

Mr. DE NEFFE. You had been instructed I understood you to say to get copies and bring them back to the county court.

Mr. BARNES. I was instructed by the county court to get copies and bring them back to them.

Mr. DE NEFFE. And did you agree to go back the next day, or to send Mr. Gray back, at 10 o'clock the next morning, to make notes ?

Mr. BARNES. I told Mr. Granger that I would come down or send a man the next morning. He told me that I might look over some of the stuff, but he did not say all of it. He did not say that he would give me a week to look over this stuff. He said, "Come down and look at it." I told him I would come down the next morning, and I had made up my mind to go down the next morning then. But the next morning I had seen John K. Kollock, an attorney

of Portland, and he told me not to go down and look at anything.

Mr. DE NEFFE. And you did not go?

Mr. BARNES. No. I figured that if I could not get what I wanted to take back there wasn't any use looking over what there was there.

Mr. DE NEFFE. You are not a lawyer yourself, are you?

Mr. BARNES. No.

Mr. DE NEFFE. Mr. Herrick testified that the only statement he made to you about not being willing to haul anybody else's logs or freight or anything, was that he just merely told you that he would hot haul any logs for you. Did he limit it to you?

Mr. BARNES. Not hardly, no. He said he did not want any common-carrier railroad at all, that he wanted it a private road, and that he would not haul any logs or anything for anybody if he could help it. I told him he could not help it, that he had signed a contract, or was going to sign one, or had made a bid on one that required a common-carrier railroad, and that he would have to sign that kind of a contract, and that he would have to carry out anything that anyone wanted him to carry out. And he said he could overcome that and I asked him how, and he said "Well, I care go into bankruptcy and turn it into a private road." I said "Mr. Herrick. A man of your caliber can not afford to do that." And he says "That does not make any difference, Barnes. I want to put up my mill in the woods, and I do not see any chance for a mill site at Burns."

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Mr. DE NEFFE. Did you ever in a conversation with Girard or Klobucher vilify Mr. Herrick or his mother's name, as has been testified here?

Mr. BARNES. Not that I remember of.

Mr. DE NEFFE. Now, in regard to Mr. Flood: Do you know Mr. Flood?

Mr. BARNES. Yes; I have met Flood.

Mr. DE NEFFE. Had you met him before this meeting in Ames's office ?

Mr. BARNES. No; I had never met him before I met him in Ames's office. Mr. Ames introduced Mr. Flood to me and Mr. McGowan.

Mr. DE NEFFE. Do you remember that he said after the bids were opened, that you in effect told him: "Young man, take that bid down and I will give you a check of the same size"?

Mr. BARNES. Yes; I remember he said that here.

Mr. DE NEFFE. Did you ever make any such statement as that to Mr. Flood?

Mr. BARNES. No; and I never talked to Mr. Flood in confidence in Mr. Ames's office. Everybody heard what I said in Ames's office.

Mr. DE NEFFE. Did you ever at any time make such a statement to Mr. Flood.

Mr. BARNES. No; a man would be a fool to make that kind of a break to Flood.

Mr. DE NEFFE. He was a complete stranger to you there?

Mr. BARNES. Yes, sir.

Mr. DE NEFFE. Except that you had just met him there?

Mr. BARNES. I had never met him until I seen him there.

Mr. DE NEFFE. Did you later on, at the hotel in Portland, or any place else, tell Mr. Herrick that he had a loyal man in Mr. Flood?

Mr. BARNES. No.

Mr. DE NEFFE. That you had offered him $25,000 to throw him down but that Flood had refused?

Mr. BARNES. No
Mr. DE NEFFE. Did you ever make any such statement?

Mr. BARNES. No; never.

Mr. DE NEFFE. Mr. Ames testified that at the conference with the Brooks-Scanlon people in Minneapolis that you knew the principal points in paragraph 3 regarding the cutting of timber, did you know anything about that?

Mr. BARNES. I did not know anything about the cutting. All I knew in the matter at Minneapolis was that Mr. Brooks had signed some kind of an agreement, and I supposed that it was an agreement that he would bid. It was natural, as I supposed, that he would ask if he were sure going to bid if they advertised. And that is all that I supposed he signed, was just an agreement that he would bid. I did not know anything about their cutting or know of their arguments on that at all that they claim here.

Mr. DE NEFFE. Mr. Klobucher testified that you tried to obstruct the, work there and to create a false sentiment against Mr. Herrick. Did you ever do anything of that kind?

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Mr. BARNES. No. The first year, I might say, after Herrick had this contract I helped him all I could, done everything I could to help Mr. Girard. As far as my working for Mr. Herrick at any time, I was never on a salary with Mr. Girard or Mr. Herrick at any time. I went in and helped Mr. Girard cruise some private timber, and he gave me a check for $200 when I got into Portland with him. And then at another time he gave me a check for $300, and that was for running around, for instance, with a car, and wherever I would get an option on some right-of-way for him I would pay out 50 cents or a dollar for the contracts, and that $300 was given to me for that kind of expense. I was never on a salary. You might call that first $200 as salary. We were in the woods for about two weeks, or maybe three weeks.

Mr. DE NEFFE. That was after the bids were opened?

Mr. BARNES. Yes, sir.

Mr. DE NEFFE. Who told you to go into the woods with Girard?

Mr. BARNES. Mr. Herrick and Girard both. Mr. Girard asked me to go in with him and cruise some private timber.

Mr. DE NEFFE. That was after this alleged charge that you attempted to bribe Mr. Flood happened, was it not?

Mr. BARNES. Yes; sure it was after the bids were opened.

Mr. DE NEFFE. And after that Mr. Herrick, claiming that that had happened, still hired you to go ahead and work for him?

Mr. HALLOCK. We object to that, because Mr. Flood did not fix the date of his report to Mr. Herrick of that conversation as being at the opening of the bids as I recollect it, but he said he told him of it later.
Mr. DE NEFFE. Yes; at the hotel.

Mr. HALLOCK. No; I am talking about communicating the information to Mr. Herrick later. It was later on.

Mr. BARNES. Probably he did not tell him until he got down here, Mr. Hallock.

Mr. DE NEFFE. When was it that you cruised that timber or helped Girard to cruise it?

Mr. BARNES. It was in May, I think.

Mr. DE NEFFE. Just tell us approximately when.

Mr. BARNES. It was beginning about May 12, or somewhere along there.

Mr. DE NEFFE. 1923?

Mr. BARNES. Yes, Sir.

Mr. DE NEFFE. That was after you and Herrick and Girard had gone from Burns to Prineville, was it?

Mr. BARNES. Oh, yes.

Mr. DE NEFFE. Just go ahead.

Mr. BARNES. We went from Prineville back to Burns, and then to Portland, and then me and Mr. Girard went back from Portland and cruised the timber.

Mr. DE NEFFE. Mr. Klobucher also testified that you had said that Herrick has in his employ a couple of men who are in the employ of the Forest Service, or words to that effect.

Mr. HALLOCK. That was Mr. Jameson.

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Mr. BARNES. That. I had said what?

Mr. DE NEFFE. Did you ever make any such statement?

The CHAIRMAN. Just let the reporter read that question to the witness.

Mr. DE NEFFE. Put in the name of Jameson instead of Klobucher.

(Thereupon the shorthand reporter read the question as corrected, as follows:)

> Mr. DE NEFFE. Mr. Jameson also testified that you had said that Herrick has in his employ a couple of men who are in the employ of the Forest Service, or words to that effect. Did you ever make any such statement?

Mr. BARNES. Well, now—words to that effect—well, everybody in town knew, at Burns, that Mr. Girard and Mr. Klobucher was in the Forest Department.

Mr. HALLOCK. That does not answer the question.

Mr. DE NEFFE. They have been in the Forest Department?

Mr. BARNES. Yes.

Mr. DE NEFFE. Before they went to Herrick?

Mr. BARNES. Yes.

Mr. HALLOCK. Mr. Chairman, I think the witness should be required to answer the question.

The CHAIRMAN. The committee reporter will read the question. (Which was done.)

Mr. BARNES. No; I never made that remark.

Mr. DE NEFFE. Mr. Klobucher also said you tried to dictate in 1923 and 1924 how the work should progress;

is that a fact that you tried to dictate?

Mr. BARNES. I never tried to dictate. I often used to try to find out from Girard what he was doing, and what he intended to do, when the work was not going on. There were miles and miles of right of way that there was nobody working on. I used to ask him once in a while different things, and he could not give me any information, because, I did not believe, he knew himself.

Mr. DE NEFFE. Did you ever tell Mr. Klobucher that you would fight Mr. Herrick as long as you had a dollar?

Mr. BARNES. No; I never told Mr. Klobucher any such thing.

Mr. DE NEFFE. And did you ever delay their work at the mill site in any way?

Mr. BARNES. No. I never stopped them working there at any time. They worked there all the time. They worked over the highway over my land and I never went near them to stop them, or see anything about it, and they finished the road.

Mr. DE NEFFE. Did they finish and lay rails.

Mr. BARNES. No; this was the highway I was talking about there.

Mr. Dr. NEFFE. That is, that they had to change the highway.

Mr. BARNES. Yes; and they grabbed the right of way right down there on my land and I never stopped them.

Mr. DE NEFFE. Mr. Gardner testified about a purported conversation at the Portland Hotel soon after the bids were opened, do you remember that? Did you have such a conversation with him?

Mr. BARNES. Oh, I went up to meet Mr. Flood when he told me to come up in the afternoon. When Mr. Flood and I came down out of

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the room, and McGowan had left the room a little while before me and Mr. Flood left. When we came down in the lobby, we met Mr. Gardner. I think he was talking to Tom McCann, when we came down through the lobby. That was the first time I had ever seen Mr. Gardner, and Mr. Flood introduced him to me. He spoke with Gardner and I went on out.

Mr. DE NEFFE. Did you speak about the bid at all, the Herrick bid?

Mr. BARNES. Not with him at no time. I just shook hands and went on.

Mr. DE NEFFE. Did you make any statement to Gardner that Herrick had no money and that you had never heard of him?

Mr. BARNES. Not at that time. The next morning Mr. Gardner met me in the hotel lobby, and he says, "I see Herrick overbid you fellows." I said, "Overbid who?" " Well," he says, "Brooks-Scanlon." "Well," I says, "I guess he did." "Well," he says, "Herrick's all right." "Well," I says, "I don't know. I never heard at all of him." I had not either until the day before.

Mr. DE NEFFE. Did you take the position to Klobucher that you were the Government and were opposed to Herrick?

Mr. BARNES. I don't know as I did. I don't think I did.

Mr. DE NEFFE. You never took the position that you were the Government?

Mr. BARNES. Oh, I never took the position that I was running the Government; no.

Mr. DE NEFFE. It is a pretty big job.

Mr. BARNES. It is a pretty big job; yes, sir.

Mr. DE NEFFE. Did you ever tell Girard that if the Brooks-Scanlon people took the timber you would get a job with the Brooks people?

Mr. BARNES. No. I never had no plans with the Brooks people whatever.

Mr. DE NEFFE. Girard testified that the deed that you tendered on the mill site, I believe it was, and if I am wrong they may correct me, had some strings tied to it. Did it have any strings?

Mr. BARNES. The deed I tendered to the mill site the first time there were no strings to it at all. I put it in escrow and Mr. Girard would not accept it. There was a string to it in this way, that the company had to commence and had to finish by a certain time.

Mr. DE NEFFE. You were wanting to protect yourself against the matter being tied up indefinitely; was that your purpose?

Mr. BARNES. Yes, Sir; and I put the deed in escrow with that condition attached to it, and Mr. Girard went to the bank and read it over and would not take it.

Mr. DE NEFFE. Did Girard have any trouble getting right of way over your land ?

Mr. BARNES. Over my land?

Mr. DE NEFFE. Except up where Mr. Biggs testified about.

Mr. BARNES. Up at Seneca Mr. Girard came to me and wanted the right of way, and I told him if he would give mean agreement that I could put on record to satisfy the people of Grant County

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that he would build to Seneca instead of to Lincoln's, and that it would always be a common carrier railroad, that if he would give me an agreement of that kind, and put the Malheur Railroad Co. seal on it, and sign it, so I could put it on record, I would give him a deed free gratis.

Mr. DE NEFFE. After the mill site controversy came up did the county court or anybody take a hand in it and settle it up in some way?

Mr. BARNES. The mill site?

Mr. DE NEFFE. On some controversy south of Burns.

Mr. BARNES. The county court never had anything to do with my affairs down at Burns, except that Girard went to the county court and got them to condemn across my land for the highway that he was making the change in.

Mr. DE NEFFE. Did that delay their work in any way?

Mr. BARNES. No; I did not stop them on the ground, but they went and got this thing when I was in Portland and I was not going to stop them and did not try to stop them.

Mr. DE NEFFE. I think that is all.

(Cross-examination by Mr. Blaine Hallock, attorney representing Fred Herrick, James W. Girard, and Frank J. Klobucher.)

Mr. HALLOCK. Mr. Barnes, what did you want to do with this $25,000 in the matter of eliminating Mr. Herrick at the time the bids were opened?

Mr. BARNES. What do you mean?

Mr. HALLOCK. I mean what was the purpose of it?

Mr. BARNES. There was nothing ever mentioned about $25,000 at any time.

Mr. HALLOCK. At no time?

Mr. BARNES. No.

Mr. HALLOCK. Did you have $25,000 available at that time for the purpose of eliminating Mr. Herrick?

Mr. BARNES. No. I did not have $25,000 if I had wanted to do such a thing.

Mr. HALLOCK. Did you have that much money available for that purpose in May, 1923?

Mr. BARNES. In May 1923 for what purpose?

Mr. HALLOCK. For the purpose of eliminating Mr. Herrick and acquiring his rights if he had any at that time.

Mr. BARNES. What do you mean; buying him out ?

Mr. HALLOCK. Yes.

Mr. BARNES. I don't remember that. I made Mr. Herrick an offer of $100,000 to take over all his obligations at one time, and I don't remember just when that was.

Mr. HALLOCK. Did you have that money available?

Mr. BARNES. I wrote him a letter to that effect.

Mr. HALLOCK. Did you have that money available for that purpose in April, 1923?

Mr. BARNES. In April, 1923?

Mr. HALLOCK. Yes.

Mr. BARNES. No, sir.

Mr. HALLOCK. Did you have it available in May, 1923?

Mr. BARNES. I forget when I made him that offer, to Mr. Herrick.

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Mr. HALLOCK. Well, I am interested in knowing the date of it myself.

Mr. BARNES. If you can, tell me when I made that offer. Mr. Herrick must have the letter here.

Mr. HALLOCK. Did you have that fund available in June, 1923?
Mr. BARNES. In 1923 ?

Mr. HALLOCK. In June, 1923 ; yes.

Mr. BARNES. No. I was in a position at one time to do what I say about that $100,000. 1 wrote Mr. Herrick a letter and offered to give him $100,000 and take over his contract, and take over all of his obligations.

Mr. HALLOCK. Yes; I understand that.

Mr. BARNES. But I forget just when that was.

Mr. HALLOCK. I will try to refresh your memory. When you talked to Mr. Herrick in June, 1923, you recall about the interest coupons on the bonds, do you not?

Mr. BARNES. Oh, well, I see, and I will tell you all about that.

Mr. HALLOCK. All right.

Mr. BARNES. On the 13th day of June, 1923, the people of Burns —

Mr. HALLOCK (interposing). Well, now —

Mr. BARNES (continuing). Now, Mr. Hallock, I have commenced, and I am going through with an explanation of it.

Mr. HALLOCK. Your can if you will answer my question. I want to know —

The CHAIRMAN (interposing). Just answer that question. Do you recall about that?

Mr. BARNES. Mr. Herrick came up into the Portland Hotel, and Mr. Girard was with me —

The CHAIRMAN (interposing). Answer if you recall.

Mr. BARNES. And he pulled out the coupons, and said, "These are the coupons off my bonds."

Mr. HALLOCK. You do recall that instance?

Mr. BARNES. Yes.

Mr. HALLOCK. At that time did you have available a fund of $50,000 to be employed in the purpose of eliminating Mr. Herrick?

Mr. BARNES. No.

Mr. HALLOCK. Then you did not tell him on that occasion that you would offer him $50,000 for his interest?

Mr. BARNES. No, sir.

Mr. HALLOCK. The first time that you put that up to Mr. Herrick was in the form of this letter?

Mr. BARNES. Yes, sir; the first time, you bet.

Mr. HALLOCK. And this amount had grown to $100,000?

Mr. BARNES. Yes, sir; that was the time when I made the offer.

Mr. HALLOCK. Who was your principal on that occasion?

Mr. BARNES. It does not make any difference to you who he was.

Mr. HALLOCK. Perhaps not; but I should like to know.

Mr. BARNES. Well, I was in a position to do it, and it was nobody else's business who it was. It was confidential with the people.

Mr. DE NEFFE. Mr. Chairman, that was ruled on by the committee as immaterial.

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Mr. HALLOCK. I do not remember anything of that kind.

Mr. DE NEFFE. It was ruled on by Senator Walsh of Montana.

Mr. MCGOWAN. That is not my recollection of what Senator Walsh said.

Mr. HALLOCK. Mr. Chairman, I should like to put the question.

Mr. BARNES. Well, I have made a ruling on it. I just figure that it was nobody's business who made that offer. I have made that clear.

Mr. HALLOCK. You say you have made that clear?

The CHAIRMAN. Now, gentlemen, let us proceed in the regular way.

Mr. BARNES. All right.

Mr. HALLOCK. In the Carter memorandum prepared in the spring of 1925 we note a recital to the effect that you have exhibited a certified check in the amount of $200,000 for the purpose of acquiring the Herrick interests.

Mr. BARNES. I never had $200,000 in a check in my life to exhibit anywhere.

Mr. HALLOCK. What are the facts as t o whether or not at that juncture you were still endeavoring to eliminate Mr. Herrick in that purchase?

Mr. BARNES. In the spring of—what year did you say?

Mr. HALLOCK. 1925.

Mr. BARNES. Well, that was the time I think when I made him an offer.

Mr. HALLOCK. Well, then, let me get the record.

Mr. DE NEFFE. There is a telegram and a letter, too, I think, about something of that kind.

Mr. HALLOCK. I do not find the committee's copy of the testimony here for that day.

Mr. BARNES. Was that in the spring of 1925?

Mr. HALLOCK. Yes. The document I am talking about is the Carter report prepared in the spring of 1925.

Mr. DE NEFFE. Here is the Carter report.

Mr. HALLOCK. At that time were you still representing interests who desired to eliminate Mr. Herrick?

Mr. BARNES. In the spring of 1925, I think you mean the time we went to the office, and Mr. Biggs just introduced a couple of articles into the record about that. At that meeting I told Mr. Granger —

Mr. DE NEFFE (interposing). That was April 22, 1925.

Mr. BARNES. I told Mr. Granger that if the Herrick contract was canceled I would pay the Government $2.80 for the timber, go over Herrick's books, put an auditor on the books, and pay him dollar for dollar what he had spent in that country, without any profit.

DIN. HALLOCK. Were you representing the same principal then?

Mr. BARNES. No, sir.

Mr. HALLOCK. That was another principal?

Mr. BARNES. You bet.

Mr. HALLOCK. Now, then, getting to the matter of Mr. Carter's statement, in that connection I refer to the document in the form of a memorandum for the forester prepared by Mr. Carter under date of

February 20, 1925, and found in the proceedings of this hearing for the day February 17, 1927, in which this matter appears:

> There is also evidence that Mr. Herrick has refused to sell out the Malheur project to the Brooks-Scanlon Lumber Co. Exact terms of the offer are unknown. A certified check for $200,000 was displayed by Mr. Barnes as constituting part of the offer.

Is that statement correct ?

Mr. BARNES. I never displayed a check anywhere for Brooks-Scanlon, nor anybody else, in connection with this deal. Nobody ever seen me have a check like that, and I do not know who made that statement that Mr. Carter says there, and I don't know who got it out.

Mr. HALLOCK. It is incorrect in any event.

Mr. BARNES. Yes, Sir. I never presented a check like that anywhere. I told you the offer I made to Mr. Granger, and that I wired it to Mr. Greeley.

Mr. HALLOCK. Did you have a check of that kind at any time?

Mr. BARNES. No, sir.

Mr. HALLOCK. Is it not a fact that you told the attorney for the Brooks-Scanlon Lumber Co., Ralph Hamilton, of Bend, Oreg., that you had a check in that amount for the purpose indicated in this same report?

Mr. BARNES. Never in my life. It is silly to say that anyone would give a check for $200,000 to be carried around.

Mr. HALLOCK. In any event you were representing the same principal from along in the spring of 1923 down to what date?

Mr. BARNES. No; I was not. I forget the date I made the offer to Mr. Herrick, that offer of $100,000 and take over his obligations. But that was only good for 10 days. And then in the spring of 1925 I was in a position to carry out what I wired Colonel Greeley.

Mr. HALLOCK. And at this time, as I understood your testimony, you have no interest that, you represent.

Mr. BARNES. I am representing nobody here, only Grant County and myself.

Mr. HALLOCK. No interest that you represent is prepared to step in here and take this —

Mr. BARNES (interposing). No; no man.

Mr. HALLOCK (continuing). Let me finish the question: That are prepared to step in and take over Mr. Herrick's interest in this contract?

Mr. BARNES. I. do not know of anyone who is willing to take this over now, and have not since 1925.

Mr. HALLOCK. You have testified that you are not responsible for the statement that appears in the Senate resolution here to the effect that Frank Klobucher and James Girard are identified with the Forest Service in some manner.

Mr. BARNES. It is not in the resolution that they are identified with the Forest Service since they went to work for Mr. Herrick?

Mr. HALLOCK. What impression do you want to leave with respect to that feature of the resolution? That these gentlemen are still in some manner identified with the Forest Service at the time they took employment with Mr. Herrick?

Mr. DE NEFFE. I think the resolution speaks for itself.

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Mr. HALLOCK. I am not talking about the resolution in that question.

The CHAIRMAN. Read the question. (Which was done.)

Mr. DE NEFFE. He has it tied up with the resolution. I inquired, about the statement made by Mr. Klobucher.

Mr. HALLOCK. I think the witness understands the question. I want to get his impression on that feature.

Mr. BARNES. I do not know anything about that. I know they were employees of the Forest Service before they went to work for Herrick, but I never said at any time that they were after they went to work for Herrick.

Mr. HALLOCK. And you are prepared to say now that at no time since Mr. Girard or Mr. Klobucher left the employ of the Forest Service have they been identified in any way with the Forest Service.

Mr. BARNES. Not that I know of.

Mr. HALLOCK. You are prepared to say that as far as you know they have not been identified with the Forest Service in any respect since they took employment with Mr. Herrick.

Mr. BARNES. No; I could not say they was. They were working for Herrick.

Mr. HALLOCK. You can say on the contrary that they have not been identified with the Forest Service since that time.

Mr. BARNES. I can not say anything of that kind.

Mr. HALLOCK. You are still standing on some vague suspicion.

Mr. BARNES. No; I am not standing on any vague suspicion. I don't know about whether they have been in the employ of the Forest Service since they went with Herrick, or not.

Mr. HALLOCK. What do you think about it?

Mr. BARNES. I am not giving any opinion.

Mr. HALLOCK. Well, then, I want to ask you one more question: About the authorship of that statement that you prepared, the memorial which you sent, or memorandum, to be introduced in the Oregon Legislature at Salem. You remember that.

Mr. BARNES. Yes, sir; a short one.

Mr. HALLOCK. Have you that memorial?

Mr. BARNES. You have been talking about that for three weeks.

Mr. HALLOCK. Yes; and have you got it?

Mr. BARNES. It is down at the hotel. I will send a messenger boy to get it if you want it. You have had an opportunity to get it before. And you have bothered the life out of me about something ever since I came here.

Mr. HALLOCK. Yes; that may be correct.

Mr. BARNES. I brought it up and you would not take it. You gave it back to us. You gave it back to us.

Mr. HALLOCK. Will you give me the document that you prepared and sent to Archie McGowan?

Mr. BARNES. Certainly.

Mr. HALLOCK. At this juncture will you tell us upon what authority you put in that statement that Mr. Klobucher and Mr. Girard are identified with the Forest Service?

Mr. BARNES. I said they were employees with the Forest Service at the time they went to work for Herrick.

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Mr. HALLOCK. Is that as far as you stated?

Mr. BARNES. All that I remember.

Mr. HALLOCK. That is all that you are contending now?

Mr. BARNES. Yes. When they went to work for Mr. Herrick they were employees of the Forest Service.

Mr. HALLOCK. And that there is nothing improper about that situation.

Mr. BARNES. I do not know whether there is or not. There is quite a lot improper about it I think.

Mr. MCGOWAN. Tell us specifically what you are basing that on.

Mr. BARNES. I am answering Mr. Hallock now, one man at a time.

Mr. MCGOWAN. But I am asking you to answer that question.

Mr. BARNES. One at a time, and I will take you up later.

Mr. MCGOWAN. You certainly will.

Mr. HALLOCK. Well, now —

The CHAIRMAN (interposing). Gentlemen, let us go along in regular order.

Mr. HALLOCK. What has there been in Mr. Klobucher's and Mr. Girard's actions in connection with this transaction that you base your suspicions upon?

Mr. BARNES. I say nothing here about suspicions. It is proven here that you have changed this contract and torn it all to pieces.

Mr. HALLOCK. Do you want to stand upon the statement that we have taken the contract and torn it all to pieces, and that that is what you are characterizing as the basis for your authority that Mr. Klobucher and Mr. Guard, are guilty of fraud, collusion, and conspiracy?

Mr. BARNES. I never accused Mr. Klobucher of being guilty of anything; only that he was a forest officer when he went in the employ of the Fred Herrick Lumber Co.

Mr. HALLOCK. Who is responsible for his name having been written into this resolution?

Mr. BARNES. Well, he was mentioned as an ex-employee.

Mr. HALLOCK. You are the one that mentioned him as such.

Mr. BARNES. Well, a lot of people—everybody knows that.

Mr. HALLOCK. I am not talking about what everybody knows, but if you are the man who communicated that information to the author of this Senate resolution?

