

FORE RIVER SHIPBUILDING CO.

MAY 7, 1926.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. VINCENT of Michigan, from the Committee on Claims, submitted
the following

REPORT

[To accompany S. 1886]

The Committee on Claims, to whom was referred the bill (S. 1886) to carry out the findings of the Court of Claims in the case of the Fore River Shipbuilding Co., having considered the same, report thereon with a recommendation that it do pass.

Attached herewith is Senate Report No. 138, which is made a part of this report.

[Senate Report No. 138, Sixty-ninth Congress, first session]

The Committee on Claims, to whom was referred the bill (S. 1886) to carry out the findings of the Court of Claims in the case of the Fore River Shipbuilding Co., having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

A similar bill was favorably reported to the Senate in the Sixty-sixth Congress; favorably reported and passed in the Sixty-seventh and Sixty-eighth Congresses; and received the favorable recommendation of the House Committee on Claims in the Sixty-seventh Congress.

The facts are fully set forth in Senate Report No. 49, Sixty-eighth Congress, first session, which is appended hereto and made a part of this report.

[Senate Report No. 49, Sixty-eighth Congress, first session]

The Committee on Claims, to whom was referred the bill (S. 1769) to carry out the findings of the Court of Claims in the case of the Fore River Shipbuilding Co., having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts in the case are fully set forth in Senate Report No. 359, Sixty-seventh Congress, second session, which is appended hereto and made a part of this report.

FORE RIVER SHIPBUILDING CO.

DECEMBER 14, 1921.—Ordered to be printed.

Mr. SPENCER, from the Committee on Claims, submitted the following

REPORT.

[To accompany S. 1298.]

The Committee on Claims, to whom was referred the bill (S. 1298) to carry out the findings of the Court of Claims in the case of the Fore River Shipbuilding Co., having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment. The facts in the case are fully set forth in Senate Report No. 658, Sixty-sixth Congress, second session, which is appended hereto and made a part of this report.

[Senate Report No. 658, Sixty-sixth Congress, second session.]

The Committee on Claims, to whom was referred the bill (S. 4005) to carry out the findings of the Court of Claims in the case of the Fore River Shipbuilding Co., having considered the same, report favorably thereon with the recommendation that the bill do pass for the reasons set forth in the findings of the Court of Claims, as contained in Senate Document No. 170, Sixty-sixth Congress, second session, as follows:

[Senate Document No. 170, Sixty-sixth Congress, second session.]

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, December 13, 1919.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact and conclusion filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1911, known as the Judicial Code.

I am, very respectfully, yours,

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

The PRESIDENT OF THE SENATE.

[Court of Claims. Congressional, No. 35593. Fore River Shipbuilding Co. v. the United States.]

STATEMENT OF CASE.

This is a claim for reimbursement of loss incurred in the construction of two torpedo-boat destroyers under the act of May 4, 1898.

On January 16, 1912, a bill was introduced in the United States Senate, known as Senate bill 4591, Sixty-second Congress, second session, for the relief of the Fore River Shipbuilding Co., a corporation organized under the laws of the State of Massachusetts. Said bill was, on January 30, 1912, referred to this court by resolution of the United States Senate, by virtue of the act of Congress of March 3, 1911, and was docketed as case No. 15593. The said bill reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Fore River Shipbuilding Company, successor of the Fore River Engine Company and the Fore River Ship and Engine Company, builders of two torpedo-boat destroyers authorized by the act of Congress making appropriations for the naval service, approved May fourth, eighteen hundred and ninety-eight, the sum of three hundred and twenty-nine thousand and thirty-three dollars and ninety-eight cents, being the difference

between the actual cost of said boats to said builders and the amount paid under the contracts entered into for the building of said boats."

On April 16, 1914, a petition was filed in this court by the Fore River Shipbuilding Co., in which it was alleged that it is a corporation and is the successor of the Fore River Ship & Engine Co., and the Fore River Engine Co., and as the proposed beneficiary under said Senate bill No. 4591 above set forth seeks the recovery of losses sustained by its predecessors in the construction of two vessels for the United States Navy.