Mr. BARNES. Well, probably I did.

Mr. HALLOCK. All right.

Mr. BARNES. I said he was in the employ of the Forest Service when he went to work for Herrick. Mr. Klobucher knew nothing about this deal; he came from Missoula later on, and he was not in this at all.

Mr. HALLOCK. Very well; you are prepared now to cease criticizing Mr. Klobucher ?
Mr. BARNES. No; I am not.

Mr. HALLOCK. You talked about some statement that you claimed Mr. Herrick made to you relative to the common-carrier feature of this railroad. As I understood your testimony, that conversation that you refer to occurred along in April, 1923, before the contract was prepared?

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Mr. BARNES. Yes; it was in May.

Mr. HALLOCK. It was in April or May, 1923.

Mr. BARNES. It was in May, I think.

Mr. HALLOCK. Now, you say that you never have held up Mr. Herrick in right-of-way matters?

Mr. BARNES. I never did, but at one place.

Mr. HALLOCK. Do not you recall that you and I sat in John Biggs's office last summer and that you were complaining that Mr. Herrick had not gone fast enough on the mill site and that I directed your attention to the fact that he had not been able to secure the right of way through your lands to the mill site and that at the same time you had this proceeding pending in which you claim to be the owner of the mill site; is not that true?

Mr. BARNES. Well, that would not stop him from working.

Mr. HALLOCK. Well, and I took the position that it was a very inconsistent position for you to maintain, did I not?

Mr. BARNES. Well, I offered to settle all those suits, did I not?

Mr. HALLOCK. No, sir; you have never offered to settle the millsite suit.

Mr. BARNES. Well, the mill site did not cut any figure in what you were wanting. You were wanting the railroad right of way.

Mr. HALLOCK. To put it in another way: You still claim that you have the right to take that mill site as your property, and at the same time are demanding that Mr. Herrick go ahead and make improvements upon it that represent an investment of a million dollars?

Mr. BARNES. Well, he did not live up to what I figured they promised me.

Mr. HALLOCK. That is not answering the question.

The CHAIRMAN. Let the committee reporter read the question, and then the witness may answer.

(The question was thereupon read.)

Mr. HALLOCK. It calls for a simple yes or no answer.

Mr. BARNES. I do not know how I could answer it, yes or no.

The CHAIRMAN. The committee reporter will read it again. (Which was done.) Now, do you or do you not claim that?

Mr. BARNES. No; I do not.

Mr. HALLOCK. You are prepared to abandon your claim on that ill-site feature now, are you not?

Mr. BARNES. Well, I do not know that I am now. I have another lawsuit with Mr. Herrick in the Federal court, and that is contingent on that. It is hooked in with that.

Mr. HALLOCK. I see. But you still want him to go ahead and spend a lot of money on that mill site, and at the same tune you want to retain your claim of right to hold that property, and all of it, as your own.

Mr. BARNES. As far as the mill site is concerned. I never wanted the mill site. I wanted to make Mr. Herrick work.

Mr. HALLOCK. Well, you are a little slow in indicating that information to us, Ed, since you have signed a verified complaint and filed it in court that you do want it.

Mr. BARNES. That is right. I have brought a suit against Mr. Herrick in the Federal court.

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Mr. HALLOCK. One more question and I am through. On February 12, 1923, in this hearing, I asked you if you had sent a telegram to citizens of Burns in which you dictated the terms of the document that you wanted signed and sent back here in this matter.

Mr. BARNES. And I said I did.

Mr. HALLOCK. And then I asked you this question

> Mr. HALLOCK. You don't think you sent such a telegram?
> Mr. BARNES. No, sir.

Then later I refreshed your memory by reading the telegram to you:

> Get up a petition, signed by as many people as possible, to read like this: "We, the undersigned, certify we believe that the Forest Service Department were negligent in signing the contract with Herrick, and that Herrick is not financially able to handle this contract, and was not from the start." Send it to me at once, as it is very important and confidential. You and Biggs do this. Let me know when Girard left and who went with him.

I then asked you if you sent that telegram, and you said you had, and I asked did you get responses, and you answered, "Yes, sir." Now, did you get such responses?

Mr. DE NEFFE. Mr. Chairman, that was all gone over long ago.

Mr. HALLOCK. I am going to make this very material. You answered "Yes, sir; " meaning that you got responses. When did you get a response or responses?

Mr. DE NEFFE. That was all thrashed out before, Mr. Chairman. I do not see any use of going over that again.

Mr. HALLOCK. No; it has not. I do not know even now whether Mr. Barnes got a response or responses to it or not.

Mr. BARNES. Well, I do not know myself whether I did or not.

Mr. DE NEFFE. That has nothing to do with the question.

Mr. BARNES. If I answered "yes," and I don't remember whether I did or not, and I might have answered "yes," but I don't remember whether I got the response or not.

Mr. HALLOCK. Well, I don't care what you answered. Now, did you get any response?

Mr. BARNES. I don't remember as I did.

Mr. HALLOCK. You would remember if you got a document of that importance, would you not?

Mr. BARNES. No; I got a lot of telegrams and things that I didn't bother my head about and threw them away.

Mr. HALLOCK. Do you want to leave the impression on this subcommittee that if you did get a response to this telegram containing these recitals that you would have thought it of such trifling consequence that you would have thrown the telegram away?

Mr. BARNES. Well, I don't remember getting it. I don't think I got an answer to that. I guess I did not.

Mr. HALLOCK. I don't believe you did, in spite, of your offer to get it. What was John Biggs to do in that matter? You refer to him there in that message.

Mr. DE NEFFE. That has all been gone over, Mr. Chairman. It goes back to the question of the memorial, which this subcommittee has time and again ruled has nothing to do with this case. The Oregon Legislature is not on trial here.

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Mr. HALLOCK. It has no reference to the Oregon Legislature, but to Mr. Barnes's actions.

Mr. DE NEFFE. Well, that has been ruled upon.

Mr. HALLOCK. Mr. De Neffe, why would you want to protect this witness from going into a discussion of that feature?

Mr. DE NEFFE. I am not trying to protect the witness.

The CHAIRMAN. Go ahead, gentlemen.

Mr. HALLOCK. What was John Biggs to do in that matter?

Mr. BARNES. John Biggs represents a lot of people in Burns. That is why I told that party.

Mr. HALLOCK. And has some influence there, has he not?

Mr. BARNES. He represents over half of the people in Burns.

Mr. HALLOCK. And yet, Mr. Barnes, you are prepared to say to this subcommittee now that in spite of your admonition to John Biggs that this was important, and to get action on it, in spite of the fact that John Biggs is influential and represents, as you say, half of the people there, you did not get a single response to that communication from Harney County?

Mr. BARNES I don't remember what I got.

Mr. HALLOCK. Very well; that is all.

Mr. BIGGS. Might I say one thing right there?

The CHAIRMAN. I think we better proceed in an orderly manner.

Mr. MCGOWAN. Mr. Chairman, might I proceed now?

Mr. BARNES. Just one minute. I want to get some papers. [After looking over some papers.] The Forest Department and Mr. Herrick have been introducing everything in this record, and I have a few sworn affidavits from some people that Mr. Jameson and Mr. Byrd are supposed to represent here, and I would like to have them introduced in the record.

Mr. HALLOCK. Are these in response to the telegram of February 4?

Mr. BARNES. No; they are not.

Mr. DE NEFFE. They are in the fall of 1926.

Mr. BARNES. They are in December.

Mr. DE NEFFE. I will show them to the chairman.

The CHAIRMAN (after looking them over). They may be made a part of the record.

(The affidavits referred to by the witness are here made a part of the record, as follows:)

AFFIDAVIT

STATE OF OREGON,
County of Harney, ss:

I Harry Howell, being first duly sworn, say:

That I am a resident of Harney County, Oreg., and have resided here for the past 23 years.

For a number of years I have been engaged in the contracting business, and contracted for the Fred Herrick interest for two years at this place, being with the Fred Herrick Lumber Co. and the Malheur Railroad Co.

That after I had accepted the contracts with them I attempted to rush the contracts through as fast as possible and to complete said contract as quickly as possible.

That the manager would check me down, order me to slow up, and at times ordered me, to quit the work entirely.

That their excuse at that time was that they did not have the money to go ahead with the work on that scale.

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At one time I even carried the work through for 90 days without any pay from them rather than lay off my men and teams.

That I have construction equipment of my own for contract work and it made it expensive to either quit or to slow down.

That by reason of their causing me to slow down or quit the work I lost between $1,500 and $2,000 on the work, while I could have made a reasonable profit if I had been allowed to push the work through in the manner in which I attempted.

I also know that they held back other contractors in the same way; I never saw Mr. Herrick on the works at all. My business was all transacted through Mr. Girard or Mr. Klobucher.

HARRY HOWELL.

Subscribed and sworn to before me this 22d day of December, 1926.

M. A. BIGGS, *Notary Public for Oregon*.

My commission expires April 30, 1929.

STATE OF OREGON,
County of Harney, ss:

I, N. F. Reed, being duly sworn, say that I am and for over 20 years past have been, a resident and property owner in the city of Burns, Oreg.; that I am now engaged in the drug-store business in said city; that I have observed the work carried on by Fred Herrick under his contract with the United States Forest Service and can say that that work has been dilatory and conducted in any manner but the way in which a concern of the kind should be operated; that the work has largely been contracted to parties who were financially irresponsible and that, relying upon the credit of the Herrick enterprise, local business men gave credit to these irresponsible contractors, who in turn defaulted, to the damage of the local community and business men; that the work has progressed in about the way one could expect of a program conducted by a man who hasn't sufficient interest in it to visit the scene of the work more than three times since it began in 1923, as has been the case with Mr. Herrick; that all work other than a little rail laying has been suspended

for the winter, and that it is apparent that the project can not be completed by March 15, 1927, as provided by the contract with the Forest Service that the Forest Service has tolerated the repeated breaches of the contract by Mr. Herrick over the protests of local residents.

N. F. REED.

Subscribed and sworn to before me this 21st day of December, 1926.

M. A. BIGGS, *Notary Public*.
My commission expires April 30, 1929.

STATE OF OREGON,
County of Harney, ss:

I, C. L. Reed, having been duly sworn, say that I am a property owner in the city of Burns and Harney County, Oreg.; that I have resided in Burns or near by for over 15 years past; that I am now engaged in the drug business in Burns, Oreg.; that I am familiar with the Herrick development project affecting the Malheur National Forest; that the work which has been done under the said project has from the outset been prosecuted with little enthusiasm by the Herrick interests and has dragged along over a period of 3½ years when it might have been completed in 2 years: that fine weather has passed by the week during these 3 years without any activity on the part of the Herrick organization, and that all work has at this time been suspended for the winter except a little track-laying north of Burns; that most of the grading work on the project has been done practically at cost by inexperienced contractors, who in turn have passed their losing on to local business men in the way of unpaid accounts.

CLIFFORD L. REED.

Subscribed and sworn to before me this 21st day of December, 1926.

M. A. BIGGS, *Notary Public for Oregon.*

My commission expires April 30, 1929.

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STATE OF OREGON,
County of Harney, ss:

I, W. A. McKenzie. being sworn, depose and say that I and a resident and property owner in Burns, Oreg.; that I conduct a hotel and restaurant business in said city; that I have observed the progress of the Herrick work in connection with the Malheur National Forest development program, and calf cap, that the said work bas not progressed in a satisfactory manner at any time since the beginning; that small crews have been used, and they have been unable to do the work in the manner which the provisions of the Herrick contract required; that the delays and inactivity on the part of the Herrick organization have resulted in much damage to the local community in that prospective investors have come and again left because of the uncertainty of the completion of the project; that many of the Herrick contractors have been irresponsible with the result that local business men have lost much money on accounts which have been defaulted by these contractors.

W. A. MCKENZIE.

Subscribed and sworn to before me this 21st day of December, 1926.

CHAS. B. FOLEY,
Notary Public for Oregon.

My commission expires October 27, 1927.

AFFIDAVIT

STATE OF OREGON,
County of Harney, ss:

I, A. A. Bardwell, being first duly sworn, say that I am a resident of the city of Burns, situated in Harney County, Oreg., and have resided in said city and State for over 15 years; that I am engaged in the real-estate, insurance, and abstracting business in said city and am a property owner in the city and county; that by reason of my business and property interests I am vitally interested in the operations of the Fred Herrick interests in the Malheur National Forest and near Burns; due to the interest which I have in the raid project I have watched with diligence the progress of the said work as pursued by the Herrick concern; that the said work has since the very beginning been slow and lifeless and has not been pursued with the energy which marks any businesslike and active concern possessed with the desire to actually accomplish anything; that week after week of fine weather has passed during the three years since the Herrick interests began work on the project without any work other than mere scratching away at a little grading; that no work other than the partial construction of a couple of small auxiliary buildings has been undertaken at the mill site, and all work at the mill site is now suspended for the winter; that a small track-laying crew is at work at present, but current report is that this crew will soon encounter the unfinished grading work and will have to discontinue the work until spring; that the delay which has resulted from the inactive methods pursued by Mr. Herrick has resulted in much damage to local business.

A. A. BARDWELL.

Subscribed and sworn to before me this 21st day of December, 1926.

VELLA M. WELCOME.
Notary Public for Oregon.

My commission expires May 27, 7927.

AFFIDAVIT

STATE OF OREGON,
County of Harney, ss:

I, Charles B. Foley, being first duly sworn, depose and say that I am and for the past 27 years, have been a resident of the city of Burns, in Harvey County, Oreg.; that I have been resident in the said city of Burns at all times since the date on which Fred Herrick of St. Maries, Idaho, entered into the contract with the United States Forest Service for the development of the Malheur National Forest; that the property interests of myself and my family

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have been such that I have watched the Herrick development work with keen interest, that the said work has been dragged along and delayed, with the result that its completion is yet a matter of many months and with the further result that local business has suffered; that during the three and a half years in which the project has been under way many months of fine weather have passed without any real action on the part of the Herrick interests and that much delay has resulted from their contracting various bits of the work to contractors who had little or no experience and less financial ability to prosecute the said work in the manner that would insure the completion of the project on scheduled time that the present condition of the project, with all work except a little track-laying on the railroad suspended, would indicate that it is highly probable that no operation of the sawmill can take place prior to late in the autumn of 1927; that the said project bas been allowed to drag and Mr. Herrick given his time by the Forest Service over the protests of local citizens.

CHAS. B. FOLEY.

Subscribed and sworn to before me this 21st day of December, 1926.

A. A. BARDWELL,
Notary Public for Oregon.

My commission expires September 3, 1929.

AFFIDAVIT

STATE OF OREGON,
County of Harney, ss:

I, Archie McGowan, being first. duly sworn, say that I am a resident of Burns, Harney County, Oreg., and that I have lived almost continuously at or near Burns since its commencement in 1884; that I am now general manager of the burns garage and have been either manager or assistant manager of it practically all the time since its organization.

That I have been in a position during all of this time where it was necessary for me to deal with Mr. Herrick, his two corporations (the Fred Herrick Lumber Co. and the Malheur Railroad Co.), and the different persons or firms which have been employed by them to do their work, or have had contracts with the said companies to do certain part of the work in developing the opening up of Bear Valley timber.

That the original contract called for this work to be done and the mill to be in operation by April 1, 1925, and was so stated in the bids for the sale of the timber and in the contract between Mr. Herrick and the Government; that after the contract was let to Mr. Herrick work was commenced thereon in the summer or fall of 1923, but only a short time prior to commencement of the winter season and then practically all work was checked or stopped until the summer of 1924. The work was then carried on intermittently until the winter of 1924, at which time very little had been done except the building of the road from Crane to Burns, which was over a practically level country, the rails and ties therefor being furnished by the Union Pacific Railroad Co. Mr. Herrick then began to secure an extension of time.

The Forest Department took up this extension, held a meeting at a public place in Burns, Oreg., at which time there were present officers of the different branches of the United States Forest Department, and a discussion of the matter was had at this time, following which an extension was granted until October, 1926, upon the performance of certain things by Mr. Herrick or his company each three months thereafter.

Prior to the time of this extension an ostensible purpose of carrying into force the contract between the Forest Department and Mr. Herrick, Mr. Herrick had two corporations formed. In each of these corporations there were three incorporators, Mr. Herrick, Mr. Girard. and Mr. Klobucher. The two latter gentlemen were in the employment of the Forest Department up to the time they became associated with Mr. Herrick. This extension was granted in March or April, 1925. No work of any importance was commenced thereon until the latter part of the summer or autumn of 1925.

After having failed in the first contract, and then, after having broken all of the conditions of the extension in the spring of 1925 after concerted efforts in this and Grant County, Mr. Herrick was cited to show cause why his con-

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tract should not be canceled. At the time, or shortly after this, another extension was granted providing conditions for the extension, among which conditions were that the grade for the railroad to Bear Valley should be completed by September 15, 1926, that the rails should be laid and the road ready for operation by December 15, 1926.

That at this time the grade is not yet completed; the rails only partially laid and none of the ballasting done; that he has broken other conditions of that extension. The extension also provided that he should have the mill in operation and sawing Government timber by March 1, 1927.

That the winters are such here that it is practically impossible to build this mill during the winter months.

In the work which has been done the companies have selected as contractors largely men who were irresponsible financially and inexperienced in that class of work. Delays have been had and many of the contractors have not been able to pay their bills; therefore the merchants and business men of this town had to finance a large part of the work, which has already been done. When they have secured contractors to work, willing to rush the work through, they have failed to furnish them such materials or data as was necessary for them to prosecute the work. Most contracts of any importance have been let just a short time prior to bad weather conditions. They have delayed, refused to let contracts, let the work slide during the good-weather months, and then each year attempt to let contracts just prior to the time that the weather would force them to quit.

This last extension was granted them in June, 1926, and a little spurt was made in August; then the work was slowed down until later in the season. Shortly prior to this time, or late in October or November, they again put on large crews, but had trouble with their contractors or their men, stopping the work and then starting again just prior to the time that winter set in.

Relying upon the good faith of the Government and Mr. Herrick in this matter, the citizens of this

place, or at least most of them, have tried in every way to assist in carrying this through, but by reason of the delays, the haphazard manner in which work has been conducted, has given them cause to lose large sums of money, and business conditions are now worse here than they have been prior to the time that Mr. Herrick received this contract. Mr. Herrick himself has been here only two or three times since the contract was awarded him, leaving the management entirely to Mr. Girard and Mr. Klobucher. That there has been no attempt upon their part to complete this work under any of the agreements or extensions, and the general policy has been one of delay. That I do not believe that the Forest Department has kept good faith with the people of this community in letting this contract to Fred Herrick.

ARCHIE MCGOWAN.

Subscribed and sworn to before me this 21st day of December, 1926.

VELLA M. WELCOME,
Notary Public for Oregon.

My commission expires May 27, 1927.

STATE OF OREGON,
County of Harney, ss:

I, A. M. Hayes, having first been duly sworn, say that I am and for over 25 years have been a resident of Harney County, Oreg.; that I am a property owner in said county and am at present engaged in the auto sales business; that because of the property interests of myself and my family in Harney County, I have been vitally interested in the Malheur National Forest project which is being undertaken by Mr. Fred Herrick of St. Maries, Idaho; that the said project has been conducted in a meager and dilatory fashion from the very beginning and has at no time moved like a project of the kind should move; that the provisions of the contract between Mr. Herrick and the Forest Service, as I have heard them, and read them In the press, have been consistently broken and ignored by the Herrick organization, especially the provisions as to the time in which the project or certain portions of the work contemplated thereunder was to have been completed: that to my own knowledge, these breaches of the provisions of that contract have been countenanced and permitted by the United States Forest Service over the protests of local citizens and without regard to the effect upon the local community ; that I at

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one time performed certain grading work for the Herrick interests on the railroad between Crane, Oreg., and Burns Oreg., and can say that I realized nothing in the way of profit from the said work; that all the work under the said contract between the Herrick interests and the Forest Service has been suspended for the winter except for a little track-laying on the railroad north of Burns; that construction was begun on two small concrete buildings at the mill site late this fall, but that no work of any kind on the sawmill proper can be seen; that the uncertainty as to when, if ever, the project will be completed has caused many prospective investors to leave Burns without making any investment and has caused many other investors serious loss because of the failure of the project to move as they imagined it would from the publicity given by the Forest Service.

A. M. HAYES.

Subscribed and sworn to before me this 22d day of December, 1926.

CHAS. B. FOLEY, *Notary Public for Oregon.*

My commission expires October 28, 1927.

STATE OF OREGON,
County of Multnomah, ss:

I, L. Woldenberg, being first sworn, depose and say that I am a resident and inhabitant of the county of Grant, Canyon City, and State of Oregon, and that I have resided in said county and State for 20 years; that I am and have been familiar with the construction work which has been done by Fred Herrick on the Malheur Railroad and mill site as regards his contract with the United States Forestry Service, and will say that I have been over this work many times, and particularly, at the solicitation of the county court of Grant

County, on December 18, in company with C. P. Haight and D. R. Richards, being, respectively, the editor and publisher of the Blue Mountain Eagle at Canyon City and the county agent for Grant County, made a trip to check the progress of the work done by Herrick upon said railroad and mill site, and I found the following: That there was steel laid on the railroad from the mill site at Burns for a distance of approximately 27 miles ; that there was no ballast on any of that part of the road ; that the balance of the road, to wit, approximately 23 miles, has been graded, with the exception of about one week's work for a substantial crew, making the length of the line graded to that place known as Lincoln Station but none of these 23 miles is leveled and ready for ties; only rough grading has been done. During this inspection of the road there were only eight men working laying steel or doing any other work in connection with the building of this railroad.

Further, I personally know that there are 4 miles of right of way which has not yet been acquired by Mr. Herrick, and which is as follows: Commencing at Mrs. D. L. Camblin's place, continuing north through Buck Hankin's place, continuing on north for 3 miles further through Craddock brothers' place, the grade having been made through this property, but it has not been settled for nor has Herrick any title to the same.

In regard to the mill site will say that there has been absolutely no work of any nature done upon the site of the proposed sawmill proper, the land not even being cleared for the foundation, the sagebrush still being in the same undisturbed condition as has been for many years. However, adjoining the mill site proper there are two small buildings, housing what purports to be a generator and boiler room. These buildings are about one-third completed, and no work is now being done upon the same, nor has any work been done upon the same for some time.

L. WOLDENBERG.

Subscribed and sworn to before me this 24th day of December, 1926.

JOHN H. WHITE,
Notary Public for Oregon.

My commission expires June 2, 1929.

STATE OF OREGON,
County of Grant, ss:

I, L. Woldenberg, being first duly sworn, on oath say:

That between about May 1 to November 1, 1924, and May 1 to November 1, 1925, I was carrying United States mail between Canyon City and Burns and was along the route of the proposed Herrick railroad every day except Sunday;

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that I was also over said road frequently during the year 1926; that in traveling such road I could see about one-half of the whole distance of the right of way, of the proposed Herrick railroad; that during such periods weather conditions were such that work could have been prosecuted on the grading of such right of way advantageously, but that during such times very little work was done on the right of way, only a few small outfits being so engaged; that in September, 1924, I went to Burns with a party who had just completed a road contract for the United States Bureau of Public Roads in Grant County and who had a large and complete equipment for road grading; I introduced this party to the officers of the Herrick Railroad Co. and was present during their entire talk; that tire party offered to take the contract to complete the grading of the road at a reasonable price and agreed to guarantee its completion by January 1, 1924, provided prompt payments were assured him as the work progressed. This party was in all ways responsible and, as before stated, had the equipment to carry the work forward; that it was the general public talk that the Herrick people employed nothing but irresponsible contractors whom they could persuade to take contracts for less than a living price, and that practically all of such contractors lost money on their jobs; that while carrying such mail I was frequently given checks by merchants in Canyon City to take with me to Burns, checks having been issued by different contractors, and payment refused by the bank, these checks having been issued for labor, but were always refused, as there was no money to meet them, but as a general rule the checks were paid after a long wait; that I talked to several of the contractors, and each one had the same story to tell, that they were unable to get any money from the Herrick people until long after the same was due and that they would issue these checks for labor, expecting the money to be placed to their credit, but it was not done until after a long delay, as stated; that on or about June 15, 1924, I hauled a tie contractor and his family and supplies out to his work from Burns to Silvies; he informed me he would pay me when he got his money from Herrick, but I repeatedly asked for it and sent a

bill to J. W. Jerard {*sic*}, an officer of the Herrick railroad, and he informed me that I should have my money, but to date I have received nothing for the work; that in my judgment if contracts for the grading of the road had been left to responsible parties, with the proper equipment, the grade could have been completed easily in one-third of the time in which they have now been working on the same.

L. WOLDENBERG.

Subscribed and sworn to before me this 21st day of December, 1926.

BERNICE D. ALLEN,
Notary Public for Oregon.

My commission expires March 10, 1929.

STATE OF OREGON,
County of Harney, ss:

I, R. E. Cole, being first duly sworn, depose and say that I am, and for the past 10 years have been a resident and property owner in the city of Burns, Harney County, Oreg.; that I am now a hotel proprietor and operator in said city; that I am familiar with the activities of Fred Herrick and his corporations, Fred Herrick Lumber Co. and the Malheur National Forest project by virtue of my residence in Burns and my interest in the said development work; that the work on said project has from the beginning been half-hearted and has at no time been prosecuted in an active, businesslike manner; that the work necessary to the completion of said project has been largely contracted to various irresponsible parties who have secured credit from local business men on the strength of their contracts with the Herrick interests, and have defaulted in the payment of the said local accounts to the heavy financial damage of the local business men; that the original contract between Mr. Herrick and the Forest Service and the modified contract have been consistently ignored by the Herrick interests, and that in spite of the protests of local citizens the Forest Service has seen fit to overlook such breaches of good faith on the part of Mr. Herrick and permit him to continue his dilatory tactics; that two small concrete buildings were started at the mill site near Burns late in the fall but that the coming of winter weather has given the Herrick interests the desired excuse for discontinuing such work until spring, that no work of any kind has been done toward the construction of the saw mill proper despite the provisions of the modified contract with the Forest

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Service, which called for the completion of the mill foundations before the end of the year 1927; that the only sign of activity on the part of the Herrick interests at the present time is a little track-laying on the railroad north of Burns, and current report is that such work is making progress which is barely discernible; that the entire conduct of this work from the outset indites a collusion between the Forest Service and Fred Herrick, which has financially injured many innocent local citizens.

R. E. COLE.

Subscribed and sworn to before me this 21st day of December, 1926.

CHAS. B. FOLEY,
Notary Public for Oregon.

My commission expires October 28, 1927.

AFFIDAVIT

STATE OF OREGON,
County of Harney, ss:

I, J. C. Clemens, having been first duly sworn, depose and say that I have been a resident of Harney County, Oreg., for the past 20 years; that I have been much interested in the Herrick development work in the Malheur National Forest since its inception some three years ago last spring; that this work has from the beginning been delayed and conducted in a half-hearted fashion by the Herrick interests, and this in spite of some of the most favorable winters for such work which we have had in this country to my knowledge; that the provisions of the contract between Mr. Herrick and the Forest Service, as published for general

information, have been consistently broken and ignored by the Herrick concern, and that the Forest Service, with information and protests from local citizens, has seen fit to modify that contract and allow Mr. Herrick to continue his dilatory methods; that such evident partisanship toward Mr. Herrick by the Forest Service has caused much damage to this community in a financial and development way, having prevented the investment of much money, due to the uncertainty prevailing as to when, if ever, the project will be completed.

J. C. CLEMENS.

Subscribed and sworn to before me this 21st day of December, 1926.

CHAS. B. FOLEY,
Notary Public for Oregon.

My commission expires October 28, 1927.

AFFIDAVIT

STATE OF OREGON,
County of Harney, ss:

I, Frank Welcome being duly sworn say that I am a resident and property owner in the city of Burns, Oreg.; that I have been familiar with the progress of a Herrick development program, and can say that it has at no time since its inception been conducted like a business of its magnitude should be conducted; delay, inactivity, and lack of diligence have marked the project from the beginning, and the Forest Service has apparently tolerated and permitted this abuse of the community and Government over the protests of local citizens; all work on the project with the exception of a little track-laying has been suspended for the winter, and there is not the slightest possibility of the project being completed on the date set by the Forest Service.

FRANK WELCOME.

Subscribed and sworn to before me this 21st day of December, 1926.

M. A. BIGGS,
Notary Public for Oregon.

My commission expires April 30, 1929.

BURNS GARAGE, *Burns, Oreg.*

I, Archie McGowan, of Burns, Oreg., being first duly sworn, depose and say:

That on or about April 7, 1923, I was in the district forest office at Portland, Oreg. There was present at that time, including myself, forestry officials in

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charge of Bear Valley, Grant County, timber sale, Messrs. Ames and Munber {Munger?}, and Mr. E. W. Barnes, representing the petitioners for the sale of said timber in Grant and Harney Counties.

That on or about two hours after bids were opened, and after it having appeared that Fred Herrick was the high bidder, the financial responsibility of Mr. Herrick was questioned at that time by Mr. Barnes, representing the aforesaid petitioners, and he was then and there assured by the aforesaid forest officials that the financial responsibility of Mr. Herrick was sufficient to enable him to complete the railroad and build the sawmill on or before the 1st day of April, 1925, as provided for by the terms of the sale.

ARCHIE MCGOWAN

Subscribed and sworn to before me at Burns, Oreg., this 18th day of December, 1928.

ALBERT A. TRAUCOTT,
Notary Public, for Oregon.

My commission expires May 25, 1929.

Mr. HALLOCK. You knew, Ed, at the time you started this activity for an investigation in the fall of 1926—or, I should say, in January, 1927—both in the Oregon Legislature and in the Congress here, that Mr. Herrick was making definite arrangements for a bond issue and which were virtually concluded in December, 1926 ?

Mr. BARNES. I did not know anything about it.

Mr. HALLOCK. You did not know anything about it?

Mr. BARNES. Not until just a few days before I came here, and I got a letter from Congressman Sinnott, with a copy of a letter from Mr. Greeley, saying that Mr. Herrick was trying now to get a bond issue of $500,000.

Mr. HALLOCK. Well, then, you did know that Mr. Herrick was endeavoring to get a bond issue before you started this investigation?

Mr. BARNES. If Mr. Herrick had been getting a bond issue for about $2,500,000, that would be different, but $500,000 would not get him anywhere, and that was the information that I got from Greeley.

Mr. HALLOCK. But you did know that he was arranging for a bond issue?

Mr. BARNES. Well, I knew something about it. But it is just like the stuff that Greeley is always peddling, and we didn't know whether he was or not.

The CHAIRMAN. Well, proceed with the examination.

(Cross-examination by Mr. D. F. McGowan, attorney representing the United States Forest Service:)

Mr. MCGOWAN. Mr. Barnes, are all the facts in your possession on this proposition of fraud, and collusion, now in the record?

Mr. BARNES. Well, I guess probably they are. All but —

Mr. MCGOWAN (interposing). In other words, you have stated everything to the subcommittee that you want to say on the question of any so-called fraud or collusion between the Forest Service officers and the Herrick people?

Mr. BARNES. No; I have not said all I want to say.

Mr. MCGOWAN. Very well, let us get it into the record, because we want to be clear and complete on this fraud business.

Mr. BARNES. Well, if I may go ahead here: To begin with, now this common-carrier road for which we asked when this timber was put on the market, we asked for a common carrier for freight and passenger that meant an interstate-common carrier, that you could ship lumber from Seneca right on out, and cattle to Kansas City or anywhere straight on out, without having them rebilled at Burns,

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and then go down there and bill them over. That was the whole reason, for the people to have straight shipments out, and to have an interstate common-carrier railroad.

Now, Mr. Girard and Mr. Herrick insisted to me at different times, that is, Mr. Girard did, that it should not be a common carrier, and that they would like to have it as a private road. I told him that could not be. They started out and made application to the Interstate Commerce Commission. That part of it was all right. They started all right, but they withdrew that, and then went to the Public Service Commission at Salem, and changed it to an intrastate railroad.

Now, we did not know that they had done this. We thought that they were going ahead with the Interstate Commerce Commission. Well, now, in shipping lumber out of Seneca it will mean at least $1.40 per thousand feet from Seneca to Burns the way this road is now, and practically the same way in cattle or sheep or anything.

Well now, there is one point there where they did not do what we wanted. Well, then in the first modification they let Herrick change the terminus from Seneca post office to a mile south of there, at the south line of section 34-1631,[3] on the other side of the river, away from the highway entirely.

As far as Mr. Guard is concerned now, when he talks about me holding him up on a piece of right of way in this canyon: There were miles and miles on both sides of this—or that is, on the south side—that there was not a man working on, where he could have put all sorts of men on it. But he made this excuse that I held him up.

Mr. DE NEFFE. Well, Mr. McGowan, you have talked about fraud

Mr. MCGOWAN. That is what I want to get—any specific evidence —

Mr. BARNES. I want to ask you a question —

The CHAIRMAN. No; don't ask counsel questions. Answer as directly and concisely as you can the question that has been propounded to you.

Mr. BARNES. When Mr. Carter and Mr. Ames went to Minneapolis in the spring of 1923—in February, I think it was, the latter part—I understood Mr. Greeley to say that they wanted to see Doctor Brooks about a higher price for the timber. That was my information. Well,
I don't know anything about them asking for a different amount to cut—Doctor Brooks—or anything about that. When we were in Minneapolis I was called in at two different times, I think. Mr. Brooks called me in to ask me something about the private timber, how it would work in with the Government timber. So I figured that the agreement that they made with Doctor Brooks—I knew they made an agreement; I knew they had a piece of paper there and wrote
up something, and Doctor Brooks signed it, and that was an agreement that Doctor Brooks would bid if they advertised. That was all I knew about it. I never knew that Doctor Brooks had made any agreement on a different cut with them until I came into this room with you men. They had no right to make any agreement with Doctor Brooks —

Mr. MCGOWAN. Without telling you?

Mr. BARNES. No; that isn't it; without telling the public.

Mr. MCGOWAN. Oh, they didn't tell the public?

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Mr. BARNES. That they were going to—now, wait; I am talking now, and you wanted me to go ahead. They claim here that Doctor Brooks was allowed to cut 150,000,000 the first three years. I saw Doctor Brooks's agreement here—Mr. De Neffe had a copy of it—and it doesn't say in that anything in regard to letting them cut 450,000,000 in three years, and it does not say in any article that you sent out that any bidder will be allowed to do that.

The CHAIRMAN. Now, gentlemen, this case is going to be argued, or you are going to submit briefs, and we do not want a full rehearsal of this case. All these facts are in the record, and this repetition is entirely unnecessary.

Mr. DE NEFFE. Mr. McGowan asked for it.

Mr. BARNES. I would like to finish here in just a few words.

The CHAIRMAN. Well, time is important in this hearing. I want to be lenient with you, but I want you to answer the question that Mr. McGowan has asked you as briefly as you can.

Mr. BARNES. You asked me in regard to the fraud. Well, there is nothing in Doctor Brooks's agreement that you made that only allows them the maximum of 150,000,000 feet in three years. And the letters that you sent out, there is nothing in them. Now, why wouldn't it have been just as easy for the Forest Department to write this contract up and put this clause in it and mail it out to those different lumbermen?

[3]The recorder must have gotten this wrong and no one else caught it. I don't know just what these numbers means; suppose it should relate to section, township, range.

Mr. DE NEFFE. Which clause do you mean?

Mr. BARNES. This clause where it gives them the right to cut—I forget how much.

Mr. DE NEFFE. Where does that clause appear?

Mr. BARNES. The clause they put in the Herrick contract?

Mr. DE NEFFE. That is what I mean. Paragraph 3?

Mr. BARNES. Paragraph 3. Why wasn't it just as easy to write up that paragraph and mail it out to all lumbermen in the country? They sent it out. Nobody could tell about it. Nobody would bid. The Edward Hines Lumber Co.—at the time we had the conference in Portland I had a letter from them, from six different companies, and I showed them to Mr. Greeley, that they would not bid at $2.75 with that amount of cut, and the condition that the Forest Department put on it. The other advertisement is 150,000,000 in three years, 50,000,000 a year. What did the public know about that? What could they do about that? They just threw it in the wastebasket.

I will tell you the position the Forest Department is in to-day. You are in this position with this contract that you made with Herrick under cover, that any lumber company in the United States to-day that was financially able to handle that proposition at that time can come back on you and go after the Government for making that kind of contract without letting them know and having a chance to bid on it. There is your fraud.

Mr. MCGOWAN. That is the fraud?

Mr. BARNES. That is the whole thing.

Mr. MCGOWAN. That is all of it?

Mr. BARNES. Well, there is more, too.

Mr. MCGOWAN. All right, Mr. Chairman, I think in view of the fact that the Forest Service has been charged with collusion this

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man should be required to tell everything that he has got on his chest so that this record may be complete and may be understood.

Mr. BARNES. I have told enough.

Mr. MCGOWAN. I am asking to have this record complete, to have Mr. Barnes tell and have in the record everything that he conceives to be fraud.

The CHAIRMAN. Well, the committee will presume that the record is complete with the close of the hearings. If Mr. Barnes has not produced that evidence, then it will never be known.

Mr. BARNES. I have produced this much evidence, that they had no right to make this kind of a contract without letting the public know about it, with Doctor Brooks or Fred Herrick or anyone else.

Mr. MCGOWAN. Let me get it clear. You have a difference of opinion with the Forest Service as to the degree of publicity they gave to the readvertisement ?

Mr. BARNES. Yes. They did not make it clear.

Mr. MCGOWAN. And that is what you say constitutes a fraud?

Mr. BARNES. Well, there must have been something.

Mr. MCGOWAN. Can't you answer that yes or no ?

Mr. BARNES. Yes.

Mr. MCGOWAN. That is the basis of your fraud?

Mr. BARNES. There is a lot more in the record. The committee will go over the record.

Mr. MCGOWAN. When did you first know about that clause?

Mr. BARNES. I knew about that clause when I got here.

Mr. MCGOWAN. Did you know about it before you got here?

Mr. BARNES. I knew there was something wrong with this contract.

Mr. MCGOWAN. Did you know about that clause before you got here ?

Mr. BARNES. I didn't know exactly, but I knew there was something wrong.

Mr. MCGOWAN. That being true, then, when you made the statements preceding your coming to Washington on the question of fraud, you did not have that clause 3 in your mind at all?

Mr. BARNES. At the time that we had the work under way, and Herrick was not furnishing the —

Mr. MCGOWAN. Just a minute.

Mr. DE NEFFE. Let him finish. He is giving the circumstances.

Mr. BARNES. Let me tell you this: At the time Mr. Ames wired the people of Burns, asking them to eliminate the common-carrier clause, I figured, and a lot of other people figured, that we were going to lose our rights —

Mr. MCGOWAN. You thought so?

Mr. BARNES. A lot of people think so.

Mr. MCGOWAN. All right. What is the basis of your conclusion in that respect? Tell us the cold facts.

Mr. BARNES. Nobody would bid on that kind of contract. They would not want to take that much obligation and cut so little, and different things that they had to contend with with the Forest Service in this first prospectus. Now, Ames wires to eliminate the common-carrier clause at the time we were getting this work done, and he would have eliminated it if we had stood for it. Now, I will ask you —

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The CHAIRMAN. No; don't ask counsel question.

Mr. BARNES. Well, supposing you had 6,000,000,000 feet of timber up at this end of the table, and down at the other end is Burns, 50 miles below. I come to you and I want to buy 800,000;000 feet up there —

Mr. MCGOWAN. I do not want to argue it with you.

Mr. BARNES. But here is the point. He was getting ready to make that a private road, and nobody could come in and bid against him on that timber.

Mr. MCGOWAN. That is what you conceive to be fraud? Am I clear on that?

Mr. BARNES. Everything looked like it.

Mr. MCGOWAN. Can you answer yes or no?

Mr. BARNES. Yes.

Mr. DE NEFFE. He says those were the circumstances, Mr. McGowan. He is not saying that that one thing

constituted fraud. There is a chain of circumstances.

Mr. MCGOWAN. Well; state them collectively. Then it is still your opinion that there is fraud in this deal ?

Mr. BARNES. Sure thing. There's nothing to it.

Mr. MCGOWAN. Very well. I guess it is a fortunate thing in the ways of the world that all minds do not work in the same channels. Now, let us come back to the $50,000 proposition. A story has been circulated—perhaps you do not know about it, but I will ask you. A story has been circulated around Canyon City and that country to the effect that the $50,000 liquidated damages was split among the forest officers —

Mr. BARNES. I never heard of that in my life.

Mr. MCGOWAN. You never heard of that?

Mr. DE NEFFE. I never did.

Mr. MCGOWAN. Then you are pretty well satisfied that was not the fact?

Mr. BARNES. I don't know anything about the $50,000. I never even knew that Herrick had forfeited that amount until I got here. There is a string to that, too.

Mr. MCGOWAN. Here is a telegram dated January 27, 1927, that appears in connection with the preliminary hearing before the passage of the senatorial resolution:

CANYON CITY, OREG., *January 27, 1927.*

RALPH H. CAMERON,
United States Senate:

If this timber matter concerning Herrick and forest officials is not collusion, it just as well be taken out of the dictionary.

L. C. DE WOLF.

IZEE, OREG.

Did you have anything to do with that?

Mr. BARNES. No, sir.

Mr. MCGOWAN. Did you inspire that telegram in any way?

Mr. BARNES. No, Sir; I do not believe I did.

Mr. MCGOWAN. Here is another telegram of the same date. It is singular, and I call attention to the fact that all of these bear the same date:

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CANYON CITY, OREG., *January 27, 1927.*

RALPH H. CAMERON

Our people have been watching this timber matter of the Forest Department and Herrick. I want to say to you, Senator, if you ever get an investigation we will show plenty of collusion.

JAMES GANT.

Dayville, OREG.

Did you inspire that telegram?

Mr. BARNES. I did not inspire anything.

Mr. MCGOWAN. Let me read just one more:

CANYON CITY, OREG., *January 27,1927.*

HON. RALPH H. CAMERON,
United States Senate:

I want to commend you on the stand you have taken for all the people of Oregon. You may rest assured we shall never forget you. Come out with that investigating committee, who will not have much trouble to find a complete combination between Herrick and ex-forest men, who have the gall of highwaymen.

W. H. PHILLIPS.

IZEE, OREG.

Did you inspire that telegram?

Mr. BARNES. No.

Mr. MCGOWAN. You had nothing to do with it?

Mr. BARNES. I certainly did not.

Mr. MCGOWAN. These three men that signed these telegrams are not in harmony with your ideas in this matter, are they?

Mr. BARNES. Well, there are a lot of people in that country that think there was collusion. They thought it then, and they think it yet, and always will.

Mr. DE NEFFE. They expressed that in some resolutions, do you remember, Mr. McGowan?

Mr. MCGOWAN. That is all, Senator.

(Further cross-examination by Mr. Blame Hallock, attorney representing Fred Herrick, James W. Guard, and Frank J. Klobucher:)

Mr. HALLOCK. May I have one question on the interstate feature? I know how much time it is taking.

Mr. DE NEFFE. I believe you and I have discussed that at length, Mr. Hallock.

The CHAIRMAN. You may ask your question, but please make it as brief as possible.

Mr. HALLOCK. Mr. Barnes, I was interested in your observations with respect to the withdrawal of the application for a certificate of public convenience and necessity which the Malheur Railroad Co. had filed with the Interstate Commerce Commission. You appreciate, do you not, that under that kind of certificate the railroad company can not turn a shovel full of dirt until it has received approval from the Interstate Commerce Commission?

Mr. BARNES. You mean when Mr. Herrick was making his application to build this road from Crane to Burns?

Mr. HALLOCK. No; from Burns to Seneca.

Mr. BARNES. Yes—well, he had lots of time to get that done.

Mr. HALLOCK. I am just asking. Mr. Barnes, if you knew, this road being of an interstate character from its very inception, from the time when you start to construct it, it is necessary to go through a lot of preliminaries before you can turn a shovel full of dirt. Do you know that to be a fact?

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Mr. BARNES. Yes; but I think he had turned lots of dirt around there before he made the application.

Mr. HALLOCK. But you know that to be a fact, don't you?

Mr. BARNES. Yes. He was working right along on that. That didn't stop him.

Mr. HALLOCK. And you realize that, this road, even of it is under interstate jurisdiction during the period of construction, is subject to what we call the recapture clause of the interstate commerce act, under which its excess earnings, earnings in excess of 5¾ per cent, may be turned over to the Government .

Mr. BARNES. I do not know anything about that; but I want to say for once and for all that the Interstate Commerce Commission never stopped Girard from working.

Mr. HALLOCK. All right; we will get at that in a moment. Now, you realize that an interstate carrier is subject to Federal jurisdiction, wholly dissimilar to State jurisdiction, under what is known as the ash pan act, the safety appliance act, and many other acts of that character, somewhat burdensome in their nature?

Mr. BARNES. That may be.

Mr. HALLOCK. And in the matter of rates you do not want to leave the impression with this committee, do you, that if that application had not been withdrawn, Mr. Herrick and his company would be entitled to no compensation for the haul from Seneca to Burns of general commodities, on the theory that the Burns rate would apply up into the woods on those commodities?

Mr. BARNES. I figured an interchange of freight rates with the Union Pacific and Mr. Herrick, and I think we all figured that. The Union Pacific takes care of Mr. Herrick for hauling the freight. If it was interstate that is what it would do.

Mr. HALLOCK. In other words, if that application had not been withdrawn, you take the position that when you get into operation it would be just a matter of the Union Pacific Railroad Co. absorbing all of Mr. Herrick's local rates?

Mr. BARNES. Certainly, and pay Mr. Herrick.

Mr. HALLOCK. And you think now that since that application has been withdrawn there will be no opportunity for shippers of that line to secure a through joint rate which will be uniform, just, and equal ?

Mr. BARNES. No; it will have to pay Mr. Herrick a rate to Burns.

Mr. HALLOCK. I thought you were in that position. You do not think, then, that with that railroad as a regulated intrastate carrier you can get on substantial carload shipments what we term a just and reasonable through rate?

Mr. BARNES. Not for a through rate; no.

Mr. HALLOCK. All right, sir; that is all.

(Redirect examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.:)

Mr. DE NEFFE. Just one or two questions and I am through. You stated that the change in the contract that Herrick got from what was in the prospectus is one of a string of suspicious circumstances?
Mr. BARNES. Yes.

Mr. DE NEFFE. Then I will ask you whether your suspicions as to there being fraud and collusion were governed by the subsequent

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delays and the granting of extensions and modifications by the Forest Service?

Mr. BARNES. It certainly was.

Mr. DE NEFFE. You said with reference to Colonel Greeley's letter or telegram, stating that Mr. Herrick was planning to raise the $500,000, that that would get him nowhere. Why wouldn't it?

Mr. BARNES. No, sir; it would not. It would take a million and a half to get him started.

Mr. DE NEFFE. Why is that? How do you figure that?

Mr. BARNES. He has got to finish his road and build his mill, and $500,000 would not get him anywhere.

Mr. HALLOCK. We will agree with you on that it would not.

Mr. BARNES. That is the statement I got from Greeley.

Mr. DE NEFFE. I did not know just what you meant when you said Mr. Girard and Mr. Klobucher when they went into Herrick's employ were in the employ of the Forest Service. Did you mean that at the time they entered his employ they were still in the employ of the Forest Seance, or that they had been previous to that?

Mr. BARNES. I said Mr. Klobucher came to Burns and went to work for Mr. Herrick after this deal was made, and he had nothing to do with fixing it up at all; but Mr. Girard, we all figured, had something to do with it.

Mr. MCGOWAN. What, specifically?

Mr. DE NEFFE. Just a minute. I think the testimony here does show that before Mr. Guard resigned from the Forest Service he did make a contract of employment with Mr. Herrick. There is no question about that. That was on May 1, as I recollect, and he resigned on the 4th of May.

Mr. HALLOCK. He explained that he was on leave with pay and that overlapped four days, I think, if that is what you mean.

Mr. DE NEFFE. You said at this meeting in Mr. Granger's office on April 22, 1925, at the time you have mentioned, that you could make some arrangement whereby Mr. Herrick's contract would be taken over and he would get his money back and the road go on and be built and everybody would be protected. Was there anything discussed by Mr. Granger as to the matter of the delay which would result in the completion of this project in case the contract was canceled ? Did he make that statement?

Mr. BARNES. Yes; he made some statement like that. I told him if the contract was canceled the people could be on the ground in 30 days and we would complete the job in 14 months.

Mr. DE NEFFE. And that there would be no delay for lack of money to go ahead?

Dr. BARNES. I told him I would give Herrick dollar for dollar that he had put in, and take over the contract, pay the same price for the timber, and have the job completed in 14 months.

Mr. MCGOWAN. I will ask you this question now, and if you do not want to answer it I am going to ask for the ruling of the chair. Who was your principal in that deal?

Mr. BARNES. That is nobody's business.

Mr. MCGOWAN. There is no privilege to him, is there, Mr. Chairman?

The CHAIRMAN. This is a private matter, is it?

Mr. BARNES. Certainly; and confidential with the people that told me to make the offer.

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The CHAIRMAN. It is not the disposition of the committee to compel witnesses to disclose their private affairs.

Mr. MCGOWAN. I am going to make a statement for the record on that. It is apparent, as we see it, that Mr. Barnes comes here presumably in the role of a public benefactor when all the time he is trying, with a private

interest, to oust Mr. Herrick and to interfere all along, and charges the Forest Service with collusion. Under those circumstances I submit that the question is proper. Now, I will drop it.

Mr. BARNES. I have said, I am representing no company.

Mr. MCGOWAN. I asked you for the name of your principal at the time you made the offer to Colonel Greeley.

The CHAIRMAN. I understand the witness has said this was a private arrangement that he had with his principal, and he does not desire to divulge, and would be betraying a confidence if he did divulge, the names of his principals. I do not think it is at all material.

Mr. BARNES. Since then I have had no doubt —

Mr. DE NEFFE. That was over a year ago.

Mr. MCGOWAN. And the witness will not be required to answer the question?

The CHAIRMAN. No; we have not compelled answers to such questions.

Mr. MCGOWAN. That is all.

Mr. DE NEFFE. That is all.
The CHAIRMAN. Very well. You are excused, Mr. Barnes. Are there any other witnesses?

Mr. DE NEFFE. I do not believe we have any others.

Mr. HALLOCK. We rest.

Mr. MCGOWAN. We rest.

Mr. DE NEFFE. Unless we may have an affidavit to introduce. I can not say now that we will. We might want to introduce an affidavit.

Mr. HALLOCK. And may we see those affidavits?

Mr. DE NEFFE. You do not want to read them over, Mr. McGowan?

Mr. MCGOWAN. I do not want to read them. I do not think they could possibly be material, Mr. De Neffe.

Mr. DE NEFFE. Mr. Chairman, will we have a chance to make an oral argument? Or what is the procedure from now on?

The CHAIRMAN. I should much prefer that you reduce your arguments to writing and file them with the committee in the form of briefs.

Mr. HALLOCK. In that connection, Mr. Chairman, shall we serve copies upon the other members of the subcommittee or make them in sufficient numbers so that they may have copies?

The CHAIRMAN. We will have them made a part of the record, if you can file them in time.

Mr. HALLOCK. Does the chair care to indicate when we should get those briefs in?

The CHAIRMAN. I would like to have them to-morrow.

Mr. DE NEFFE. I will try to get mine in by to-morrow noon. I may be able to do so; I am not sure. I have been doing a lot of work on this.

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Mr. HALLOCK. I feel we will be able to do that. I will certainly make the effort.

Mr. MCGOWAN. Then there will just be independent briefs filed by each party, and not a brief filed by the plaintiff and an answer by the defendant? Just statements of what we conceive to be the issues and truth, irrespective of what the others say? The time is pretty short to go into it in the ordinary way, Mr. Chairman.

The CHAIRMAN. Yes, the time is much too short for that.

Mr. DE NEFFE. The committee is required to report on the 28th.