E. C. Brandenburg, Esq., appeared for the claimant, and Mr. C. W. De Knight was on the brief. The Attorney General, by C. F. Jones, Esq., his assistant, and under his direction, appeared for the defense and interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel, makes the following

FINDINGS OF FACT.

I.

The naval appropriation bill of May 4, 1898, authorized an increase of the Naval Establishment through the addition of 3 battleships, 1 gunboat, 4 harbor defense vessels, 12 torpedo boats, and 16 torpedo-boat destroyers, to be of domestic manufacture.

The act appropriated the sum of \$6,900,000 for the construction of 16 torpedo-boat destroyers, which were to be of about 150 tons displacement, with the highest practicable speed, the cost in all, exclusive of armament, not to exceed the sum stated.

It is further provided by said act that not more than 5 of said torpedo-boat destroyers and not more than 4 of said torpedo boats should be built in one yard or by one contracting party, and the contracts for torpedo boats and destroyers might be let after only three weeks' advertisement. (30 Stat. L., 389, ch. 234.)

Under date of May 16, 1898, the Secretary of the Navy issued a circular defining the chief characteristics of the destroyers and torpedo boats. The circular specified a displacement for the destroyers of from 400 tons to 435 tons, and a minimum speed of 28 knots per hour, and stated that no bids for destroyers would be considered that aggregated more than \$295,000 each. The circular of the Secretary was supplemented by a circular issued by the Bureau of Steam Engineering, dated May 4, 1898, giving in detail the requirements to be met by the machinery. The circular of the Secretary stated that an advertisement would be published later calling for bids on the department's designs and on the bidders' designs. On May 25, 1898, a copy of the circular, which contained sufficient information to permit the preparation of bidders' plans, was mailed to the Fore River Engine Co. by the Bureau of Construction and Repair. The bureau stated in the letter that hull plans and specifications would be ready about July 18, 1898.

The Navy Department in the circular of May 16, 1898, fixed the maximum average price on any bid of \$295,000 each on the destroyers and \$170,000 each on the torpedo boats.

The sum of \$5,000 was reserved on each boat to cover the expenses chargeable to the appropriations not included in the contract price.

The aggregate of the maximum prices fixed by the circular plus the total of the reservations equaled the limit fixed by the act, \$6,900,000.

The maximum prices contained in the circular above referred to are in reasonable accord with the contract prices of vessels similar in type to each class of vessels contracted for next preceding the vessels authorized by the act of 1898.

The maximum price fixed by the circular for the destroyers was for a vessel of about 400 tons displacement with a speed of 28 knots per hour. The proposal of the company was for a vessel of about 400 tons displacement with a speed of 30 knots per hour, an increase in power of approximately 23 per cent, with the greatly increased cost that this necessarily entailed.

Torpedo boats and torpedo-boat destroyers are essentially the same type, differing somewhat in size. While this Government had never constructed any torpedo-boat destroyers, so designated officially, nor any torpedo boats of precisely the type called for in the advertisement, the Government had contracted for a number of torpedo boats of the same general type as the torpedo boats advertised for and had contracted for the construction of torpedo boats of the

same general type as the torpedo-boat destroyers and but slightly smaller in size. Some of these torpedo boats were of the same general type and exceeded in size the vessels called torpedo-boat destroyers built by other nations.

The information available to the Navy Department as to costs was the contract prices of similar vessels previously built for the Government and the costs of English vessels of similar type, all of which was contained in public documents readily procurable by anyone interested.

None of the shipbuilders submitting proposals had built any torpedo-boat destroyers. The upset price fixed by the Government for the construction of a war vessel is made after careful estimate by the department of the cost. Such price usually allows a fair return to the contractor for his labors. The representatives of the Government believed that the upset price fixed for these torpedo boats and destroyers was fair and reasonable, and that a fair profit would be made by their builders under said contracts, and so stated to prospective bidders.

Under date of July 13, 1898, the Navy Department advertised for proposals for the construction of the said torpedo boats and destroyers. The date of opening was later changed to August 23, 1898.

The advertisement for proposals was published 41 days before the opening of the bids, this being 20 days in excess of the minimum time allowed by the act of May 4, 1898.