The CHAIRMAN. Yes. I have exhausted my time, and I am unable to get any other members of the committee to continue the hearings. Perhaps counsel can agree among themselves as to the procedure. It would be very acceptable to the committee if they could do so.

Mr. HALLOCK. I suppose that is the only course available to us. Senator, within the time at our disposal. I am quite agreeable.

Mr. MCGOWAN. I will try to get something in by noon to-morrow.

The CHAIRMAN. Are you agreeable to that, Mr. De Neffe?

Mr. DE NEFFE. That is satisfactory to me. I was just wondering about replies.

Mr. MCGOWAN. If you are going to do it on the basis of replies I would have to have your brief first, and then furnish you a copy of ours and you reply to us. In view of the shortness of the time I think each man should file his brief and let it go at that.

Mr. HALLOCK. I suggested to the chairman that he indicate the time within which briefs must be filed, and the chairman indicated that he desired them by to-morrow noon and that the hearing be officially closed and that we do not be accorded the privilege of answering each others' briefs. Otherwise we will be answering them for a long time.

The CHAIRMAN. If agreeable that is the procedure that will be followed.

Mr. DE NEFFE. You say any time to-morrow?

The CHAIRMAN. Well, as early as you can to-morrow.

Mr. DE NEFFE. All right.

The CHAIRMAN. The report of the findings of this committee in this investigation will be inserted following the briefs at the end of to-day's proceedings. The committee will now stand adjourned subject to the call of the chairman.

(Briefs were thereafter submitted by counsel representing interested parties, and are here printed in full, as follows:)

{Briefs are presented on the following pages.}

BRIEF ON BEHALF OF GRANT COUNTY, OREG.

In the matter of the investigation, under authority of Senate Resolution No. 332, of the contract between Fred Herrick and the United States Forest Service for the purchase of timber in the Malheur National Forest in Oregon.

Due to the limited time remaining before the subcommittee will be required, under the above resolution, to report its recommendations herein, to wit, on February 28, 1927, it will be impossible to give as full a presentation of this controversy as the evidence and the importance of this matter warrants, so all that we will attempt to do is to touch on the vital and salient points in controversy.

In this hearing, as in all proceedings where an effort is made to uncover irregularities and wrongdoing, Fred Herrick and the Forest Service have thrown out a smoke screen in order to divert the attention of the subcommittee

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from the main issue, namely, the delinquencies, shortcomings, and wrongdoings of Mr. Herrick and certain officials and employees of the Forest Service.

All through this hearing Herrick and the Forest Service have launched an attack on Mr. E. W. Barnes and have tried to paint him as the villain in the case, hoping, no doubt, that by so doing the subcommittee would forget the real purpose of the hearing and the persons who are under investigation. First, they accused Mr. Barnes of being the master mind, which, while in Washington, D. C., swayed the minds of the members of the Oregon Legislature, 3,000 miles away, subjugated them to his will, and caused them to pass a memorial requesting the United States Senate to make this investigation.

It has been conclusively proven by the evidence that Mr. Barnes was not the only one who criticized Herrick for his many repeated and unjustifiable failures to comply with his contract with the Forest Service and the many modifications and extensions thereof, or who criticized the Forest Service for granting to Herrick such extensions and modifications. The evidence shows that during practically the whole troubled course of the history of the Herrick contract Barnes's views were shared by hundreds of good, respectable, and reliable citizens of both Grant and Harney Counties. Their criticisms of Mr. Herrick and of the Forest Service were the same as those of Mr. Barnes, namely, that Herrick's failure to comply with his contract and such extensions and modifications was due to his lack of sufficient funds; that he unnecessarily delayed the work, wasted good working weather, and that he was not acting in good faith; and that the Forest Service, knowing that Herrick was not acting in good faith and was not sufficiently financed, nevertheless ignored the protests and wishes of the people of those counties and granted Herrick extensions and modifications of his contract, time after time, after repeated failures of Herrick to even approximately live up to his contractual obligations. Herrick and the Forest Service forget that Mr. Barnes is representing Grant County, Oreg., in this controversy and that he comes here with credentials as the duly accredited representative of that county in this hearing. These credentials area part of the record in this hearing.

Mr. Herrick and the Forest Service have always taken the position that this criticism has been uncalled for and unjustified, because, as they claim, this contract is between Herrick and the Forest Service, and the people of those counties have no right to complain. They forget that while this timber is under the jurisdiction of the Forest Service, so far as its sale and administration is concerned, that the people of Grant and Harney Counties have a very vital interest in it, and that the Forest Service is in reality merely the trustee of these people to the extent of the people's interests in the timber, and in the benefits which would result to them from this sale.

The Forest Service, perched high on its throne of bower and authority, has taken the position in this controversy, that "the king can do no wrong;" yet we actually find in the files of the Forest Service that their records disclose the fact that Colonel Greeley's confidential officials and employees had from time to time, when the question of the advisability of granting extensions and modifications of the Herrick contract arose, made reports, in which they, in clear and forceful language, voiced the very sentiments and made substantially many of the same charges and statements which Mr. Barnes and the good people of Grant and Harney Counties had made, and on account of which Herrick and the Forest Service have so unjustly maligned Mr. Barnes during this whole hearing. (See the following exhibits: Report of E. E. Carter, assistant forester to the Forester, dated February 20, 1925; page 388 of transcript; letter of Mr. Hoffman, logging engineer to district forester, dated July 3, 1925, page 583 of testimony; report of said Hoffman to Fred Awes, district forester, dated July 9, 1925, page 584 of testimony; report of C. M. Granger to Colonel Greeley, dated July 24, 1925, page 71, Exhibit 9).

Any unbiased mind must admit that the evidence produced at this hearing has fully justified the Oregon Legislature and the people of Grant County in requesting this investigation.

It is not at all surprising that men like Herrick, Girard, and Colonel Greeley, who can see nothing wrong in Girard's failure to seek other bidders who might bid more than Herrick said he would bid, should, when brought to account far their own misdeeds, and delinquencies, attempt to inject into this hearing come evidence which might tend to divert the attention of the subcommittee from themselves. They have done this very thing when they accused Mr. Barnes of attempting to bribe Mr. Flood a few minutes after the bids were

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opened. Mr. Barnes and Archie McGowan, in his affidavit, positively deny that Mr. Barnes made any such statement or proposition to Mr. Flood. Even Ames, who says he was in the same room with Mr. Flood and Mr. Barnes, when this alleged conversation took place, did not dare to testify that any such statements were made.

This attempt on the part of these men to so unjustly try to injure and besmirch Mr. Barnes's character and reputation, is merely an illustration of the lengths to which men will go when they are hard pressed. In being thus unjustly accused and maligned, Mr. Barnes is merely suffering the penalty which everyone must suffer who takes a prominent part in uncovering and punishing wrongdoing.

FRAUD AND COLLUSION HAS BAN PROVEN

The record is full of facts and circumstances which prove conclusively that there was collusion between Girard and Herrick and Ames and Colonel Greeley in the making of the Herrick contract. We will consider these in their order.

The evidence shows that James W. Girard, a former Forest Service employee stationed at Missoula, Mont., was the one who got Herrick interested in this timber. He testified (p. 359, testimony) that after the six months advertising had expired February 15, 1923, and no bids had been received, and the timber was being readvertised for 30 days at a minimum price of $2 per M, he decided to go out and find a buyer himself, and that he had in mind as possible purchasers three men, Fred Herrick, Mr. Leuthold, and Mr. Rosenberry, of the Winton Lumber Co.; that just as he was about to leave Missoula to go to St. Maries, Idaho, to see Mr. Herrick, the latter called him on the telephone and asked him to come to St. Maries as he wanted to talk with him regarding this timber. Mr. Herrick testified (p. 624, testimony) that he had a few days prior to this received one of the prospectuses sent out to the lumbermen when the timber was advertised for the six months' period.

It is truly a remarkable coincidence that these two men should have this single identical thought at the same identical time. Girard said that when he arrived at St. Maries and told Herrick what he knew about this timber, Herrick, after 30 minutes of conversation, told him he would bid $2.80 per M, based on what he bad learned from reading the prospectus and from what Guard told him.

Girard testified (testimony, p. 359) that this conversation was held about a week or 10 days before the 30-day advertisement period would expire.

In order evidently to divert any suspicion which might attach to his making this bid without having seen the timber, etc., himself, Herrick claims that be sent a Mr. Douglas down to Bear Valley and vicinity to look over the project and to report. It is apparent that this was merely a camouflage, because it is evident that Douglas could not in such a short time have gone over 67,000 acres of land to ascertain the logging conditions and traveled over an 80-mile railroad route and inspected a sawmill site, because he would not have had sufficient time to make such an extensive examination. According to Girard, his first talk with Herrick was a week or 10 days before the bids were to be opened. Granting that Douglas had 10 days to make the examination, at least 4 days would be consumed in traveling from St. Maries, Idaho, to Bear Valley, which would leave only 6 days to do all of the tremendous amount of work above enumerated, and in the dead of winter at that.

It is very apparent that if Herrick sent Douglas at all it was merely as a blind, so he could say at some future date, if the question ever came up, that he had an inspection made by another man before he submitted his bid, for Herrick admits that he never saw the timber or the railroad route or anything connected with the project, until after he was found to be the highest bidder.

It is a very significant fact that Herrick did not produce Douglas as a witness to prove that he actually did send him over the ground as he claims he did.

This truly was a remarkable and unusual transaction on Herrick's part. He was here entering upon a venture involving millions of dollars, without having even gone over the ground himself, merely taking the word of Girard,

an employee of the seller (the Forest Service), and taking the word of Douglas (if we grant that he actually did make the trip{)}, who could not have furnished him information which any sound business man would have been justified in relying upon.

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The following testimony of Girard furnishes further proof that there was fraud and collusion in this transaction:

Girard testified (testimony, p. 358) that when he made up his mind to find a buyer himself he had three men in mind as possible purchasers of this timber-Herrick, Leuthold, and Rosenberry—as above stated. It is significant that he did not see either of the other gentlemen first, but he went straight to Herrick; and he testifies that after Herrick told him that he would bid $2.80 per M he (Girard{)} made no further effort to get Leuthold or Rosenberry to bid more than $2.80; in fact, he said he ceased all further efforts in that direction, as he felt that Herrick had put him in a hole by telling him he would bid $2.80. We consider Guard's testimony on this point so vital that we will quote from it extensively, as follows (pp. 379-381){quoted testimony is set apart in a smaller and different typeface}:

"(Gross-examination by Mr. Frederick M. De Neffe, attorney representing Grant County, Oreg.:)

"Mr. DE NEFFE. Mr. Girard, you said that after you had told Mr. Herrick the minimum appraisement was $2.76, and he said he would bid $2.80, that be had put you in a hole?

"Mr. GIRARD. I said that I considered he had; yes, sir.

"Mr. DE NEFFE. How had he put you in the hole?

"Mr. GIRARD. Because I was not in a position to go and discuss that with anybody else and get them to bid $2.75 or $2.85.

"Mr. DE NEFFE. Who were you working for at the time?

"Mr. GIRARD. At that time I was working for the Government.

"Mr. HALLOCK. May I have one more question there?

"Mr. DE NEFFE. When I get through here, Mr. Hallock. Don't interrupt this cross-examination now.

"At that time you were working for the Government, weren't you?

"Mr. GIRARD. Absolutely; and I was primarily interested in getting $2.75 for that timber, and that was all.

"Mr. DE NEFFE. That was all you cared about. If you could have got $3, would you have objected?

"Mr. GIRARD. I would rather get $2.75 than to get $4.

"Mr. DE NEFFE. You would?

"Mr. GIRARD. Absolutely.

"Mr. DE NEFFE. Why?

"Mr. GIRARD. Simply because if a man bids so high that his margin is cut down and he has no chance to make money it will be impossible for the Forest Service to get that man to pile his brush and do other things which are necessary for reforestation purposes. They have had a lot of experience along that line of men bidding too high, and as a result of this bid that was too high they were not able to make a profit and comply with the Forest Service regulations and the various conditions.

"Mr. DE NEFFE. Then yon are more interested in the operator's getting his profit than you were in the Government's getting the best price?

"Mr. GIRARD. No, sir. I was interested in the Government getting the proper price and I was interested in the operator making a profit regardless of who he was. Otherwise I would have recommended $4 fur this timber or $5. That is the only way we can build up a successful timber-sale business—giving the operator a chance to make a reasonable margin.

"Mr. DE NEFFE. Suppose you had gone to Mr. Leuthold and he had said he would bid $2.90. would not that have been to the advantage of the Government?

"Mr. GIRARD. That would have been to the advantage of the Government; yes, sir.

"Mr. DE NEFFE. And you think he would have fallen down on his bid and could not make it go, and the Government would have had to take it over?

"Mr. GIRARD. At $2.90?

"Mr. DE NEFFE. Yes, sir.

"Mr. GIRARD. No, Sir.

"Mr. De NEFFE. Why did you not go and see if you could get Mr. Leuthold interested?

"Mr. GIRARD. Because I was satisfied that Mr. Herrick would bid the full appraised value. That was all I was interested in.

"Mr. DE NEFFE. He told you he would bid $2.80, didn't he?

"Mr. GIRARD. He told me he would stand on my appraisal and go me 5 cent, better.

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"Mr. DE NEFFE. And if you had gone to the other man he might have bid $2.95. Would not that have been a good thing for the Government?

"Mr. GIRARD. It would have been a good thing for the Government if he did not go so high that he could not carry out the contract.

"Mr. DE NEFFE. Of course, if Mr. Leuthold had bid $2.80 Mr. Herrick would not have gotten the contract, would he?

"Mr. GIRARD. No; he would not have gotten the contract.

"Mr. DE NEFFE. And you were rather interested in seeing him get that contract, were you not?

"Mr. GIRARD. I was not any more interested in Mr. Herrick's getting that contract than in anybody else's getting it, except to this extent: As I stated before, Mr. Herrick was the first man in north Idaho that piled brush on white pine lands. It was a big operation, and he was a man that would comply with the Forest Service requirements with reference to reforestation, and I figured he was the best man in that whole territory, and I still figure that way.

"Mr. DE NEFFE. Then you consider that because Mr. Herrick was a good brush piler that would outweigh any additional money that the Government might get if there were two or three more bidders there that would go higher than Herrick? Did you figure that was of more importance?

"Mr. GIRARD. I did not figure the Government was entitled to any more than $2.75. That is, I did not figure that I should go out and try to get anybody to bid more than the appraised price.

"Mr. DE NEFFE. Was your sense of duty, then, to the Government or to Mr. Herrick?

"Mr. GIRARD. My sense of duty was first to the Government. If it had not been I might have told Mr. Herrick that he could buy that stuff for $2.10 per thousand, which I was reasonably sure in my own mind he could have done. If my interest had not been with the Government that is exactly what I would have done.

"Mr. DE NEFFE. You were acting in a confidential capacity for the Government?

"Mr. GIRARD. I should say not.

"Mr. DE NEFFE. You were not?

"Mr. GIRARD. There was nothing confidential about going down there and discussing this timber.

"Mr. DE NEFFE. No; nothing wrong at all. But then you told him that the appraisement was $2.75, didn't you?

"Mr. GIRARD. Absolutely; yes, sir.

"Mr. DE NEFFE. Then when you found that Mr. Herrick had bid $2.80 you quit?

"Mr. GIRARD. I quit; yes, sir.

"Mr. DE NEFFE. And you did not make any more effort to see these other gentlemen whom you intended to see?

"Mr. GIRARD. No, Sir; I did not. I knew that Mr. Rosenberry had been over this chance; he said he had. And I said: 'That is a good chance.' He said: 'Certainly it is a good chance, but I am not particularly interested because there is too much investment in the railroad.' He said: 'We figure it will take 2½ or 3 million dollars to get it through down there before we cut the first saw log.' I realize that probably it may be possible to twist this thing around —

"Mr. DE NEFFE. I am not trying to twist it around, Mr. Girard. You said, I believe, that if you had tried to get somebody else and they bid higher than Mr. Herrick, and Mr. Herrick had found that you had given him away —

"Senator WALSH of Montana. Oh, no.

"Mr. DE NEFFE. Am I in error in that?

"Senator WALSH of Montana. You said he figured that Mr. Herrick could charge him with having —

"Mr. DE NEFFE. With having told —

"Senator WALSH of Montana. Told what his bid was.

"Mr. DE NEFFE. That his bid was $2.80. Suppose somebody had bid $2.90. Then you would say that Mr. Herrick might charge you with having told this party that he had bid $2.80, and you did not want to incur his displeasure? Was that the idea?

"Mr. GIRARD. No. It looked like it was not doing what was right, and as between man and man I would not be doing the proper thing to do that, because I had accomplished all that I had

started out to do."

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This testimony presents an interesting study of the mind of a man who, had long been in the service of the Forest Service, and who everyone would naturally expect would be strongly imbued with his sense of duty to the Forest Service, first, last, and all the time; yet we find Mr. Girard here, in effect admitting that under the circumstances as above related, he held a higher duty to Herrick than he did to the Forest Service or to his country.

Questioned as to his opinion of the foregoing conduct of Girard, Colonel Greeley, Chief Forester, testified as follows (pp. 516-518):

"Mr. DE NEFFE. Is it customary for your men to go out and hunt up purchasers of timber tracts?

"Colonel GREELEY. Yes, wherever we have an opportunity.

"Mr. DE NEFFE. And it is their duty, isn't it, to get the best price they can for the Government; isn't that right?

"Colonel GREELEY. Yes, to interest bidders where they can. I have done it myself on more than one occasion.

"Mr. DE NEFFE. If they found a man, for instance, who was willing to pay $2.80, and they knew of a number of other men who might be induced to pay more, wouldn't you think it was the duty of such a man to go and try to get some other parties to pay more for the timber? To make a bid at a higher price?

"Colonel GREELEY. In general terms it is the duty of our employees to get as many bids and as good bids as they can.

"Mr. DE NEFFE. And not, when they find one man willing to bid a certain amount, to stop and not make any other effort; isn't that right?

"Colonel GREELEY. As a matter of general service practice I would say it was their duty to interest as many people as they could.

"Mr. DE NEFFE. Yes; but didn't you know that Mr. Guard—you heard his testimony, didn't you—after be got Mr. Herrick to make an offer of $2.80, did not make any further effort to see Rosenberg or the Winton people? You heard the testimony about that, didn't you?

"Colonel GREELEY. I heard his testimony. That is my only source of knowledge on the subject.

"Mr. DE NEFFE. And you heard him state the reason was that he felt that Mr. Herrick might think that he had thrown him down or had not treated him right?

"Mr. HALLOCK. Well, pardon me, Mr. De Neffe, wouldn't it be better to let the record stand on what Mr. Girard's testimony was?

"Mr. DE NEFFE. I thought I would ask what Colonel Greeley thought about it. You heard it?

"Mr. HALLOCK. You can not pick out one sentence and ask for his construction of that.

"Mr. DE NEFFE. And would you not consider, under the circumstances, that Mr. Guard held a higher duty to the Government than he did to Mr. Herrick?

"Colonel GREELEY. Why, certainly, as long as Mr. Girard was in the Government employ his duty was to the Government.

"Mr. DE NEFFE. As long as he was out getting a buyer here now, it was his duty to keep going, wasn't it, and get other buyers and get a high bid, isn't that a fact?

"Colonel GREELEY. In general terms; yes.

"Mr. DE NEFFE. Well, in general terms—under all conditions shouldn't he?

"Colonel GREELEY. Well, I am not undertaking to say all of the circumstances which should govern the actions of a member of the Forest Service in those actions. Mr. Guard has made his own statement. If I were handling what he set out to do, I would not have done it in the same way.

"Mr. DE NEFFE. Well, can you tell me any circumstances, Colonel Greeley?

"Colonel GREELEY. But you have heard Mr. Guard's statement, and I think the committee can judge for themselves whether that was an honest and honorable thing or otherwise.

"Mr. DE NEFFE. Well, do you think that he should have kept going and tried to get a higher bid there? That can be answered yes or no.

"Colonel GREELEY. I refuse to answer it yes or no. I think that what Mr. Girard might preferably have done was to have communicated with three or four concerns without learning what any one of them intended to bid. Or I can appreciate that having been told by Mr. Herrick what he intended to bid, it did put him in an embarrassing situation in going to somebody else.

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"Mr. DE NEFFE. As far as Mr. Herrick was concerned?

"Colonel GREELEY. As far as Mr. Girard was concerned.

"Mr. DE NEFFE. That is the only place there could have been any embarrassment?

"Colonel GREELEY. As far as Mr. Girard's reputation as a reputable forester is concerned, I can appreciate that there might have been some embarrassment; but in general terms, as I stated, our general practice would be to interest as many different people as we could.

"Mr. DE NEFFE. Would it have hurt Mr. Girard's reputation as an officer of the Forest Service if he had gone out and gotten another man or a number of other men who would bid more than $2.80 on that timber?

"Colonel GREELEY. It would not have hurt his reputation with me.

"Mr. DE NEFFE. Would it with anybody?

"Colonel GREELEY. Well, it might have hurt his reputation with the local people there.

"Mr. DE NEFFE. What local people? In Harney —

"Colonel GREELEY. No; in Idaho.

"Mr. DE NEFFE. How would it have hurt his reputation? Loyalty to the service and the Government, would that hurt a man's reputation any place under any conditions?

"Colonel GREELEY. Well, you are asking me to comment on a situation that comes down to the working of the mind of an individual. Now, Girard felt that having been informed by Herrick that he was going to bid a certain amount, if he then went to somebody else and tried to get them to bid he would be in a position of double-crossing Mr. Herrick. Now, that was his own affair. I am not attempting to say that he did right or wrong. I do say that our general practice is not to try to interest one individual, but to interest as many as we can, and at the same time not getting in possession of information that would be of any embarrassment to us in going from one to another. Every one knew that we were interesting as many different people as possible. I have done that myself recently in connection with large sales in Alaska.

"Mr. DE NEFFE. Well, now, having learned that Mr. Girard put this deal over in this way, are you willing to sustain him in it and say that it was all right? Is that what I am to understand?

"Colonel GREELEY. Yes.

"Mr. DE NEFFE. All right, we understand each other."

Girard's deliberate failure to seek other bidders, and Colonel Greeley's approval of his course, is truly an astounding code of ethics for men in their position to set up in the administration of the vast national resources over which Colonel Greeley has jurisdiction; and yet Colonel Greeley in his telegram to the Oregon Legislature (testimony, p. 425) seems surprised at the action of the Oregon Legislature in passing the memorial asking for this investigation, and asks whether the passage of that memorial "should be construed as an expression of lack of confidence in the integrity of the Forest Service." We believe it had always been the impression of the people generally that the ideals of the Forest Service were so high that no person or official connected with it would be guilty of, condone, or approve of such conduct as Girard testified be was guilty of.

This testimony of these two prominent figures in this controversy is very important, as their attitude as above expressed with respect to the code of ethics and honesty which should govern the conduct of a man in Girard's position tends to shed much light on subsequent events, and clearly explains many things which Colonel Greeley did or failed to do.

The following events, following in rapid order soon after the bids were opened, are strong proof of an understanding between Herrick and Girard at the time Herrick told Girard he would bid $2.80 for the timber, of Girard's employment by Herrick, should Herrick be the successful bidder.

The bids were opened April 5, 1923, and on April 7, 1923, two days later, we find Herrick writing to Colonel Greeley stating that he was the successful bidder, and then said: "I am giving you due warning that I am going to take your best man and put him at the head of the railroad building and logging operation." (P. 366 of testimony.)

There can be no doubt in the mind of anyone that Girard was the man Herrick had in mind, for Herrick had submitted his bid without seeing the property himself but relied practically entirely on Girard.

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On page 369 we find Girard's testimony to the effect that a few days after the bids were opened Herrick wrote him, asking: "Would you consider handling the operation for me?"

On April 12, 1923 a week after the bids were opened, the district forester at Missoula wrote Colonel Greeley,

telling him Herrick wanted Girard to enter his employ to take charge of the development of the Bear Valley project (p. 520 of testimony).

Sometime after the middle of April, 1923, Girard agreed verbally with Herrick to enter the latter's employ at a salary of $7,500 per annum, whereas he was getting only $3,840 from the Forest Service; and on May 1, 1923, three days before he resigned from the Forest Service, Girard signed a written agreement of employment with Herrick on the above basis. He did this even though he was offered a better proposition by another lumber company.

On pages 218, 219, 224, and 225 of the testimony it appears that Girard with Frank Klobucher, another ex-Forest Service man, who had been employed at the Missoula office, became incorporators with Herrick of the Fred Herrick Lumber Co. and the Malheur Railroad Co., the two corporations with which Herrick is trying to develop this project, and they became directors and vice president and secretary-treasurer, respectively, of those corporations. The records of those corporations show that Girard and Klobucher each subscribed for $5,000 par value of stock in each of these corporations and that neither of them has paid more than several hundred dollars on their stock subscriptions, even though these corporations have been in straightened financial circumstances on many occasions.

Herrick's contract contains provisions which are much more favorable than the provisions which everyone else who bid or had notice that the timber was being readvertised for sale thought would be embodied in the contract; therefore, Herrick obtained a big advantage over every other prospective bidder. And the Government was therefore prevented from receiving the benefit of the strong competitive bidding which would have resulted had the exact provisions of paragraph 3 of the Herrick contract been given publicity when the timber was readvertised for sale for the 30-day period.

The portion of paragraph 3 relating to the rate of cutting, appearing in the prospectus (Exhibit 8) used when the timber was advertised for the six-months' period, reads as follows:

> "Unless such amounts are changed in writing by the district forester, at least 60,000,000 feet b. m. and not more than 110,000,000 feet b. m. shall be cut prior to April 1, 1928; at least 120,000,000 feet b. m. and not more than 220,000,000 feet b. m. shall be cut prior to April 1, 1931; and not less than 100,000,000 feet b. m. and not more than 175,000,000 feet b. m. shall be cut during each three-year period thereafter until all the timber designated for cutting on the sale area is cut and removed, or until the agreement has expired."

It will be noticed that during the first and second three-year periods—that is, between April 1, 1925, and April 1, 1928, and between April 1, 1928, and April 1, 1931—the contractor was compelled to cut at least 60,000,000 feet, and during each three-year period after April 1, 1931, he had to cut a minimum of 100,000,000 feet.

This provision requiring a minimum cut during each three-year period was insisted on by the people of Grant and Harney Counties when the timber was first put up for sale, because that was the only way in which they could be assured of the mill and logging camps being in continuous operation. This was desirable, not only to insure continuous pay rolls, but, also, so that these counties would be sure of receiving a definite amount during each three-year period as their share of the money from the sale of the timber in order to liquidate certain road-bond indebtedness.

Before the timber was readvertised for the 30-day period Brooks-Scanlon Lumber Co. had made a written offer of $2 per thousand, which offer was the basis of the readvertisement for the 30-day period at the minimum price of $2 per thousand. This memorandum of agreement between the Forest Service and the above lumber company appears on pages 757-758 of the testimony.

The portion of paragraph 3 of the Herrick contract (see Exhibit 9) , pages 58-59, relating to the rate of cutting provides as follows:

> "Unless such amounts are changed in writing by the district forester, at least 60,000,000 feet, board measure, and not more than 150,000,000 feet, board measure, shall be cut prior to June 1, 1928; at least 120,000,000 feet, board

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> measure, and not more than 300,000,000 feet, board measure, shall be cut prior to June 1, 1931; at least 220,000,000 feet, board measure, and not more than 450,000,000 feet, board measure. shall be cut prior to June 1, 1934; at least 320,000,000 feet board measure, and not more than 600,000,000 feet, board measure shall be cut prior to June 1, 1937; at least 420,000,000 feet, board measure, and not more than 750,000,000

feet, board measure, shall be cut prior to June 1, 1940; and at least 520,000,000 feet, board measure, shall be cut prior in June 1, 1943.

"*Provided*. That whenever the district forester is satisfied that the cut from this sale area will exceed 890,000,000 feet, board measure, log scale, be shall increase the maximum amounts which may be cut prior to each of the above-named dates which have not previously passed, by such amounts as will permit the purchaser to cut thereafter an average annual amount sufficient to complete the cutting of the remaining timber covered by this sale, as the remaining cut may be estimated at that date, by June 1, 1945."

It will be noted that paragraph 3 of the Herrick contract differs very materially from paragraph 3 in the form of contract in the prospectus, because it eliminates the very vital provision in the prospectus contract requiring at least 100 000,000 feet to be cut during each three-year period after April 1, 1931.

On pages 233 to 236, inclusive, of the testimony, John W. Biggs clearly explained how paragraph 3 of the Herrick contract differs from paragraph 3 of the contract in the prospectus, and he pointed out that under the Herrick contract Mr. Herrick, by cutting the maximum cut allowed, when the lumber market was good, could shut down his sawmill and logging operations for periods of from three, five, and six years if he so desired, on account of a slump in the price of lumber. An analysis of Mr. Biggs's testimony appears on page 546 of the testimony in tabulated form, and is also attached hereto marked "Exhibit A," and is made a part hereof. Colonel Greeley (pp. 494, 497, and 498 of testimony) admitted that under the Herrick contract Herrick could shut down his mill as stated in said tabulated analysis.

Mr. Herrick would, without doubt, take advantage of the above provisions in case of a big drop in the price of lumber, because he himself testified that it would not pay to turn a $10 tree into lumber when he would get only $5 out of it. Since he has many other mills in operation, where he is paying taxes on the timber and interest on his investment in the timber, he would naturally keep those mills in operation in case of a slump and allow the Bear Valley operation to close down, because there he pays no taxes on the timber and no interest on his investment in the timber.

The elimination from the Herrick contract of the provision in the prospectus contract requiring a compulsory cut of a definite amount during each three-year period after April 1, 1931, is the very thing which makes it possible for Herrick to take advantage of a high market by cutting the maximum cut allowed while prices are high and shutting down his operations for periods ranging from three to six years when the market is greatly depressed. Herrick's is a very fine contract, as was, in effect, admitted by Colonel Greeley.

In testifying regarding the favorable provisions of paragraph 3 of the Herrick contract in that it did not compel the operator to cut any definite minimum amount during any particular three-year periods, as was the case in the prospectus contract, Colonel Greeley said: "And I am willing to say that to the average lumber operator that that is probably a more favorable clause than the one printed in the prospectus." On page 500 of the testimony he further testified that the usual form of contract heretofore issued by the Forest Service contained a clause compelling a definite minimum cut over certain definite periods during the life of the contract. And when asked whether he could point to a single contract issued by the Forest Service either during his administration or during the administration of any of his predecessors, where this clause requiring a minimum cut over certain definite periods was not inserted, he said he could not do so offhand, and he promised to examine some of the contracts and see if any of them are comparable to the Herrick contract. It is significant that he failed to report thereafter that he had found that such a contract had ever been issued before.

It will be noted that in the Brooks-Scanlon Lumber Co.'s offer, merely the maximum cut is mentioned. Nothing is said about the minimum cut, and there is no provision in the offer of the Brooks-Scanlon people which compels a minimum cut during any three-year period after April 1, 1931. By eliminating this provision from the Brooks-Scanlon Lumber Co.'s offer the Forest Service broke faith with the people of Grant and Harney Counties, as well as when

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they signed the Herrick contract, because it was well known, the testimony shows, by the Forest Service that the people of those counties had insisted on these operations being continuous in order to guarantee a continuous pay roll for the communities.

When the timber was advertised the first time (for the six-months period) prospectuses (Exhibit 8) were sent out to many hundreds of lumber operators throughout the country, and it is safe to say that every operator of any consequence in the country received one. The Forest Service claims that during the 30-day readvertisement they

published and gave the following notices of the new terms and price of sale:

On March 3 1823 they claim they wrote to Congressman M. N. McArthur, of Oregon (p. 736 of testimony), whose constituents had inquired regarding this sale. They told him, in reply to his letter, that a reliable lumber company (meaning Brooks-Scanlon Lumber Co., no doubt) had made an offer of $2 per M, "but with substantially no other change in the original conditions as advertised." This statement would naturally lead any of Mr. McArthur's constituents who might be interested in bidding to believe that the provisions in the prospectus compelling a minimum cut during each three-year period after April 1, 1931, would be retained in any contract they might have to sign, and no notice was given that the contract would contain the very favorable additional proviso in paragraph 3 of the Herrick contract.

In the letter of E. A. Sherman, acting forester, to Senator C. L. McNary, dated March 2, 1923 (p. 737 of testimony), we find substantially the same language, namely, "This assures a sale at this price and under substantially the same conditions as originally advertised."

The press release of the Department of Agriculture dated March 17, 1923 (p. 737 of testimony), specifies the only change in the contract to be in the maximum cut allowed in the first three-year period, from 60,000,000 feet to 150,000,000 feet, and providing for an increase in that amount if the timber exceeded the estimate, to enable cutting to be completed in 18 years. Anyone who had received the prospectus, who might have read this press notice, would naturally think that the contract to be signed would contain a three-year compulsory cutting provision as paragraph 3 in the contract in the prospectus.

On page 738 of the testimony appears a copy of what purports to be a readvertisement which the Forest Service claims appeared in a number of lumber journals, etc. No mention here is made of a compulsory minimum cut.

On page 739 of the testimony appears what purports to be a notice of the Department of Agriculture of the readvertisement of this timber. After reciting that no bids having been received as a result of the six-months advertisement, it states that the timber is being offered for sale under more attractive terms. And states further: "The price is now $2 per thousand and the contract terms are modified to permit a maximum average annual cut of 50,000,000 feet board measure of the Government timber." The Forest Service claim that copies of this letter were sent out to a number of lumbermen. It is apparent that any lumberman receiving this letter, who had previously received the prospectus, would certainly have believed that if he should be the successful bidder he would have to sign a contract containing the provisions of paragraph 3 in the prospectus contract pertaining to minimums cutting, because this letter merely specifies that the contract terms specified in the prospectus were modified only in respect to the price and the maximum average annual cut.

The letter from Fred Ames to F. J. and A. M. Smith is the only place where paragraph 3 of the Herrick contract appears, but in the letter from the Smiths to the district forester it appears that in the advertisement of the Forest Service in the American Timberman the sale in question was advertised to close April 2 instead of April 4, so it appears that many people must have been mislead as to the last day on which bids would be received. The Ames letter was dated March 19, 1923, too late for them to do anything about investigating the project.

Theodore M. Knappen, in charge of publicity work for the National Lumber Manufacturers' Association, testified (pp. 673-677 of transcript) that he wrote the article appearing on page 674 of the testimony. He said the Forest Service gave him the information contained in this article. This article, he said, was sent to about 350 lumber journals, etc., and was given to the press. This article mentions that the timber in question is being readvertised by the Forest Service. It is absolutely misleading in that it gives the last day for receipt of bids as April 2, instead of April 4 ; it says that the minimum price is $2 and that "The contract which the successful bidder will be required to execute is

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generally similar to that previously made public, except that the maximum rate of cutting has been changed, etc." Anyone reading this article who had previously received the prospectus would know that the provisions regarding the minimum cut over each three-year period specified in the prospectus would be retained, because nothing is said in this article about any change in the minimum cut allowed.

On pages 742-744 of the testimony, appear copies of what purports to be telegrams which the Forest Service claims were sent by the district forester to Shevlin-HIXON Lumber Co., at Minneapolis, to Edward Hines Lumber Co., at Chicago, and to Winton Lumber Co., at Gibbs, Idaho. In each of these telegrams, reference is made to the "readvertisement of the Bear Valley timber, Malheur National Forest," having just begun and after giving the

minimum price of $2 and the final date for bids as April 4 we find the following: "Cut of Government timber increased to average of 50,000,000 annually, other terms the same as in printed prospectus. Further information sent on request."

The effect of the phrase "other terms the same as in printed prospectus," in these telegrams, was to tell these three of the largest lumber operators in the country, specifically, and definitely that if they should bid and were the successful bidder, they would have to sign a contract containing the provision requiring a definite compulsory cut during each three-year period after April 1, 1931. These telegrams gave to those companies no information whatever that the contract to be signed would contain the provisions regarding the minimum cut and the new proviso in case there should be more than 890,000,000 feet in the unit, contained in the Herrick contract. Those companies certainly would have bid had they received the identical paragraph 3 appearing in the Herrick contract, because that would have advised them clearly that they could so regulate their cut during periods of high and depressed market conditions, so that they would have to operate only when the price of lumber was high. The Forest Service has nowhere explained why they did not set out in detail, in the letters, telegrams, and advertisements, above mentioned, the identical paragraph 3 as it appears in Herrick's contract, new proviso and all. This paragraph is not long and it would have been a great help in advising a prospective bidder just what kind of a favorable contract he would get. It would have greatly stimulated bidding, and in all likelihood would have resulted in a much higher bid than the Herrick bid.

In each case, except possibly the Smith case, the Forest Service led everyone with whom they communicated or who read their advertisements and articles to believe that the only change in the prospectus contract was the price and the provision allowing an average amount cut of 50,000,000 feet. Nothing whatever appears regarding the minimum cut to be allowed.

For these reasons none of these people, throughout the length and breadth of the land, ever had an equal chance with Herrick, and the Forest Service deprived the Government of the benefit of strong competitive bidding.

In view of the fact, as we will hereinafter show, that the Forest Service, according to its own witnesses, inserted paragraph 3 in Herrick's contract without his request, and the further fact that he has been granted many undeserving modifications and extensions, can anyone be blamed for believing that when the timber was advertised for 30 days, the Forest Service through some of its officials, were in touch with Girard and Herrick all or most of the time, and knew that Herrick would bid, and that the failure of the Forest Service to set out in all of its telegrams, letters, press notices, and magazine articles, the exact terms of paragraph 3 in the Herrick contract, was intentional and premeditated on the part of the forest Service officials. Fred Ames, district forester at Portland, testified that the provisions in paragraph 3 of the Herrick contract were drafted at Minneapolis on March 1, 1923, at the time the Brooks-Scanlon Lumber Co.'s. offer was signed. One may well ask, why this concealing from the public generally of the exact provisions of the contract which the successful bidder would receive? Why this misleading of the public by telling them in effect that, except as to the price and the amount of the average annual maximum cut, the contract would be the same as previously advertised in the prospectus? And why mislead the public as in the Knappen article, sent to many magazines, journals, and newspapers, by advising them that April 2, instead of April 4 was the last day on which bids would be received?

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Thus far, we have shown that the evidence establishes the following suspicions circumstances, pointing strongly to fraud and collusion in the making of the Herrick bid and contract:

1. The fact that Girard, after getting Herrick to bid $2.80 per thousand made no further effort to see Messrs. Leuthold and Rosenberry, whom he set out to see, to try to persuade them to put in a bid on the timber.

2. The fact that Herrick filed his bid without seeing the timber or looking over the project himself, but relied on Girard, an employee of the Forest Service—the seller of the timber.

3. The fact that in all of the letters, telegrams, and publications which the Forest Service sent out regarding the terms of the sale during the 30-day readvertisement, the exact terms of paragraph 3, as embodied in the Herrick contract, was not set out, but on the contrary, the public was clearly advised by the above means, that the provisions of the contract contained in the prospectus, were unchanged except for the price and the change permitting an average annual cut of 50,000,000 feet; and in addition to that, the public was misled in the Knappen article as to the last day for filing bids, as above pointed out.

We come now to the circumstance which absolutely proves that fraud and collusion between Herrick and Girard

and certain Forest Service officials existed.

The circumstance referred to is the preparation and signing of the Herrick contract containing paragraph 3 thereof.

Herrick's testimony is to the effect that before he talked with Girard, be had secured a copy of the prospectus and took it home and read it over. The next day he called Girard on the telephone, and Girard went to St. Maries and after talking with Herrick for 30 minutes about this $5,000,000 project, Herrick agreed to bid $2.80 per thousand for the timber.

As far as the terms of the contract were concerned, Herrick bid entirely on the contract set out in the prospectus. This is shown by Girard's testimony that while Herrick had a mimeographed sheet be did not remember what it was, as he had never gone over it, and that as far as he knew. Herrick bid on the prospectus (pp. 368-369).

Herrick's testimony clearly shows that while he knew that there was some sort of a supplementary prospectus, in some of the trade journals and papers, be paid no particular attention to them. He had probably in mind the letters and notices which we have discussed above.

These notices stated in effect that the contract would be the same as in the prospectus except as to the price and a change permitting an average annual cut of 50,000,000 feet.

So it is clear that in submitting his bid Herrick expected to sign a contract containing the same provisions as those contained in the contract in the prospectus except as to the price and the maximum cut, which would mean that the contract which he expected to sign would contain the provision in the contract in the prospectus requiring a minimum cut of 100,000,000 feet during each three-year period after April 1, 1937. There was absolutely nothing in the literature which Herrick had seen during the 30-day advertising which world lead him to believe that his contract would contain the very favorable new paragraph in paragraph 3 of his contract, referred to in this hearing as the "proviso. "

Girard testified (p. 678) that the first be knew of the difference between the Herrick contract and the contract in the prospectus, relative to the cutting requirements, was when be came to this investigation, and that previous to that he had had nothing to do with the drafting of the Herrick contract.

Herrick's testimony (p. 678) is to the same effect, and on pages 642-643 he testified that there were no negotiations leading up to the drafting of paragraph 3; that he was not consulted in its preparation; made no suggestions; asked for no changes; but that the Forest Service people had drafted it, sent him a copy, and be signed it just as they had prepared it.

The Herrick contract was signed on June 15, 1920 {this is incorrect; should be 1923}, 2 mouths and 10 days after the bids were opened. It was signed on the day when Colonel Greeley was in Portland, so Ames testified. Colonel Greeley must have seen and read it over, as it was a very important document, being a contract for the sale of the largest body of timber which the Forest Service had theretofore sold. If Colonel Greeley did not read this contract before it was signed and delivered,

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he was guilty of negligence of the worst sort, in view of the provisions which it contained. Guard and Ames were else present.

Here, then, we have a most unusual and remarkable situation. Assuming that the version of Herrick, Guard, and Ames as to the circumstances surrounding the preparation and signing of this contract are correct, we have the Forest Service officials voluntarily giving to Herrick a contract without any solicitation on his part which is far more favorable to him than the contract which Herrick expected to receive when he submitted his bid, namely, the contract in the prospectus, which contained the provision requiring a cut of at least 100,000,000 feet during each three-year period after April 1, 1931 ; which did not contain the "proviso " in the Herrick contract; and which did but permit Herrick to close down his mill for three, five, and six year periods in times of great depression in the lumber market.

If we assume that the version of Ames, Girard, and Herrick as to the preparation and signing of this contract is correct, then we must conclude that Ames and Colonel Greeley are entirely lacking in intelligence or were so grossly negligent and incompetent that they are not entitled to continue in the high positions which they now occupy in the

Forest Service, because nobody who was in his right mind or who had a particle of intelligence would have voluntarily and without solicitation given to Herrick a contract so much better and so much more advantageous to him than the contract which be expected to get and was entitled to get.

So unless Ames and Colonel Greeley are willing to admit that they fall within the class of incompetents above mentioned, any reasonable man is forced to the conclusion that Ames and Greeley were in collusion with Herrick and Girard when that contract was prepared and signed, for one may well ask: "Why should these officials of the Forest Service give to Herrick or permit him to receive something far better than he expected to get or was untitled to unless they in some way benefited or were to benefit by the transaction?"

The question would naturally arise as to what favors or concessions Herrick and Girard would naturally ask and expect in consideration of any benefit which Ames and Colonel Greeley might have received or were promised from the transaction.

What happened after the contract was signed is ample proof of the fraud and collusion of these parties.

First, we find that on April 7, 1923, two days after the bids were opened, Herrick wrote to Colonel Greeley (p. 366), telling him that he intended to take Greeley's best man to put in charge of the Bear Valley project. Can anyone doubt that Herrick had Girard in mind as being that man?

As near as we can tell from Colonel Greeley's testimony, Girard agreed about April 15, 1923, about 10 days after the bids were opened, to leave the Forest Service, where be was getting about $3,840 per year, and enter Herrick's employ in the development of this project at an annual salary of $7,500. This date is fixed by Girard's testimony on page 370, where be states that the Baird-Harper Lumber Co., of Missoula, offered him a higher salary than Herrick did. This offer was made, he says, between April 15 and 20, 1923; and he said Herrick had made his offer before then.

There can surely be no doubt in the minds of reasonable men that there was a clear and definite understanding between Herrick and Girard when Herrick decided to bid $2.80 per thousand and when Girard decided that his duty to Herrick (and his future job) was so much greater than his duty to the Forest Service and his country that be would not try to secure any other bidders who might bid higher than $2.80 per thousand. That understanding must have been, judging from what subsequently happened, that in consideration of Girard not attempting to obtain other bidders who might outbid Herrick, Herrick would, should he be the successful bidder, employ Girard at $7,500 per annum in the development of this project; and it is possible that Girard was also promised an interest in the project in the form of the above-mentioned stock, for it is apparent that neither Girard nor Herrick ever expected Girard to pay for that stock.

Girard was in such a hurry to get on Herrick's pay roll that he signed a five-year employment contract with him on May 1, 1923 (three days before he had resigned from the Forest Service), and Herrick placed him in complete charge of the development of this $5,000,000 project, involving the construction and operation of a railroad some 90 miles long and of a sawmill.

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Here is another unusual, suspicious, and unexplainable circumstance. Why should a man of Herrick's wide experience in the lumber industry select a man like Girard, wholly inexperienced in, developing and managing an enterprise of this magnitude, and pay him a large salary unless it was understood and expected in advance that Girard could and would use his influence with the Forest Service officials in securing such extensions and modifications of Herrick's contract as Herrick knew he would require and which he intended to request of the Forest Service, for there can be no doubt but that right from the beginning Herrick intended to finance this project with profits from his other mills; and his intention from the beginning was clearly to "shoestring" the Bear Valley project along and to not develop it any faster than necessary and to not put any more money into it than he was compelled to and to rely on extensions and modifications of his contract, which he knew he could secure from Colonel Greeley as per agreement with him and Girard.

It will be recalled that on February 20, 1923, being between the time of the expiration of the six months' advertisement and before the second advertisement began, and while plans were being made for a readvertisement, Mr. Ames, the district forester at Portland, wired to I. S. Geer, one of the members of the committee of 10 at Burns, asking whether the people of Burns would be willing to eliminate the common-carrier clause from the contract with reference to the railroad north of Burns. Mr. Barnes, in common with the people of Grant and Harney Counties, took the stand that that part of the line must be a common carrier, among other reasons, in order to prevent the purchaser

of the Bear Valley unit of timber from bottling up about 6,000,000,000 feet of timber in the vicinity of that unit. Mr. Ames was notified accordingly. Barnes and the people stood together on this proposition of the common carrier.

In view of what transpired, as is pointed out in this brief, it is evident that Colonel Greeley, Ames, Herrick, and Girard were at that very time in conference and were laying their plans whereby through insufficient notice to the public and the large lumber operators generally, as hereinbefore specified, the contract for this timber would be awarded to Herrick.

It will be remembered that the common-carrier clause was always extremely obnoxious to Herrick. Mr. Barnes testified (pp. 81-82 of testimony) that several weeks after the bids had been opened Herrick told him at Prineville that he did not like the common-carrier clause in the contract as to the line north of Burns, and said that even though he built the road as a common carrier he did not have to haul anyone else's logs, because he could turn it into a private road by going into bankruptcy. He also told Barnes that he did not want a common-carrier road, and asked Barnes to betray the people of Grant and Harney Counties and "fix" it for him so that the common-carrier feature would be eliminated from the contract, saying that he "would take care of" Barnes, and stating that he didn't believe in the people of Burns sitting around there for the last 40 years and profiting off of Barnes's efforts. Barnes refused to accept his proposal, because he felt it would amount to a betrayal of the people who had reposed implicit trust in him. Mr. Barnes testified (p. 99) that on another occasion, at Burns, Herrick told him that he would not haul a log out of Bear Valley for anyone but Herrick. Barnes is corroborated to this by William Farre, who overheard Herrick's statement. This attitude of Herrick relative to the common-carrier clause is only one example of the "people-be-damned" attitude which Herrick has always assumed from the time he went into the Burns country. Is there any wonder, in view of these statements of Herrick relative to the common-carrier clause, made even before he had signed the contract, that the people of those counties have ever since been suspicious whenever any statements were made, as, for example, Colonel Greeley calling the Burns to Seneca road a "logging railroad," or when anything was put in any of the modifications of the contract which indicated that the common-carrier feature of the contract as applied to the Burns to Seneca part of the road was being tampered with?

Herrick and the Forest Service have frequently during this hearing emphasized the fact that because Herrick's bid was 80 cents per thousand more than the only other bid, that of Brooks-Scanlon Lumber Co., it proves that there was no fraud or collusion in the Herrick bid and contract. On page 135 of the testimony Mr. McGowan, counsel for the Forest Service, stated that the Government will receive $689,350 more from the Herrick bid than it would have received had Brooks-Scanlon Lumber Co. been the highest bidder at $2 per M. They forget that under the provisions of the contract in the prospectus, even though the contract had been awarded to Brooks-Scanlon Lumber Co.

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or to anyone else who might have bid less than Herrick did, the price at which the contract would have been awarded, would have held good only for all timber cut prior to April 1, 1928 because the Forester could raise the price every three years thereafter, and there would be nothing to prevent the price from being raised to $2.30 per thousand or more. So even though Brooks-Scanlon Lumber Co. had been the successful bidder at $2 per M and had cut, prior to April 1, 1928, the maximum cut of 150,000,000 allowed in the Herrick contract, the excess which the Government would receive under the Herrick bid over what would have been received under the Brooks-Scanlon bid, for that three-year period, would have been $120,000. This $120,000 is nothing compared with the value to Herrick of the favorable cutting contract which he received and the many extensions, modifications, and concessions which he knew he would receive and which he has actually received to date. It is likely that Herrick bid high on purpose because he and Girard knew that since the Brooks-Scanlon people had offered $2 per M as the basis of the second advertising, they would be likely to bid a little more than that, so they decided that it would be best to bid $2.80 in order to be sure of getting the contract; for they knew that if the Herrick bid was somewhat higher than that of the Brooks-Scanlon people it would allay any suspicion that fraud or collusion existed in the bid or contract when it became known that Girard had become a partner with Herrick in the project. Nor does this $120,000 begin to compare with what the Government lost by the Forest Service not properly readvertising the timber the last time, for if it had notified the lumber industry of the sale by setting out in all of the advertisements an exact copy of paragraph 3 of the Herrick contract, so that the operators would know what kind of a contract they would get should they be the successful bidder, there would have been many bids, without doubt, in excess of $2.80 per M, for the large operators would have instantly recognized that they would get a contract with an exceptionally favorable cutting clause—a clause which Colonel Greeley himself testified (p. 499 of testimony) was probably more favorable to the average lumber operator than the one printed in the prospectus.

FURTHER EVIDENCE OF FRAUD AND COLLUSION

The dilatory and indifferent manner in which Herrick prosecuted the work in attempting to develop this project,

and the many unjustifiable extensions and modifications which Colonel Greeley granted him, when he positively knew that he was not acting in good faith, taken in connection with all of the other circumstances above enumerated, should convince the most skeptical mind that fraud and collusion did exist.

This timber was put on the market not only to produce revenue for the Government and Grant and Harney Counties from its sale, but also to bring about railroad development in those isolated counties and to create continuous pay rolls for those communities from the logging and milling operations contemplated. That is why the people there petitioned that the timber be sold. Herrick learned all this from reading the prospectus, so he had notice in advance that those communities had an interest in his contract with the Forest Service being performed, and that they expected and had a right to expect that he would live up to the provisions of his contract. This, of course, interfered with Herrick's preconceived method of financing this project, so, notwithstanding complaints and protests which poured into Herrick's office and into the office of the Forest Service and which were sent to the Oregon delegation in Congress, the work on the railroad lagged to such an extent, due to Herrick's inability to provide the necessary funds, that we find him, as early as October, 1924, applying to Colonel Greeley for an extension. It was then a foregone conclusion that Herrick would be unable to complete the railroad into the timber by April 1, 1925, as required by the contract, because very little work had been done north of Burns. It had taken Herrick a year to build the 30-mile section of railroad between Crane and Burns—a job which Harry Haley, an experienced railroad engineer and builder, testified (p. 299 of testimony) could be finished easily within four months by an experienced railroad contractor properly financed.

Colonel Greeley, in February, 1925, sent E. E. Carter, assistant forester, to Burns to investigate the situation. Mr. Carter met at Burns on February 15, 1925, with Ames and other Forest Service officials, and with Girard and Klobucher, representing the Herrick interests, and with 25 citizens of Burns.

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Mr. Carter reduced the findings of his investigation into a report to Colonel Greeley, under date of February 20, 1925. (See Carter's report, p. 388 of testimony.)

In this report Mr. Carter clearly and distinctly pointed out to Colonel Greeley that the work had not been prosecuted as it should have been, due to lack of funds; that checks to employees had been protested for lack of funds in the bank; that delaying actual disbursements appeared to be a firmly fixed habit with Herrick, and that apparently he never paid out anything until he could no longer delay—the experience of district 1 of the Forest Service (at Missoula) being distinctly to that effect; further, that there had not been and was not then, any serious delays due to right-of-way matters; that practically speaking, the summer of 1924, an unusually favorable summer for construction work in that vicinity, was wasted; and that from the best evidence available it seemed that Herrick was trying to finance thin project out of the profits of his Idaho projects, which would mean a delay of five years or more before logging and milling would actually be under way.

Right here we wish to call to the attention of the subcommittee the fact that in that report Mr. Carter said substantially the same things in criticism of Herrick which Mr. Barnes and many other people from those counties had been saying. It is for saying these very things that Herrick, Girard, Colonel Greeley, and Ames have, all during this proceedings, charged Mr. Barnes with personal animosity toward Herrick, and have accused him of hounding and prosecuting Herrick; and it is on account of this criticism that they have even gone to the extent of unjustly accusing Mr. Barnes of attempting to bribe Mr. Flood—all to divert the attention of the subcommittee from their own misdeeds and delinquencies. It is a significant fact that Mr. Barnes was not at that Burns meeting, so we assume that Mr. Barnes is at least free, in the minds of these parties, frown any suspicion of having influenced the contents of Mr. Carter's report.

When Colonel Greeley received this Carter report, the latter part of February, 1925, he had proof positive that Herrick's fixed habits of not meeting his obligations, and his lack of sufficient finances, and his lack of good faith and good intent, and his lack of performance demanded the cancellation of the contract. The contract should have been canceled then and there, because Herrick's lack of good faith and his inability to finance the project had been clearly demonstrated. Herrick would be reimbursed by the Union Pacific Railroad Co. for the work he had done on the Crane-Burns line, and he had spent only a comparatively small amount on the line north of Burns. It would have taken not more than two months to have completed a readvertisement of the timber. The proposition would have been much more attractive than formerly, because the purchaser would be relieved of building the 30-mile Crane to Burns line and the Forest Service would have had no difficulty in securing another purchaser at even a higher figure than $2.80 per M, especially if in their readvertisement they had set out in detail the very favorable provisions of paragraph 3 of the Herrick contract.

But Colonel Greeley evidently never had any intentions of canceling the contract. He knew that extensions and modifications were expected by Herrick and Girard, so he granted a modification and extension of the contract on March 3, 1925, in which he required definite work to be done within definite periods and required $100,000 to be spent on the road north of Burns between April 1 and July 1, 1925, and there were other requirements for other work. Right here Colonel Greeley wrote a letter which we will comment on. He wrote it on February 27, 1925, to Senator C. L. MCNARY, United States Senator from Oregon (p. 583, transcript), who had been receiving many protests from his constituents against Herrick's inactivity under the contract. Remember, at this time Colonel Greeley had before him Mr. Carter's report containing the statements above set out. In this letter to Senator MCNARY, Colonel Greeley stated that he had authorized the district forester to approve a modification of the Herrick contract under which Herrick would be required to perform certain work and make certain expenditures therein specified, and he then added: "These requirements are reasonable, and I feel that failure to meet them will be ample evidence of a lack of good faith on the part of Mr. Herrick, which will justify me in terminating his contract and reoffering the timber for sale through public advertisement."

Let us see whether Colonel Greeley meant what he said about canceling the contract.

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Herrick knew that he could not meet the requirements of this modification of the contract; he never intended to meet them, and he knew that Colonel Greeley would not compel him to meet them, so he continued to live up to his previous record for nonperformance, and before July 1, 1925, came the protests of the citizens down there began again to pour in, with the result that a meeting was held at Spokane between Herrick and C. M. Granger, Ames, Carter, and Hoffman, of the Forest Service. (See Granger's report to Colonel Greeley of July 24, 1925, p. 71, Exhibit 9.)

In this report Mr. Granger, district forester at Portland, pointed out that Herrick had fallen short over 50 per cent of the amount required under the modified contract of March 3, 1925, to be expended between April 1, 1925, and July 1, 1925. The report also pointed out (p 71) that it was difficult to give a clear presentation of Herrick's arguments, because he did not make them clear himself; that Herrick claimed that the essence of the contract was the cutting of 60,000,000 feet by June 1, 1928, and that the Government should be satisfied even though the stipulations were not literally complied with; that (p. 71) Herrick had nothing to offer when asked what guarantees he could give that the remaining stipulations would be complied with, even after he had talked with Girard about it; that Herrick waved aside his failure to make the required expenditures before July 1 1925, as immaterial, claiming a liberal construction of the contract justified his doing so; and he finally told them he would see that Girard had the necessary funds to comply with the requirements, but that he would not accept the requirement as to the building of the mill foundation that fall.

Here, then, we have Herrick badly in default on his contract for the second time, treating his contract as a mere "scrap of paper," interpreting it to suit himself, assuming an independent, arrogant, and dictatorial attitude, and actually dictating to the Forest Service what he would and would not do, as in the case of starting the mill foundations that fall. Can anyone imagine what would happen to some poor stock rancher in one of these counties should he attempt to in even the slightest degree assume toward the Forest Service the independent and dictatorial attitude which Herrick assumed in a matter involving millions of dollars?

Surely Herrick must have been certain of his standing with Colonel Greeley, or he would not have under the circumstances assumed such an attitude. He knew that Colonel Greeley would grant him the modifications and extension made necessary by Herrick's deliberate defaults. And he was correct in his assumption, for Colonel Greeley did grant him a second modification on September 8, 1925.

Right here it is well to inquire as to what had become of Colonel Greeley's clear and positive intentions as expressed in his letter of February 27, 1925, to Senator MCNARY, when he said:

"These requirements (meaning the requirements in the modification first granted on March 3, 1925) are reasonable and I feel that failure to meet them will be ample evidence of a lack of good faith on the part of Mr. Herrick which will justify me in terminating his contract and reoffering the timber for sale through public advertisement."

Why did Colonel Greeley change his mind? What sinister influence was working on him? Did Herrick remind him that now, since he had gotten Colonel Greeley and other forest officials enmeshed in this damnable contract, it was up to Colonel Greeley to "play ball" with him, because if there should he an "exposure" Greeley and the other forest officials involved would be exposed as well as Herrick? A man treading on the thin ice of repeated defaults in

performance of his contract, as was Herrick, would not have been so bold and defiant had he not known what Colonel Greeley would do in the matter of granting extensions and modifications of his contract.

So Colonel Greeley ignored his promise to Senator McNary to cancel the contract after he had had "ample evidence of lack of good faith on the part of Mr. Herrick " and granted the modification of September 8, 1925.

Time will not permit a detailed analysis of all of the many flagrant violations by Herrick of his contract as modified, after September 8, 1925—of the changing of the northern terminus of the road to a point about a mile south of Seneca without consulting the people of Grant County; of Herrick's failure and refusal to live up to his contract as modified. Suffice to say that another modification became necessary and was granted by Colonel Greeley on July 14, 1926 (p. 78, Exhibit 9), and through Herrick's failure and neglect all of the stipulations set out in the modification of July 14, 1928, were either broken

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or it was apparent Herrick would not be able to perform them within the times specified, but notwithstanding that Colonel Greeley announced, some time before this investigation started, in letters to some of the Members of the Oregon delegation in Congress that he would grant Herrick a fourth modification of his contract.

Can anyone doubt, after considering the long chain of damaging suspicious, circumstances above recited, that there was fraud and collusion in the making of the Herrick contract? The granting of these repeated modifications and extensions supports the testimony of Mr. Barnes (p. 89 of testimony) that Herrick told him that he (Herrick) could get all of the extensions he wanted, and that he would not have been fool enough to take a contract like that without knowing that he could do so; and it also coincides with the testimony of Mr. Barnes (p. 90 of testimony) to the effect that Girard told him, when Barnes had complained about the work dragging and reminded him that he would have to obtain an extension, that he (Guard) was the only one who could get extensions for Herrick, and that he could get them because he was a friend of Colonel Greeley. It also corroborates the testimony of Mr. Farre where he testified (p. 204 of testimony) that W. L. Blott, of Burns, told him that Herrick had made the statement in Herrick's office in Burns that Colonel Greeley had promised him all the extensions he wanted.

Herrick and the Forest Service produced many witnesses who testified to the great wealth of Herrick—the estimates being from $8,000,000 to $9,000,000. Some of these witnesses said that when this contract was signed Herrick had clear assets amounting to $1,200,000.

Admitting for the sake of argument that this was true, Herrick and the Forest Service have still not answered the unexplained and unexplainable fact that Herrick was not forced by Colonel Greeley to use sufficient of these. millions to comply with his contract.

CONCLUSION

The record in this hearing is very voluminous and much more could be written, but the limited time given to prepare this brief (only two days) prevents a discussion of many more important phases of the controversy.

In conclusion we wish again to enumerate the strong chain of suspicious and positive circumstances which would prove to any reasonable mind that fraud and collusion existed:

1. The fact that Girard, after getting Herrick to bid $2.80 per M, made no further effort to see Mr. Leuthold or Mr. Rosenberry, whom he had set out to see to try to persuade them to put in a bid on the timber.

2. The fact that Herrick filed his bid without seeing the timber or looking over the project himself, but relied on Girard, an employee of the Forest Service, the seller of the timber.

3. The fact that in all of the letters, telegrams, and publications which the Forest Service sent out regarding the terms of the sale during the 30-day readvertisement, the exact terms of paragraph 3, as embodied in the Herrick contract, was not set out, but, on the contrary, the public was notified by the above means that the provisions of the contract contained in the prospectus were unchanged, except for the price and the change permitting an average annual cut of 50,000,000 feet, nothing being said that the provision in the prospectus contract, compelling a definite minimum cut during definite periods after April 1, 1931, and in addition to that the public was misled in the Knappen article as to the last day for filing bids, as above indicated.

4. The fact that Colonel Greeley approves Girard's conduct in not having made an effort to secure a bidder who

might have bid more than Herrick bid.

5. The fact that certain Forest Service officials voluntarily gave to Herrick a contract far more favorable for Herrick than he was entitled to—a contract which Colonel Greeley admitted was probably more favorable to the average operator than the contract in the prospectus, a contract which was different from any contract which had ever been before issued by the Forest Service to anyone, so far as Colonel Greeley knew, in that it did not contain a provision compelling a definite minimum cut during definite periods.

6. The fact that Girard entered Herrick's employ about 10 days after the bids were opened, at a large increase in salary, not even waiting until the contract was signed and before he had resigned from the Forest Service.

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7. The fact that from the very beginning Herrick prosecuted the work in only a dilatory manner and did not show good faith or good intent.

8. The fact that Colonel Greeley, after receiving Mr. Carter's report, showing sufficient facts to justify a cancellation of Herrick's contract, nevertheless granted an extension and modification.

9. The fact that on July 14, 1925, even though the requirements in the modified contract of March 3, 1925, had not been complied with as much as 50 per cent, Colonel Greeley nevertheless granted a second modification, thereby repudiating the definite promise which he had made to Senator MCNARY, and through Senator MCNARY to the people of Grant and Harney Counties, that Herrick's failure to meet the requirements in the modification of March 3, 1925, would be ample evidence of a lack of good faith on the part of Mr. Herrick which would justify him in canceling the contract and reoffering the timber for sale through public advertisement.

10. The fact that thereafter Colonel Greeley granted another modification on September 8, 1925, another modification on July 14, 1926, and had announced during the latter part of last year or the first part of this year that he would grant Herrick further additional modifications and extensions, all even though the necessity for the granting of such modifications and extensions has been due solely to Herrick's neglect and failure to comply with his contract as repeatedly modified and extended in the past.

11. The fact that these many modifications and extensions which Colonel Greeley granted to Herrick substantiate the testimony of Mr. Barnes to the effect that after the Herrick contract had been signed, Herrick told him in effect that he could get all the extensions he wanted, and that he would not have been fool enough to have taken a contract like that without knowing that he could do so, and it also coincides with the testimony of Mr. Barnes (p. 90 of the testimony) to the effect that Girard told him, when Barnes had complained about the work dragging and reminded him that he would have to obtain an extension, that he (Girard) was the only one who could get extensions for Herrick, and that he could get them because he was a friend of Colonel Greeley; and it further substantiates the testimony of Mr. Farre to the effect that Mr. Blott had said Mr. Herrick stated in his office that Colonel Greeley had promised him all the extensions he wanted.

We respectfully submit that the evidence produced in this hearing, as above enumerated, so conclusively proves fraud and collusion between Herrick, Girard, Colonel Greeley, and Ames that this subcommittee should recommend in its report that a resolution be adopted by the Senate requesting the Department of Justice to institute and prosecute a suit against Mr. Herrick for the cancellation of this contract with the Forest Service on the grounds above specified.

Respectfully submitted.

FREDERICK M. DE NEFFE,
Attorney for Grant County, Oreg.

FEBRUARY 26, 1927.

EXHIBIT A

Analysis of Herrick contract (Par. 3), relative to rate of cut

MAXIMUM CUT ALLOWED	MINIMUM CUT REQUIRED
150,000,000 feet prior to June 1, 1928	60,000,000 feet prior to June 1, 1928
300,000,000 feet prior to June 7., 1931	120,000,000 feet prior to June 1, 1931
450,000,000 feet prior to June 1, 1934	220,000,000 feet prior to June 1, 1934
600,000,000 feet prior to June 1, 1937	320,000,000 feet prior to June 1, 1937
750,000,000 feet prior to June 1, 1940	420,000,000 feet prior to June 1, 1940
	520,000,000 feet prior to June 1, 1943

If Herrick cuts the maximum of 150,000,000 feet prior to June 1, 1928, he would not have to cut any more prior to June 1, 1931, because he would have already cut 30,000,000 feet more than the 120,000,000 feet requirement prior to June 1, 1931; so he could shut down his mill completely between June 1, 1928, and June 1, 1931, a period of three years, and if he so desired he could keep it shut down two years longer (making a five-year shutdown), because, having already cut 150,000,000 feet, which is only 70,000,000 feet less than the 220,000,000 feet required to be cut prior to June 1, 1934, he could easily cut

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this 70,000,000 feet in the one-year period between June 1, 1933, and June 1, 1934.

If Herrick should cut the maximum of 300,000,000 feet prior to June 1, 1931, he would not have to cut any more prior to June 1, 1934, because he would have already cut 80,000,000 feet more than the minimum requirement of 220,000,000 feet prior to June 1, 1934; so he could shut down between June 1, 1931, and June 1, 1934 (three years), and could keep his plant shut down two years longer (making a five-year shutdown), until June 1, 1936, because the minimum amount required to be cut prior to June 1, 1937, is 320,000,000 feet, only 20,000000 feet more than he has already cut. He could easily cut that 20,000,000 feet in a few months between June 1, 1936, and June 1, 1937.

If Herrick should cut the maximum of 450,000,000 feet prior to June 1, 1934, he would not have to cut any more prior to June 1, 1940, because he would have already cut 30,000,000 feet more than the minimum amount of 420,000,000 feet required to be cut prior to June 1, 1940, so he could shut down his mill for six years, from June 1, 1934, to June 1, 1940.

The above figures absolutely prove that Mr. Herrick could shut down his mill and logging operations for periods of three, five, and six years, which he certainly would do if the price of lumber was low. He would operate only when the market was good and close down when the market was poor.

There is no provision in this contract like there was in the contract shown in the prospectus, requiring him to cut at least a minimum of 100,000,000 feet in each three-year period after June 1, 1931, so as to insure continuous operation of his plant in order to give a continuous pay roll to the communities interested in his mill and logging operations.

BRIEF OF FRED HERRICK

CONTRACT BETWEEN THE UNITED STATES FOREST SERVICE AND FRED HERRICK FOR 890,000,0000 FEET OF TIMBER IN THE BEAR VALLEY UNIT OF THE MALHEUR NATIONAL FOREST, GRANT COUNTY, OREG.

Your chairman has requested that we file a short brief in this matter. We are glad to respond to this request, although in so doing we experience difficulty in finding in the record evidence of any proposition which could be said to sustain the position taken by the proponents of this investigation, and with respect to which there appears to be any need to submit argument.

FRAUD, CONSPIRACY, AND COLLUSION

It is charged that Mr. Herrick, along with unidentified persons connected with the Forest Service, are guilty of fraud, and that there has been conspiracy and collusion in the making of the contract and in performance under it. The complete absence of any evidence, even remotely sustaining these charges, is so apparent on the face of the record that we leave the entire matter with that observation, coupled with the further statement that the only fraud, collusion, or conspiracy brought to light in this proceeding is that which the record so abundantly shows to have characterized the activities of Mr. Barnes in his attempts to eliminate Mr. Herrick's bid and place the timber on the

market for his then principal, the Brooks-Scanlon Lumber Co., at a loss to the Government of some $700,000; his avowed purpose to fight Mr. Herrick at every turn, and his attempts to conceal the fact that he is not only the principal actor in this drama, but that he has actually dictated almost every expression, official or otherwise, which has been directed against the integrity of Colonel Greeley and his organization, and against Mr. Herrick, Mr. Guard, and Mr. Klobucher.

We can not conceive that your committee, in its findings upon this matter, will place the stamp of approval or commendation upon Mr. Barnes, nor upon the methods which he has employed in bringing this matter to the attention of Congress at so great an expense of time and money to all concerned, and particularly to Mr. Herrick, Mr. Girard, and Mr. Klobucher, who have been compelled to cross the continent in order that they might defend against these monstrous and wholly unjustified charges.

We are not unmindful of the fact that Mr. Barnes presents credentials from Grant County, and we are not disposed to question the right of the people of

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that section of the State, or elsewhere, to direct the light of honest inquiry upon any matter of public concern if it be tainted with fraud. But we feel that the committee must readily, agree with us, that the personal interest of Mr. Barnes and the service which he is seemingly extending to his "undisclosed principal," as well as his obvious antagonism and animosity toward Mr. Herrick and Colonel Greeley, can not and should not be lost sight of in this case. It is true that in a technical sense Mr. Barnes is not on trial, yet he submits himself with his propaganda and his motives to inspection by this committee, and in the very nature of things must thereby assume that responsibility which the committee should feel impelled to place where it properly belongs. It is no small thing to invoke the aid of Congress in a matter of this character, and where, as in this case, it develops that a hearing, extending over a period of two weeks and covering every phase of the transaction, fails to produce so much as a scintilla of evidence, either of fraud, collusion, or conspiracy on the part of Mr. Herrick's organization or the Forest Service, the man who is directly responsible for that situation should not escape a severe rebuke.

Mr. Barnes and the few who have followed him to Washington under Government subpoenas appear to have developed an abnormal sense of suspicion. "Evil to him who evil thinks."

The most charitable thing which could be said for Mr. Barnes in connection with this farcical affair is that his efforts are not entirely altruistic, that his work in this matter is not wholly in the interests of the people of Grant County, and that he has been actuated more by personal interest than public weal.

CUTTING REQUIREMENT CLAUSE

After months of search and preparation, it now develops that the only thing which the proponents of the investigation have to offer as fraudulent or collusive is the fact that clause 3 of the contract covering the cutting requirements does not appear in the contract executed by Mr. Herrick in the identical form as it appears in the draft set forth in the prospectus. We learn from the witnesses who testified on this subject that there is an honest difference of opinion as to whether either clause has any advantage over the other; but, quite independent of that question, it has been conclusively shown that Mr. Herrick had nothing whatever to do with the preparation of this clause; that it was strongly urged by the Brooks-Scanlon Lumber Co., whose bid was 75 cents per thousand less than Mr. Herrick's; and that between the dates of the first and second advertising the change in the cutting requirement was fully communicated to the trade generally, not only by means of published notices appearing in the newspapers but by telegrams and letters addressed by members of the Forest Service to various concerns whom it was thought might be interested to submit a bid. Furthermore, all of the witnesses called by Mr. Barnes in support of his belated contention that this change in the cutting requirement constituted the solar plexus of the fraud and collusion, admitted that they knew nothing about the claimed advantage to Mr. Herrick until after their arrival here in Washington for the hearing. In short, this feature was entirely an afterthought thrown into the potpourri for good measure, and was never thought of when the resolutions adopted by Grant County and the Stockgrowers' Association, the Oregon legislative joint memorial, and Senate Resolution No. 332 came into existence. But regardless of when or how this point was developed, it is wholly without merit. We therefore respectfully submit that it will be folly for Mr. De Neffe to request from this committee a finding of fraud. collusion, or conspiracy.

COMMON-CARRIER CLAUSE

Let us neat consider the matter of the common-carrier clause of the contract and the testimony developed by Mr. Barnes in support of his contention that Mr. Herrick and the Forest Service at any time after the contract was

signed on the 15th day of June, 1323, contemplated the elimination of this clause.

When pressed for some evidence of such a plan Mr. Barnes and his people fell back upon the flimsy contention that in one of the extension stipulations it was recited that the railroad should be so substantially constructed as to be suitable for the transportation of logs. To us this situation is significant in that it is characteristic of the quality of proof advanced by the proponents of this investigation in support of every one of the unwarranted charges pre-

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ferred by Mr. Barnes and by him actually dictated to the Oregon Legislature and suggested to the Congress of the United States.

We appreciate that in addition to this feature Mr. De Neffe also made the discovery that the minute book of the Malheur Railroad Co. disclosed that the application filed by Mr. Foley with the Interstate Commerce Commission for a certificate of public convenience and necessity to construct the line from Burns to Seneca had been withdrawn, and he lays great stress upon that. Surely, had we believed that our action in withdrawing this application was in any sense improper, or had we felt that it might at any time become necessary for us to apologize for such action, we would not have placed in the minute book the conspicuous and detailed recital, which appears there, bearing upon this feature.

That Mr. Herrick was seriously delayed in the matter of constructing the line from Crane to Burns because of the necessity for securing such a certificate is amply sustained by the record. Upon advice of counsel he withdrew the application theretofore filed for such certificate covering the line from Burns north, which was under construction by the Malheur Railroad Co., an Oregon corporation and located wholly within that State, being no part of an interstate transportation system. Had not this application been withdrawn, much delay would have resulted through the necessity of preparing maps, reports, and other data required by the commission; but, what is far more important, the little railroad company could not negotiate a bond issue, prepare a stock certificate, execute a note, nor hypothecate any of its securities without first making an elaborate showing to the commission and, at the end of a lot of red tape, secure an order to do so, coupled with conditions and requirements quite burdensome upon a property of this character. Federal jurisdiction, predicated upon interstate operation, carries with it, in addition to these considerations, amenability to such regulatory statutes as the safety appliance act, the boiler inspection act, the ash pan act, and innumerable other provisions of law covering the whole operating alphabet from accounting down to wages. We see no good which could come to anyone through our voluntarily assuming, at this time, an interstate status for this road. On the other hand, innumerable benefits in connection with the construction program will result from retaining an intrastate status. No legal or moral right demands that we construct this road as an interstate carrier. That we are acting within such rights in this matter is clearly announced in the case of Texas & New Orleans Railroad Co. *v.* Northside Belt Railway Co. (8 Fed. Rep., 2d. ed., 153):

" Well spotted as this new arm of interstate commerce is, however, it has not been, and can not be drawn to so fine a bead as to bring within its comprehensive aim the fledgling railroad in the case at bar."

If and when tonnage may be offered to the road for interstate destination, it will be time to consider the question of rates, and under the law they must necessarily be just and reasonable, but we can not appreciate upon what theory counsel attempts at this time to inject the question of rates into this inquiry.

So much for the proposition that either the Forest Service or Mr. Herrick is attempting to eliminate the common-carrier requirement of the contract.

OREGON MEMORIAL

We can not too strongly emphasize what Mr. Wallenburg {*sic*} and Mr. Farre have admitted, and what the record abundantly shows, that the passage of the memorial by the Oregon Legislature was predicated almost entirely upon the belief that there was some disposition on the part of some one to eliminate the common-carrier feature from the contract, whereas the Senate resolution upon which this investigation is based makes no mention of the common-carrier feature, but does devote a paragraph to the proposition that the legislative assembly of the State of Oregon "without a dissenting vote " adopted its memorial. The situation of Mr. Barnes, who placed the common-carrier matter in the Oregon memorial. "is like the eagle's plight that winged the shaft that stopped its flight."

HERRICK'S FINANCIAL RESOURCES

We learn from the resolution and from the memorial "that neither said Herrick nor said corporations ever had

and have not now sufficient financial resources to perform said contract." We are going to pass this proposition with the simple statement that this charge is nothing short of absurd, and that we are satisfied that the committee is thoroughly convinced that Mr. Herrick,

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when signing the contract, had, and at all times since has possed {*sic*; posed?}, a net worth of some $8,000,000, and that his difficulty has not resulted in any sense from a want of sufficient assets, but rather from a lack of experience in modern financing, incomplete and poorly compiled data and financial statements of his assets, and a want of knowledge as to how these assets could be best employed in order to accomplish adequate financing of his Oregon venture. Mr. Herrick is a man of the old school. He has been accustomed to financing his operations in his own way, and as he frankly put it, "Now, maybe I was a little wrong in taking thought that I could meet that big development in that way, but I was conceited enough to think that I could (p. 450).{"}

Mr. Herrick firmly believed at the time he signed the contract that he could finance his Oregon venture with the returns from his other operations, plus property conversion. The condition of the lumber market at that time, which the evidence clearly shows, fully justified such a belief and plan. The evidence also shows that this is the logical, reasonable method of expansion, and is the one generally employed.

Had it not been for the serious slump in the lumber market, which cost Mr. Herrick a shrink in gross revenue of approximately $1,000,000 during each of the past two years, it is altogether probable that his plan of financing would have proven adequate and successful. However that may be, he lacked the knowledge of how to best capitalize his resources. He came to a full realization of this situation in October of last year, and it was generally known at that time that he was arranging a bond issue through a Chicago house. Notwithstanding this fact, Mr. Barnes pushed this investigation with unusual energy, the result of which was to seriously embarrass and handicap Mr. Flood and Mr. Herrick in connection with the present financial program, and, as the former testified, the ultimate placing of the proposed bond issue is necessarily dependent upon the outcome of this investigation and consequent status of Mr. Herrick's contract. We have no desire to minimize the consequences of Mr. Herrick's action in failing to furnish to Mr. Girard at Burns sufficient funds as needed to enable him to prosecute the construction work with that degree of diligence which was necessary to make a 100 per cent compliance with the construction stipulations imposed by the Forest Service. Mr. Herrick had very definite ideas as to what he believed to be the essence and substance of his obligation under the contract; i.e., to cut and remove not less than 60,000,000 feet of timber by June 30, 1928. But the Forest Service imposed upon Mr. Herrick numerous burdensome conditions as a consideration for receiving extensions of time, and these stipulations Mr. Herrick in good faith signed. We do not believe that the committee will be disposed to conclude that Mr. Herrick did not sign these stipulations, honestly intending to raise this money, and do the work within the times and according to the terms therein set forth, even though, as he says, they were signed by him under protest because they were not at all in accord with his interpretation of the essence of the contract. Like every man who has devoted a lifetime to a particular business venture involving the sale of a staple product on a world market, he hoped and expected that market conditions would soon improve. In this he was disappointed. He found that his methods were wholly inadequate to meet the situation, and that his predications for an immediate recovery of the lumber market were not to be borne out. Whereupon he enlisted the services of Mr. Flood, and the latter, because of his years of bank experience and his valuable financial connections, had no difficulty in arranging a bond issue and raising a substantial sum of money to be used in the interim.

We, therefore, respectfully submit that if Mr. Herrick is to be subjected to any criticism in this matter, it can only be because he was too little informed of the present modern methods of financing a venture of this magnitude, to be able to work out his financial difficulties as he might sooner have done.

If Mr. Barnes had predicated his complaint upon this proposition, he would have been entitled to prevail on that point, but to suggest that any intelligent man should be permitted to take a business matter of that kind to Congress for investigation, with nothing more upon which to invoke the jurisdiction of this committee, is to state an absurdity.

HERRICK A SPECULATOR

The resolution next goes on to recite "that said contract was secured as a pure speculation on the part of said Herrick and said Girard." To accuse Mr. Girard of any speculative or other interest in the contract, as an owner of any

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part of-it, is nothing short of malicious, and for a man like Mr. Barnes, possessed of the facts, to subscribe to such a statement and to impose it upon the Legislature of the State of Oregon and the Congress of the United States is, in our opinion, wholly inexcusable. We say this not only because the record is absolutely devoid of any testimony whatever to support this charge, but for the further important reason that Mr. Barnes himself had made repeated efforts to induce Mr. Herrick to speculate with the contract and had utterly failed. Mr. Barnes should be the first to say to this committee that instead of attempting to speculate with the contract, Mr. Herrick at all times manifested a steadfast purpose to retain it, to perform, and to build upon it, as the foundation, a monument to his name and a permanent industry for his heirs.

ACTION BY THE COMMITTEE

What shall the committee do in this matter? The Blue Mountain Eagle, through its fiery editor, screams forth a demand for the cancellation of the contract, and our public-spirited friend, Mr. Barnes, joins in the chorus, at the same time insisting that he does not now represent any heir presumptive to the Herrick rights. All of the other witnesses recognize the evil of such a course, and state that by all means Mr. Herrick should be permitted to carry out the plan which he set in motion last fall, of floating his bond issue and completing the construction program during the present year. We leave this phase of the matter with the statement that we can not believe this committee would for one moment subscribe to the violent and anarchistic clamor of Mr. Height, whose name so aptly characterizes his mental attitude toward Colonel Greeley and Mr. Herrick. A man who refers to Mr. Herrick with his million-dollar investment as a "shoestring outfit" and who admits that he is after Mr. Greeley and his "brass-button policies" can not expect any very serious consideration at the hands of this committee.

CONCLUSION

We have already carried this brief to lengths far beyond our intention, and we have not attempted to quote from the voluminous records, since, were we to do so, it would necessitate our extending this document to the paint where in all likelihood the committee would not have the patience to read it. We therefore conclude with the earnest request that the committee consider the resolution as a recital of the issues in this case, that it make specific findings of fact on each of these issues, and that it fully exonerate those who are here charged with the commission of a monstrous crime against the property and the people of this Government, and that it also express itself with respect to the motives and the good faith of the man who is directly responsible for what we respectfully characterize as one of the most groundless proceedings which was ever conducted at the Capital of the Nation.

May we suggest for the consideration of the committee the importance of findings on the following propositions:

1. Is there in the case any evidence of fraud, conspiracy, or collusion on the part of Mr. .Herrick or any member of his organization, or on the part of Colonel Greeley or any member of the Forest Service?

2. Did Mr. Herrick, Mr. Girard, or Mr. Klobucher have anything to do with the preparation of the original contract, and particularly with paragraph 3 thereof, which prescribes the cutting requirements?

3. Was there anything improper in Mr. Girard and Mr. Klobucher leaving the Forest Service and accepting employment by Mr. Herrick?

4. Was where anything improper in the fact that Mr. Girard and Mr. Klobucher acted with Mr. Herrick as incorporators of the Fred Herrick Lumber Co. and the Malheur Railroad Co. in November, 1923?

5. Was where any desire or intention on the part of Mr. Herrick, Mr. Guard, or Mr. Klobucher, or on the part of any member of the Forest Service, to eliminate or modify the common-carrier clause of the contract at any time after it was signed?

6. Did Mr. Herrick at the time he signed the contract possess, and at all times thereafter has he possessed, assets sufficient to enable him to develop an industry of this magnitude?

7. Did Mr. Herrick in good faith intend to complete the project?

8. Did Mr. Herrick intend to speculate with the contract?

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9. In connection with any phase of this transaction, did Mr. Herrick secure any advantage over any other

prospective bidders?

10. Has Mr. Barnes acted in this matter only as a public-spirited citizen of Grant County, or has he been largely actuated by personal interest and animosity?

Respectfully submitted.

BLAINE HALLOCK,
Of Counsel for Fred Herrick, James W. Girard, and Frank, Klobucher.

WASHINGTON, D. C., *February 25, 1927;*

Since this brief was written we have received the last volume of the transcript of testimony, and we can not refrain from quoting the following matter, which concludes the cross-examination of Mr. Biggs, the personal attorney of Mr. Barnes, and his star witness on the question of fraud in the phraseology of clause 3 of the contract:

> "Mr. HALLOCK. Now, John, as a lawyer, I wonder if you will tell me frankly whether or not you do not believe it to be a fact that there is not a scintilla of evidence in this case that would justify any litigant in going to a court or to a jury on the proposition of fraud, collusion, or conspiracy against Mr. Herrick or any member of his organization, or the Forest Service or any of its people?
> " Mr. BIGGS. I refuse to answer that at all, entirely.
> " Mr. HALLOCK. Very well; that is all."

BRIEF ON BEHALF OF UNITED STATES FOREST SERVICE

STATEMENT FILED ON BEHALF OF THE UNITED STATES FOREST SERVICE IN CONNECTION WITH THE HEARINGS HELD UNDER SENATE RESOLUTION 332, IN CONNECTION WITH THE FREDERICK HERRICK TIMBER SALE CONTRACT, MALHEUR NATIONAL FOREST. BY D. F. MCGOWAN, ATTORNEY, UNITED STATES FOREST SERVICE

The contract between Frederick Herrick and the United States Forest Service involves the cutting and removal of all the dead timber, standing or down, and all the live timber marked for cutting from an area of approximately 67,400 acres of land belonging to the Government and within the Malheur National Forest. The quantity of timber is estimated to be 890,000,000 feet, more or less.

The contract between Mr. Herrick and the Government was signed and approved in Portland Oreg., on June 15, 1923. (See Exhibit 9.)

In the spring of 1922, Mr. E. W. Barnes, representing the citizens of Burns, Oreg., took up with the Forest Service the question of placing on the market for sale the timber that was subsequently included in the Herrick contract. Barnes contended that the minimum price should be fixed at $1.50, but he was advised by the officers of the Forest Service that the timber would not be placed upon the market until after it had been appraised.

In the spring of 1922 logging engineer Bruce Hoffman, of district No. 6 of the Forest Service, with headquarters at Portland, Oreg., and James W. Girard, logging engineer of district No. 1 of the Forest Service, with headquarters at Missoula, Mont., made an appraisal of the timber for the purpose of establishing a minimum price at which it would be offered for sale.

Upon the completion of their field work steps were taken by the Forest Service to sell the timber. A prospectus (Exhibit 8) was prepared and distributed broadcast to the lumber trade and to such other persons as the Forest Service thought would be interested in the timber. The prospectus contained a form of contract which it was stated would be required to be executed. The first advertisement which ran for six months, fixed the minimum price for yellow pine at $2.75, and stated that bids would be received up to and including February 15, 1923. (See Exhibit 9.) No bids were received in response to this advertisement. Shortly thereafter the timber was readvertised at $2 as a minimum, for a period of 30 days, and two bids were received, to wit, those of Fred Herrick and Brooks-Scanlon Lumber Co. The Herrick bid was $2.80 for the yellow pine and the Brooks-Scanlon bid was $2 for the yellow pine. Herrick being the high bidder, the timber was awarded to him and the contract signed on June 15. 1923.

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Clause 38 of the contract called for the construction by the operator of a common-carrier railroad and this clause

has never been modified in any way. The contract as signed by Mr. Herrick provided that the cutting operations should begin in 1925, with a minimum of 60,000,000 feet to be cut prior to June 1, 1928, and with all of the timber cut by November 30, 1945. Intermediate minimum and maximum cutting requirements were inserted in the contract.

Mr. Herrick failed to comply with the requirement that the cutting operations begin in 1925 and under the first of the three modifications of the agreement (Exhibit 9) the time for the beginning of the cutting of the timber was extended to October 21, 1928.

This first modification was approved by the district forester on March 12, 1925. The railroad contemplated by the contract was of approximately 90 miles in length, of which approximately 35 miles from Crane, the terminus of the Union Pacific, to Burns was constructed by Herrick and in operation prior to the approval of the first modification. This construction work afforded the people of Burns railroad communication which had long been sought for and which it is doubtful would have been obtained for many years had not the Forest Service placed upon the market this timber covered by the Herrick contract.

When the Forest Service drew the original contract with Herrick it proceeded upon the assumption that the construction of the railroad would precede the cutting of the timber, which it was contemplated would begin in 1925. It, therefore, imposed no construction requirements in the contract with reference to the time within which the railroad should be completed. When, however, Mr. Herrick made application to the Forest Service in connection with the extension which became a part of the first modification the Forest Service, in its desire to expedite the construction of the railroad, included in the stipulations which were made a part of the first modification certain construction requirements in connection with the railroad and in connection with the proposed sawmill and power plant. One of these obligations was that Mr. Herrick should expend for railroad construction between Burns and Seneca $100,000 between April 1 1925, and July 1 1925. Mr. Herrick fell short of this requirement in that between these two dates he expended approximately only $75,000 on construction work and did not carry out the provisions in connection with the construction of the foundation for the sawmill and power plant.

The Forest Service was disappointed in Mr. Herrick's delinquencies in this respect, so when the second modification of the agreement was approved in Portland,. Oreg., on September 8, 1925, by the district forester, a clause was inserted in the contract to the effect that in the event that Mr. Herrick failed to comply with the provisions of the second modification the damages of the United States would be liquidated in the sum of $50,000. Under this modification certain specified construction requirements were imposed by the Forest Service upon Mr. Herrick.

Mr. Herrick did not comply in toto with the requirements of these stipulations, but the expenditures he made were in excess of the requirements of the Government, and therefore the construction work on the railroad was accepted as a fulfillment of this portion of the stipulations.

Mr. Herrick fell short of the railroad construction work that was required to be completed by April 1, 1926, and thereupon the United States collected the $50,000 liquidated damages and deposited the money with the Treasury Department. Thereafter it became necessary again to modify the agreement, and in the stipulations attached to the third modification the Forest Service required that Mr. Herrick make available for construction work $70,000 by August 1, 1926; $70,000 by September 1, 1926; $70,000 by October 1, 1926; and $70,000 by November 1 1926; or a total of $280,000.

Mr. Herrick fell somewhat short of this requirement in connection with the construction work, but his compliance was accepted by the Secretary of Agriculture on December 3, 1926, as being a substantial compliance with the provisions of the contract.

The stipulations attached to modification No. 3 require that by March 1, 1927, a complete sawmill plant shall be ready for operation. It will be a physical impossibility for Mr. Herrick to meet this requirement, and it will be necessary to make another modification of his contract.

As the work now stands Mr. Herrick has completed some 35 miles of standard-gauge railroad between Crane and Burns; he has practically completed the grade between Burns and Seneca, with steel on the ground. According to the

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testimony, it is probable that the entire railroad from Burns to Seneca (although the exact location of Seneca, which involved not to exceed 1 mile, is disputed) by this time is completed, and at an aggregate investment of over

$2,000,000 on the entire project, of which amount Mr. Herrick has expended personally a sum in excess of a million and a quarter dollars.

The problem of the Forest Service in handling this case has not been a simple one. It has been necessary to coordinate and preserve the rights of the United States, the rights of the local community, and the equities of the contractor. While the delinquencies of Mr. Herrick have been disappointing to the Forest Service, it can not be gainsaid that in view of the huge investment which Mr. Herrick has in the project, he is entitled to consideration from the Government. The Forest Service has taken from Mr. Herrick $50,000 in the way of liquidated damages, and it has imposed the construction requirements as contained in the modifications of the contract, with the desire that the project may be completed in its entirety at an early date.

Notwithstanding the fact that Mr. Herrick has not fulfilled in toto the construction requirements, the Forest Service has always been confronted with the problem of handling this matter in such a way as to properly protect the interest, of the United States and the local communities, and at the same time not take an arbitrary and unjust action in so far as Herrick is concerned. If there be criticism of the course the Forest Service has pursued in the handling of the matter, there is no assurance that if the Forest Service had forthwith canceled the Herrick contract with the consequent great damage to Herrick, and the possibility of the consummation by some other concern of the project with the delays in connection therewith and the possible loss of the stumpage price as guaranteed to the Government by the Herrick contract, the criticism of the Forest Service would have been much more severe than the criticism to which it is now subject by Mr. Barnes and his followers.

SENATE RESOLUTION 332

The investigation of the Herrick contract is being conducted under Senate Resolution 332. The events that preceded the enactment of this resolution are, to say the least, unique; they show conclusively that this resolution was inspired by Mr. E. W. Barnes, a disgruntled interloper.

While undoubtedly it is of no particular interest to the committee what Mr. Barnes's motives might be, if in fact there was collusion between Herrick and the Forest Service in this matter, nevertheless if it is true and the record shows that it is true, that Mr. Barnes, while he attempts to don the robes of a citizen acting in the interests of the public, is, in fact, a person with a selfish interest and with a decided animus toward Mr. Herrick, his motives become apparent, and his credibility as a witness, to a degree at least, becomes lessened.

The witness Byrd (pp. 680-681) stated that prior to the inception of the idea of the citizens of Burns an attempt be made to have the Forest Service put on the market the timber that was later covered by the Herrick sale; that Mr. Barnes had been promoting a timber matter for some big timber organization, but that the deal fell through. Thereafter Barnes became affiliated with the citizens of Burns in promoting the sale of the Government timber in Bear Valley. That at the inception (p. 882) of the project it was a community matter, but that Barnes became interested in real-estate speculations, and acquired for himself large areas of land adjacent to Burns, and options on timber for his own private gain.

Barnes has, on two separate occasions, sought to have the Forest Service cancel the Herrick contract for the purpose of acquiring the timber for an undisclosed principal. In his letter of March 30, 1924 (p. 444), to Colonel Greeley he stated that his principal would assume Herrick's contract, and in 1926 (p. 444) he renewed the offer. When these propositions are considered in connection with the numerous lawsuits that Mr. Barnes has had with Mr. Herrick. following the letting of the contract by the Forest Service, it becomes perfectly obvious that Barnes's zeal as a public benefactor is somewhat diluted by the interests of E. W. Barnes, the individual.

THE MEMORIAL OF THE OREGON LEGISLATURE

The resolution of the United States Senate, under which this investigation is being conducted, recites the memorial passed by the Oregon Legislature on January 20, 1927. The record is clear that in the passage of the memorial by the Oregon Legislature the people of Oregon were imposed upon by Mr. Barnes

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and his cohorts. The Oregon memorial was engineered by Barnes as a build-up in connection with his attempt to have the United States Senate inquire into the Herrick contract.

Barnes came to Washington (p. 107) and attempted to have Congress investigate the Herrick contract. If there had been any merit to his case he would not have been required to resort to the methods that he was forced to pursue; but he met with a rebuff. Thereupon he wired from Washington to his associates in Oregon a form of memorial that he desired passed by the Oregon Legislature (Wallenburg. pp. 159-161). This memorial was rammed

through the Oregon. Legislature without there being an opportunity given to the Forest Service, to Mr. Herrick, or to the citizens of Burns to be heard in connection with the matter.

Representations were made to the Oregon Legislature that the common-carrier clause of the contract was endangered, which statements were absolutely false. The testimony before your committee shows clearly and conclusively that since the signing of the contract no member of the Forest Service has even considered the elimination or modification of the common-carrier clause. Therefore the representations made to the Oregon Legislature in connection with this feature were untrue.

Immediately upon the enactment of this memorial by the Oregon Legislature, on January 20, 1927, it was transmitted to Washington, and on January 24, 1927, Senate Resolution 332 was introduced in the United State Senate.

The elapsed time between the introduction of the resolution in the United States Senate and the passage of the resolution by the Oregon Legislature was not sufficient to enable the Oregon resolution to be transmitted to Washington in the ordinary mail. It is submitted, therefore, that in view of the fact that the memorial of the Oregon Legislature was passed upon misrepresentations of fact with reference to the common-carrier clause that the efforts of Mr. Barnes and his cohorts in this matter should be censured most severely.

Senate Resolution 332 recites the Oregon memorial. In addition thereto it states there was fraud and collusion between Herrick and certain officials of the Forest Service in the making of the Herrick bid, in the execution of the contract, and in the extensions thereof. The resolution further states that Herrick has never had sufficient financial resources to perform the contract.

This Sensate resolution, therefore, is in the nature of an indictment of "certain officials" of the Forest Service and Herrick of fraud and collusion.

Of what this fraud and collusion consisted has not yet been disclosed, notwithstanding the taking of nearly 2,000 pages of testimony. Neither has there been indicated the names of the officials of the Forest Service who were suspected of this so-called fraud. These charges of fraud and collusion are serious, and they have been of concern to the various members of the United States Forest Service. Notwithstanding that fraud and collusion were laid to certain officials of the Forest Service in Senate Resolution 332, which, if proved, should be a sufficient basis for sending Herrick and these "certain officials" to the Federal penitentiary, it is a fact that of the 10 witnesses asked for by Colonel Greeley on February 2, February 5, and February 9 (pp. 21-22), but one witness was subpoenaed by the committee to refute these dastardly charges. We submit that these officers of the Forest Service who were embraced in these charges of fraud and collusion are first citizens of the United States, and their rights in this respect should be protected by your committee against the vicious and unjustified attacks of a disgruntled interloper.

It was not known who of the Forest Service were charged with this fraud and collusion, but the Forest Service brought to the hearings all of its officers who have had any major connection with this transaction for examination by the committee and by Attorney De Neffe, for any question the committee or Mr. De Neffe might care to ask.

The complete file of the Forest Service was turned over to the committee and to Mr. De Neffe, and this file was combed by Mr. De Neffe in his efforts to obtain evidence to support the vicious charges of fraud and collusion; but search as he would, his diligence availed him naught.

It is appreciated, of course, that in any senatorial investigation the committee is not confined to the matter specifically indicated by the resolution, and rightly so. The committee is entitled to inquire into any matter germane to the subject of the investigation. This is as it should be. It may be said, however, that the complaints made in the Oregon memorial, in the Senate resolution, and in the afterthoughts presented by Mr. Barnes and his associates in the charges may be summarized as follows:

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1. The modification of the common-carrier clause.
2. The charge that Herrick has never had sufficient financial resources to perform the contract.
3. The charge that there was fraud and collusion between Herrick and certain officials of the Forest Service in the making of the bid and in the execution of the contract.
4. The charge that Herrick obtained some undue advantage by reason of paragraph 3, of his contract, which differed from paragraph 3 of the sample form of contract as set out in the prospectus.
5. The charge that modified paragraph 3 is an improper clause from a public standpoint.

1. The modification of the common-carrier clause:

While it is true that the Oregon Legislature passed its memorial upon the assumption that the common-carrier clause might be eliminated or modified, there is not a scratch of the pen that justifies such a conclusion, other than the countryside gossip of Mr. Barnes and his cohorts.

It will be observed that the suggestion that the common-carrier clause might be abandoned, as indicated by the Oregon memorial was not contained in Senate Resolution 332. Barnes (p. 142) states that he never suggested that the Forest Service would abandon the common-carrier clause. Wallenberg (p. 174-175) states that he has no personal knowledge as to what the Forest Service intended to do with reference to the common-carrier clause. Farre (p. 205) has never inquired, subsequent to the signing of the Herrick contract, as to what the attitude of the Forest Service would be with reference to common-carrier clause. Haight produced no evidence that the Forest Service would eliminate the common-carrier clause, but Dutton (p. 724) states that he told Haight on January 11, 1927, prior to the passage of the Oregon memorial, that there was nothing in the record to indicate that the Forest Service would modify the common-carrier clause. Notwithstanding this information, Haight and Wallenberg were at the Oregon Legislature seeking to have passed the Oregon memorial which was based upon the assumption that the common-carrier clause would be modified.

On the contrary, the testimony of Greeley (p. 425) shows that he has never intended to abandon the common-carrier clause; he shows (p. 427) that his instructions to Carter in the Brooks-Scanlon conference were to the effect that the common-carrier clause should not be modified, and that be has received no application or request from Herrick, or anyone else, to change the common-carrier clause, and "that no such change would be considered by me for a moment."

Hoffman (p. 760) states that he had been intimately connected with the sale as a forest officer, and it had never been intimated to him that the Forest Service intended to modify or abandon the common-carrier clause.

The testimony of District Forester Granger (pp. 761-762) and the testimony of Assistant District Forester Ames (p. 782) is to the same effect. It will be seen, therefore, that the very basis upon which the Oregon Legislature passed its memorial was entirely without any foundation of fact. The Forest Service has not modified the common-carrier clause, and does not intend to do so. The charge that the Forest Service intends to eliminate or modify the common-carrier clause is without foundation, and the committee should so find.

2. The charge that Herrick has never had sufficient financial resources to perform the contract:

The prospectus required the purchaser to show assets in hand of $850,000, which assets must be clear of liabilities. Upon the award of the contract to Mr. Herrick, he was called upon by the Forest Service to furnish a financial statement to cover this requirement of the prospectus. Such a financial statement was furnished by Mr. Herrick and it appears in Colonel Greeley's testimony (p. 453). The statement shows net assets of not less than $1,250,000. The Forest Service inquired of two banks in connection with Mr. Herrick's statement, and their replies are set out on page ____ of the record.[4]

Mr. Culver, vice president of the J. D. Lacey Co. (p. 278), stated that Herrick is worth anywhere from $5,000,000 to $8,000,000, and (p. 290) that Herrick was worth over $1,200,000 in 1923. Flood (p. 334) testified that in 1923 Herrick was worth over $1,250,000, and (p. 334) that in 1923 Herrick was worth from eight to ten million dollars. Flood also testified that in the fall of 1926 he obtained a loan of $850,000 for Herrick and had arranged with the Continental & Commercial National Bank for a $2,500,000 bond issue.

The charge, therefore, that Mr. Herrick has not had sufficient financial resources to carry out this contract is without the slightest foundation. and the committee should so find.

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3. The charge that there was fraud and collusion between Herrick and certain officials of the Forest Service in the bid, and in the execution of the contract:

This charge has its foundation in the fact that James Girard and Frank Klobucher, now in the employ of Mr.

[4]The page number was not included in the final transcript.

Herrick, were formerly in the employ of the United States Forest Service. Yet at no place in the record does it appear that Klobucher had anything to do with the making of the contract or the granting of any of its extensions, and even Mr. Barnes (p. 821) does not accuse Mr. Klobucher of anything wrong in connection with the matter. Klobucher, therefore may be dismissed without further comment.

The timber covered by the Herrick contract was appraised in the spring of 1922 by logging engineers Bruce Hoffman and James W. Girard, as members of the Forest Service. Thereupon Girard returned to his headquarters at Missoula, Mont.

Following the appraisal, the timber was advertised by the Forest Service for a period of six months, with the final date for bids fixed at February 15, 1923. This was the first advertisement, and the minimum price for yellow pine was fixed at $2.75 per thousand. No bids were received as a result of this advertisement. Thereupon the Forest Service took further steps to place the timber on the market. The minimum for the yellow pine was fixed at $2, and a change made in the intermediate cutting requirements following a conference with the Brooks-Scanlon Lumber Co. in Minneapolis. The timber was readvertised for a period of 30 days.

Girard, upon the completion of his 1922 appraisal of this timber, returned to his district headquarters in Missoula, Mont. About the middle of March, 1923, Charles McHarg, forest supervisor (p. 723), in a conversation with Fred Herrick, called his attention to the timber and gave Herrick a copy of the prospectus. McHarg advised Herrick that Girard had assisted on the appraisal and could give him further information. Herrick then got in touch with Girard, who went to Coeur d'Alene and convinced Herrick that the timber was worth the $2.75 per thousand for which it had first been advertised.

Using the information given to him by Girard, supplemented by other data, Herrick submitted a bid at $2.80, the net result being that the Government will have received upon the completion of this contract and directly as a result of Girard's efforts, figured on the basis of $2.80, price bid by Herrick, as against $2 minimum as contained in the readvertisement, a difference of some $689,000. Upon what possible theory this action on the part of Girard in getting this bid from Herrick could be construed as fraud or collusion is beyond comprehension. Even Mr. Barnes, in response to the questions asked him by Senator Means, had to admit (pp. 129-130) that there was no fraud in the original contract, and, as Mr. Barnes stated:

> "Oh, say, if the original contract had been carried out there would be no kick about it.
> "Senator MEANS. Then the only complaint that we have here is as to these extensions and the reason for them?
> "Mr. BARNES. Yes."

The suggestion of Mr. Barnes (p. 130) that Mr. Girard went into partnership with Mr. Herrick is entirely without support in the record.

Mr. Girard certainly can not be condemned for obtaining for the Government, his employer, the price that he succeeded in getting through the Herrick bid, and we submit that a man of Mr. Barnes's type should not be permitted to vilify Mr. Girard because of his faithful efforts while an employee of the United States.

About the middle of April. 1923. Mr. Herrick Inquired of Mr. Girard if be would take charge of the contract for him, and Girard entered Herrick's employ on May 1, 192.3, under a contract which stipulated that Girard's salary should be $7,500 per annum. Girard resigned immediately from the Forest Service and he has been in Mr. Herrick's employ ever since.

The substance of Mr. Barnes's complaint seems to be that Girard, by reason of his former employment in the Forest Service, obtained concessions for Mr. Herrick that would not have been granted to other contractors. But the facts of the case disclose this to be nothing more than one of Mr. Barnes's vagaries, inasmuch as the Forest Service has imposed upon Mr. Herrick a number of burdensome conditions that were not in his original contract in connection with the construction program and in addition thereto has exacted from Mr. Herrick in the form of liquidated damages the sum of $50,000, which is now on deposit in the Treasury of the United States. The Forest Service has never imposed such exacting conditions on any other timber-sale operator. These requirements certainly would not have been imposed upon Mr. Herrick by the Forest Service

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if there had been the fraud and collusion that Mr. Barnes suspects. There is not a line in the record that supports the charge of fraud or collusion in this matter; there is not so much in the record that could even be regarded as a justifiable suspicion. The purpose of the Forest Service has been to accomplish a desired result in connection with

the construction of the railroad. This is clearly evidenced by a most cursory examination of the three modifications of the contract as they appear in Exhibit 9 that it is hardly worth the while take the time necessary to dignify Mr. Barnes's suggestion of fraud and collusion with an answer.

There was no fraud and collusion in this matter, and Mr. Barnes, with all of his animus toward Herrick and toward Colonel Greeley, could not scrape together anything that even borders on the suggestion that the officers of the Forest Service in this matter were not faithful to their trust, and it is submitted that the committee should so find.

4. The charge that Herrick gained some undue advantage by reason of paragraph 3 of his contract, which differed from the paragraph 3 of the sample form of contract as set out in the prospectus:

The testimony of Carter, associate forester (pp. 729-730), shows that upon the failure of the Forest Service to receive any bids in response to the six months' advertisement which expired February 15, 1923, and under which the timber was advertised at $2.75, he and Assistant District Forester Fred Ames met in Minneapolis for a conference with Doctor Brooks of the Brooks-Scanlon Lumber Co., following the receipt by the Forester of the letter of February 17, 1923 (p. 729), in which the Brooks-Scanlon Co. made an offer of $2 for the yellow pine, conditioned upon the right to cut 50,000,000 feet per annum. Mr. Carter's testimony shows that in his conference with Doctor Brooks he endeavored to get more for the Government than $2 but was unsuccessful. He stated that Doctor Brooks insisted that the contract provide for a larger maximum cut than was stipulated in the prospectus. Doctor Brooks was also inclined to be doubtful of the estimated amount of timber, but he finally agreed (p. 730) that the company would submit a bid if the timber were readvertised at $2 per thousand, and if the contract price as printed in the prospectus were changed so that the maximum cut of the timber at the rate of 50,000,000 feet per year would be permitted. Doctor Brooks also asked that the contract provide that if it were ascertained that there was more timber on the sale area than had been estimated, the intermediate amounts named in the contract would be increased accordingly.

Mr. Fred Ames, assistant district forester, represented the Forest Service with Mr. Carter in these negotiations (p. 779). Thereupon Mr. Carter and Mr. Ames redrafted clause 3 of the contract as it was set up in the prospectus to meet the suggestions of Doctor Brooks, all of which is clearly covered by Mr. Carter's memorandum of March 1, 1923, which appears in the record at page 731.

This clause of the contract therefore was redrafted in Minneapolis several weeks prior to the time that Herrick had any familiarity at all with the timber as indicated by the statement of Supervisor McHarg (p, 723), which shows conclusively that it was not until March 13, 1923, that he suggested to Herrick that Herrick might be interested in the timber that was later covered by his contract. Therefore it is obvious, as Mr. Carter stated (p. 731), that Mr. Herrick, Mr. Girard, or anybody connected with Mr. Herrick had absolutely nothing to do with the revision of clause 3.

The contentions of Mr. Barnes to this effect have not the slightest foundation in fact.

Upon the return of Mr. Carter to Washington and the return of Mr. Ames to Portland, Oreg., their respective headquarters, following the conference with Doctor Brooks, steps were immediately taken to convey to the lumber trade the necessary publicity in connection with the change in clause 3 that had been agreed upon with the Brooks-Scanlon Co.

The testimony shows (p. 674) that the Forest Service furnished to the National Lumber Manufacturers' Association an article covering this change under which the price was cut from $2.75 to $2, and the cutting requirements modified. This article was sent to the lumber-trade press and to the engineering and technical press. A copy of the article appears at page 674. Mr. Knappen of the National Lumber Manufacturers' Association stated at page 675 that the article reached practically 350 publications.

In addition to this publicity given to the change of paragraph 3 by the National Lumber Manufacturers Association, the Forest Service had published special advertisements (p. 736) in which the $2 minimum was inserted

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along with the changed condition as to the cutting requirements. This change was indicated to Representative McArthur (p. 738) and to Senator MCNARY (p. 737), by the special press release by the Department of Agriculture (p. 737), by the inclusion of the readvertisement in the American Lumberman, Lumber, and the Southern Lumberman (p. 738), by mimeographed circulars sent out to lumbermen (p. 739), by a special letter to F. J. & A. H. Smith (p. 740), and by special telegrams to the Shevlin-Hixon Lumber Co. (p. 742), the Edward Hines Lumber Co.

(p. 743), and the Winton Lumber Co. (p. 744). This advertisement was also run in the Portland Oregonian (p. 744). (See also letter at p. 798). It would be impossible to conceive how greater publicity could have been given to the changed conditions of paragraph 3.

Therefore, the suggestion that the Forest Service changed the paragraph 3 of the prospectus without giving to the lumber trade adequate notice of the change is a child of Mr. Barnes's imagination and we will dismiss this point without further comment. The intimation that Herrick participated in the redrafting of clause 3 is without foundation, as this clause was redrafted in Minneapolis long prior to the time that Mr. Herrick had any connection whatsoever with the timber that was later covered by his contract.

5. The charge that modified paragraph 3 is an improper clause from a public standpoint:

The discussion of this clause before the subcommittee was an afterthought on the part of Mr. Barnes and his associates. Even if it be assumed (though it is not conceded) that this clause is defective, the matter is of no materiality in the discussion of the Barnes charges that there was collusion and fraud between the officers of the Government and Herrick, for the simple reason that Herrick had nothing to do with the drafting of the clause, and for the reason that the clause would have been included in the contract of the successful bidder, whoever he may have been. Mr. Barnes attempts to make the point that the community is entitled to a continuous operation of a sawmill. He contends that the period of time the contractor would be permitted to shut down is too great, and therefore the clause is not a good one from the standpoint of protection of the interests of the public. He would have the operator run irrespective of whether his milling operations would have to be conducted at a loss.

Mr. Barnes and his associates in their fault-finding efforts to pick flaws in the modified clause 3 did not point out to the committee as Mr. Ames did (pp. 787-788) that under clause 3 of the prospectus, which was apparently satisfactory to everybody in Burns, and even to Mr. Barnes, that no complaint has ever been made against that paragraph and the authorization therein under which technically the operator could shut down for as long a period of four years. The objections to modified clause 3 bobbed up for the first part of this hearing obviously, therefore, if Mr. Barnes and his associates had, in good faith, objected to the right of the contractor to shut down in periods of depression, some objection would have been made, ere this late date, to clause 3 as contained in the prospectus under which the operator has the technical right to shut down for a maximum period of four years. But in any event the discussion of this point is academic. An investment in the operation will amount to several million dollars. The operator can not afford as a practical proposition to shut down his plant for a trivial reason. Obviously, when the market is good he will wish to operate; when the market is bad and he can not make money by the operation he will wish the privilege of shutting down. Much as a continuity of operation is to be desired, the Forest Service can not establish as an administrative policy to be included in its contracts a requirement that the operator run at a loss merely for the sake of providing a pay roll for the local community.

Mr. Ames describes this point graphically when he says (p. 788) in answering Mr. De Neffe's question:

> "Mr. DE NEFFE. Well, the substance about it is the people in both these counties, Grant and Harney Counties, Oreg., wanted continuous operation, so that they would have continuous pay rolls and that that was one of the reasons why they wanted the timber marketed.
> "Mr. AMES. Certainly they wanted it, but they did not say that they expected the Government contract would compel it. Now, to my notion, the mere suggestion that the Government contract should compel a man to operate at a loss in order to provide a pay roll for a community is idiotic. I do not believe that the people in Burns or Grant County ever thought of such a thing. I know they are too sensible for that. It would be equivalent to putting a

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> clause in the contract saying that if the operator was compelled to shut down he should contribute $100,000 to the community to support it."

The views of Mr. Ames are fully concurred in by Mr. Carter (p. 748) when be states that the point made is of no practical application.

But this clause, whether it be good or bad, weak or strong, is an afterthought of Mr. Barnes and his associates, injected into this case as an afterthought and solely for the purpose of attempting to save something from the wreck of their senseless and baseless charges that preceded the enactment of Oregon memorial and Senate Resolution 332.

CONCLUSION

I hope I will not be considered presumptuous in suggesting a course for the committee to follow. If this had been a case in a court, the matter would have been dismissed immediately upon the conclusion of the presentation of the testimony of Mr. Barnes and his associates. There is not a scintilla of evidence to support the charge that the common-carrier clause will be abandoned; nor to support the charge that Herrick did not have ample assets to finance the project; nor to support the charge that there was fraud and collusion between Herrick and curtain officials of the Forest Service; nor to support the charge that Herrick received some undue advantage in connection with clause 3 as it was redrafted.

I realize, of course, that this is an investigation, and even though Mr. Barnes and his associates made no case, it was right and proper for the committee to proceed with the hearing. It was the desire of the Forest Service that the matter be fully investigated. In fact, Colonel Greeley, in his letter of February 5, 1927, to Senator Stanfield (p. 22) stated: "The Forest Service is charged in effect with fraudulent practice and nothing lest than a full investigation of these charges will be satisfactory to me."

Instead of the Forest Service attempting in any way to dismiss the case upon the presentation of the testimony of Mr. Barnes and his associates, the Forest Service voluntarily offered to the committee Logging Engineer Huffman, Forest Supervisor Dutton, Assistant District Forester Ames, District Forester Granger, and Assistant Forester Carter, in addition to Colonel Greeley. These men were asked a few questions by me and then submitted to the committee for any and all questions that the committee or that Attorney De Neffe might wish to propound to them. The files of the Forest Service were turned over to Mr. De Neffe and he raked them fore and aft in the hope that he might obtain some information with which to substantiate the charges made by Mr. Barnes, but of no avail. That the Forest Service is clean is obvious.

I submit, therefore that the Forest Service is entitled to receive specific findings on:

1. The charge of fraud and collusion.
2. The common-carrier clause.
3. The financial ability of Herrick to consummate the project.
4. Whether Herrick received an undue advantage by reason of modified clause 3 of the contract.

That the United States Senate could and should investigate a matter of this sort for the purpose of determining whether or not there was fraud, or whether the administration of the Forest Service has hem so lax as to fail to protect the rights of the United States, there can be no doubt. If, however, it is the conclusion of the committee that there was no fraud or collusion in this matter (and it is submitted that the committee can arrive at no other conclusion), then necessarily the inquiry resolves itself into a matter pertaining to a function which has been intrusted to the executive department for execution.

From the standpoint of the Forest Service, the Herrick contract has not been an easy one to handle. The Forest Service has been confronted, as was so well expressed by Colonel Greeley, with protecting the interests of the Government, protecting the interests of the local community, and protecting the equity of the contractor, in the face of the delinquencies of Mr. Herrick in his performance of the stipulations required by the Forest, Service in connection with this construction work.

It is possible men might disagree upon the wisdom of the course the Forest Service has pursued in this matter. I can not believe, however, that it will be the disposition of the committee, now looking at this case in retrospect, to say that the Forest Service has not fulfilled to the best of its judgment the obligations that were imposed upon it.

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If the committee feels there should be some expression on this point, I submit that the expression should be one of commendation to the Forest Service and to Colonel Greeley in connection with the wisdom of the course he has pursued, notwithstanding the fact that he could have taken advantage, perchance, of some one of Herrick's defaults and as a result thereof canceled the contract, to the great damage of Herrick, to the great injury to the local community, and to the possible injury to the United States.

Mr. Barnes sought this investigation. He premised it on propositions that were false. He has absolutely failed to substantiate any charge he has made. Without the slightest regard for the name of Herrick, for the name of the Forest Service, or the men working therein, he has charged fraud and collusion and he has made a complete fizzle in his attempt to justify his untenable position. He should be repudiated and rebuked by the committee for his senseless and unsupported charges.

I submit that the committee in its findings give to the Forest Service in this matter a clean bill so that it may go

to the people of Oregon untainted by this vicious and unwarranted attack of Mr. Barnes.

REPORT OF FINDINGS SUBMITTED TO THE SENATE

The following is the report submitted to the Senate on March 3, 1927, by the Committee on Public Lands and Surveys, pursuant to Senate Resolution No. 332, as to its findings in respect to the contract between Fred Derrick and the United States Forest Service for tile purchase and cutting of timber in the Malheur National Forest, Oregon"

[Senate Report No. 1695, Sixty-ninth Congress, second session]

The Committee on Public Lands and Surveys, to whom was referred the resolution (S. Res. 332), submits the following report on the investigation conducted by it under and by virtue of Senate Resolution 332, hereinafter set forth.

On January 31, 1927, the Senate adopted the following resolution:

> "Whereas on June 15, 1923, a contract was entered into by and between the United States Forest Service and one Fred Herrick, of Saint Maries, Idaho, for the purchase by said Herrick of approximately eight hundred and ninety million feet of timber situate in the United States forest reserve in Grant County. Oregon, known as the Bear Valley Unit of the Malheur National Forest; and
>
> "Whereas by the terms of said contract the said purchaser agreed within a period of two years from the date of said contract to construct and complete, ready for operation approximately eighty miles of common-carrier railroad to a designated point within said Grant County, Oregon; and
>
> "Whereas by the terms of said contract said Herrick agreed to commence logging operations by April 1, 1925; and
>
> "Whereas it is charged by reliable citizens of Grant and Harney Counties, Oregon that said Herrick has failed and refused to carry out the terms of said contract, as is therein specified; and
>
> "Whereas on two different occasions said Forest Service has, since the signing of said contract, granted to said Herrick and to the corporations by menus of which he is attempting to develop said project an extension of one year to complete the performance of said contract. making a total of two years' extension which has thus been granted: and
>
> "Whereas said Herrick and said corporations are now requesting another extension on said contract from said Forest Service; and
>
> "Whereas said citizens further charge that one James W. Girard, while in the employ of the United States Forest Service, in a responsible position, is its office in Missoula, Montana, was instrumental in getting said Herrick to bid on said timber and to enter into said contract; that soon after bids were opened and before said contract was signed, said Girard resigned his position with the Forest Service and entered said Herrick's employ in the development of said project, at an increase in salary of $5,000 per year over what he had been receiving from the Government; that soon after said contract was signed one Frank Klobucher, also an employee of the Forest Service in said Missoula office, likewise resigned his position and accepted a position with said Herrick in connection with sand project, at a substantial increase in salary; that soon thereafter said Herrick, Girard, and Klobucher acted as incorporators of the Fred H. Herrick Lumber Company and of the Malheur Railroad Company, which are

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> the operating corporations organized by said Herrick to develop said project and said Girard and Klobucher became and now are officers, directors, and stockholders of and in said corporation; and
>
> "Whereas reliable citizens of said counties also state that there are circumstances surrounding said transactions which strongly indicate that there was fraud and collusion between said Herrick and certain officials of the United Staten Forest Service in the making by said Herrick of said bid and in the execution of said contract, and that said Herrick has told different persons in said counties that he would not have entered into said contract if he had not been assured in advance by officials of the United States Forest Service that he would be granted all the extensions of time he desired to complete said contract; and

"Whereas on December 4, 1926, the county court of said Grant County adopted resolutions in which among other things, it is charged in effect that it is apparent that the unusual privileges extended to said Herrick and said corporations, and the leniency shown to them in regard to the violations of the terms of said contract have been due to the connection between said Herrick and said former employees of the United States Forest Service, and said resolution requested that the Oregon delegation in Congress demand a complete investigation of the original advertising of said timber for sale by the Forest Service, and of the execution of said contract, and of all such extensions granted, and of the activities of present and former employees of the United States Forest Service in connection with said matters: and

"Whereas said citizens further charge that neither said Herrick nor said corporations ever had, and have not now, sufficient financial resources to perform said contract according to its provisions and charge that said contract was secured, as aforesaid, as a pure speculation on the part of said Herrick and said Girard; and

"Whereas on January 20, 1927, the Legislative Assembly of the State of Oregon. without a dissenting vote, adopted a memorial in which, among other things, it memorialized the Senate of the United States to appoint a special committee to investigate the facts surrounding the execution of said contract and the granting of said extensions of time; that such committee be authorized to recommend to the Department of Justice the institution of proper legal proceedings to fully protect the interests of the citizens of said Grant County, the State of Oregon and of the United States: Now, therefore, be it

"*Resolved*, That the Committee on Public Lands and Surveys, or any duly authorized subcommittee thereof, is authorized to investigate and inquire into all matter and things surrounding and connected with the advertising and receiving of bids for the sale of said timber, the execution of said contract, and the granting of said extensions, of time to perform said contract. For the purpose of this resolution such committee or subcommittee is authorized to hold hearings, to require by subpoena or otherwise the attendance of such witnesses, and the production of such books, papers, documents, and records, and to administer such oaths and to take such testimony and to make such expenditures therefor, as it may deem advisable. The cost of stenographic service to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of such committee or subcommittee, which shall not exceed the sum of $3,000, shall be paid from the contingent fund of the Senate, and the expenditure of said sum is hereby authorized for the above purposes. The said committee, or subcommittee shall make a final report on said matters to the Senate as to its findings on, or before the 28th day of February, 1927, together with recommendations for such legislation or action as it may deem necessary and proper."

The committee, after 11 days of hearings, in which more than seventeen hundred pages of stenographic evidence were submitted, and after giving careful consideration to all of the evidence, desires to make the following report and recommendations:

On June 15, 1923, the United States Forest Service entered into a contract with Fred Herrick, of St. Maries, Idaho, for the sale of approximately 890,000,000 feet of timber in what is known as the Bear Valley unit of the Malheur National Forest, in Grant County, Oreg. Under the terms of the original contract, and contract as modified, Mr. Herrick was to have completed a railroad from Crane to Seneca, Oreg., to be operated as a common carrier. He was to have constructed a sawmill at Burns, Oreg., and to have begun the general operation of lumbering within two years from the date of the execution of contract.

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It appears from the testimony that Mr. Herrick has failed to comply with the terms of the contract. The Forest Service has granted extensions from time to time, and it appears from the testimony that a further extension must be granted to Mr. Herrick if his contract is to be continued.

These delays and extensions have resulted in unrest and dissatisfaction on the part of a great many of the people living in the section of the country where this operation is to be carried on.

It was suggested that Mr. Herrick obtained the contract from the Forest Service through fraud and collusion on the part of former forest employees, viz., Messrs. Girard and Klobucher. Mr. Girard and Mr. Klobucher were employees of the United States Government in the Forest Service at the time the Forest Service entered into the contract with Mr. Herrick for the cutting of said timber, and they have since joined him in this enterprise, receiving salaries and owning an interest in the railroad company and the sawmill company that is to handle the timber. The evidence shows that this arrangement was made between Mr. Herrick and these members of the Forest Service

subsequent to the filing and opening of the bids for the timber contract.

There is no evidence in the testimony to substantiate a charge of conspiracy, fraud, or collusion on the part of anyone connected with the so-called Herrick contract, or with the Forest Service or Mr. Girard or Mr. Klobucher, and it is the opinion of the committee that these gentlemen should be wholly exonerated from any charge of conspiracy, fraud, or collusion.

There is an abundance of evidence showing Mr. Herrick's noncompliance with the terms of the original contract and with the modified terms of contract.

It was charged that Mr. Herrick was not financially able to carry out the terms of the contract. It appears to the committee that Mr. Herrick was financially able to comply with the terms of the contract, but possessed with a determination to arrange his finances to suit his own convenience. The evidence given in the testimony leads the committee to believe that Mr. Herrick could have financed and can finance the undertaking in accordance with the terms of the contract.

The evidence further shows that the Forestry Department has attempted to secure a compliance from Mr. Herrick of the terms of the contract, but has been compelled to grant certain extensions or cancel the contract. The fact that extensions have been granted is sufficient evidence that in their opinion it was more practical and for the best interests of the Government and the people to grant the extensions that have heretofore been made.

Certain modifications were made in the contract entered into aside from that of granting extensions. The committee does not feel that it should be concerned as to the modifications that have been made by the administrative branch of the Government, but believes that if the Forestry Department sees fit to further extend the time for completion of the project and the beginning of operation thereof, the committee may, with propriety, make certain recommendations to wit:

1. That Mr. Herrick make financial arrangements satisfactory to the forest department.
2. That Mr. Herrick, or his assigns, be engaged in cutting the timber in a substantial way on or before October 1, 1927.
3. That the sawmill plant be completed and in full operation at Barns, Oreg., on or before January 1, 1928.
4. That the railroad from Burns to Seneca be in operation as a common carrier for freight and passengers on or before October 1, 1927.

It is admitted and asserted by the Herrick interests and the Forest Service that it is and has always been their full intention to cause the railroad from Burns to Seneca to be operated as a common carrier, and insomuch as there seems to be a question as to the interpretation of the wording of the contract, the committee recommends that if further extensions or modifications of the contract are to be made, one of these shall clearly set forth the condition that the railroad from Burns to Seneca is to be operated as a common carrier.

Respectfully submitted by the committee.

ROBT. N. STANFIELD, *Chairman.*
RALPH H. CAMERON.
T. J. WALSH.
RICE W. MEANS.
JOHN B. KENDRICK.

(Whereupon, at 2.15 o'clock p. m., the committee adjourned to meet subject to the call of the chairman.)

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Telegram and letters: Telegram to the Forest Service, Washington, D. C., from Mr. C. J. Buck, United States Forest Service, Portland, Oreg, dated March 5, 1923; letter to the district forester, Portland, Oreg, from Mr. E. E. Carter, Assistant Forester, Washington, D. C., dated March 6 1923; letter to the Forester, Washington, D. C., from Mr. George H. Cecil, district forester, Portland, Oreg., by Mr. C. J. Buck, acting district forester, dated March 9, 1923; and letter to the Forester, Washington, D. C., from Mr. George H. Cecil, district forester, Portland, Oreg., by Mr. Fred Ames, acting district forester, dated March 12, 1923, all regarding publicity being given to the readvertisement of the timber in the Bear Valley unit, Malheur National Forest, Oreg., and the changing of the date for final receipt of bids from April 2 to 4, 1923 798-800
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Further redirect examination by Mr. D. F. McGowan, attorney representing the United States Forest Service 801
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Affidavits of: Mr. Harry Howell, Harney County, Oreg., dated December 22, 1926; Mr. N. F. Reed, Burns, Oreg., dated December 21, 1926; Mr. Clifford L. Reed, Burns, Oreg., dated December 21, 1926; Mr. W. A. McKenzie, Burns, Oreg., dated December 21, 1926; Mr. A. A. Bardwell, Burns, Oreg., dated December 21, 1926; Mr. Charles B. Foley, Burns, Oreg., dated December 21, 1926; Mr. Archie McGowan, Burns, Oreg., dated December 21, 1926; Mr. A. M. Hayes, Harney County, Oreg., dated December 22, 1926; Mr. L. Woldenberg, Canyon City, Oreg., dated December 24, 1926; Mr. L. Woldenberg, Canyon City, Oreg., dated December 21, 1926; Mr. R. E. Cole. Burns, Oreg, dated December 21, 1926; Mr. J. C. Clemens, Harney County, Oreg., dated December 21, 1926; Mr. Frank Welcome, December 21, 1926; and Mr. Archie McGowan, Burns, Oreg., dated December 18, 1926, all regarding the delays and manner in which Mr. Herrick was prosecuting the construction work and his failure to comply with the terms of the contract, except the last affidavit by Mr. Archie McGowan, which relates to the questioning of Mr. Herrick's financial responsibility on the day the bids were opened at Portland, Oreg., in 1923 824-832
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