II.

In 1884 Thomas A. Watson and Frank O. Wellington formed a copartnership under the firm name and style of the Fore River Engine Co. for the purpose of building boats, and while so engaged, on September 29, 1898, were awarded by the Navy Department contracts for the construction of torpedo-boat destroyers Nos. 8 and 9, subsequently known as the *Lawrence* and the *Macdonough*, respectively. This copartnership continued until February, 1901, when said partners incorporated under the name of the Fore River Ship & Engine Co., by virtue of the laws of the State of New Jersey. Frank O. Wellington became a stockholder in said corporation and acted as general manager, and Thomas A. Watson, the remaining partner, was for a time president of the new corporation.

III.

Upon the incorporation as aforesaid of the Fore River Ship & Engine Co., the assets of said copartnership, together with its contracts for said torpedo-boat destroyers, were transferred to the said corporation, the Fore River Ship & Engine Co. At the date of the organization of said corporation, the *Lawrence* and *Macdonough* had been nearly completed by the said firm and were ready for trial runs. The uncompleted work under the contracts for said vessels was, with the prior consent of the Secretary of the Navy and the respective sureties for said company, assumed by said Fore River Ship & Engine Co., and by it completed and the vessels accepted by the Navy Department in the fall of 1903.

IV.

The contractors made an estimate with reference to the cost of constructing such destroyers as called for in the advertisement, and submitted a proposal for the building of two of said destroyers at the price of \$281,000 each.

The specifications that formed a part of the contracts for these boats were agreed to by both parties before the contracts were executed.

V.

On December 6, 1902, the Fore River Ship & Engine Co. executed and delivered its certain mortgage or deed of trust to the Adams Trust Co., a Massachusetts corporation, as trustee, to secure its indebtedness as evidenced by certain coupon bonds. On April 1, 1904, said company having made default in the payment of the interest on its said bonds, the said trustee, acting for the bondholders under proper proceedings and in pursuance of the terms of said mortgage or deed of trust, foreclosed the mortgage and sold the real and personal property conveyed thereby, including the rights, franchises, and privileges comprising the manufacturing plant of the Fore River Ship & Engine Co. as a going concern, on September 7, 1904, to one Henry Endicott, jr., who was acting in said purchase for the owners and stockholders of the company mentioned in the next finding.

VI.

The Fore River Shipbuilding Co. was organized under the laws of the State of Massachusetts on September 6, 1904. On said 7th day of September, 1904, said Henry Endicott, jr., conveyed by deed to the Fore River Shipbuilding Co. all and singular the property acquired by him at said mortgage sale.

VII.

On October 10, 1904, said Fore River Ship & Engine Co. duly executed and delivered to the Fore River Shipbuilding Co. (the new corporation) a written assignment and transfer to the latter of all moneys then due or thereafter to become due to said Fore River Ship & Engine Co. from the United States Government on account of torpedo-boat destroyers 8 and 9 (the *Lawrence* and *Macdonough*), together with all the rights, claims, and demands connected with or arising therefrom.

As a part of the plan pursuant to which the foreclosure was had and the above assignment given, the Fore River Shipbuilding Co. assumed, took over, and paid the liabilities of the Fore River Ship & Engine Co., amounting to the sum of \$1,052,858.36, and assumed, in addition to the outstanding liabilities, the obligation of completing all incomplete contracts.

At the time of making said assignment, the Fore River Ship & Engine Co. had contracts with the Navy Department for the construction of the battleships *Vermont*, *Rhode Island*, and *New Jersey*, as well as other contracts for other minor work. The unfinished work under all of those contracts was taken over and completed by said Fore River Shipbuilding Co. after that company entered into new contracts with the Secretary of the Navy whereby it assumed all the obligations undertaken by said Fore River Ship & Engine Co. The *Lawrence* and *Macdonough* at that time had been completed and paid for and a release executed, as is more fully shown in Finding XX.

VIII.

Said firm known as the Fore River Engine Co. submitted a proposal dated August 18, 1898, and on September 13, 1898, the Acting Secretary of the Navy requested if in case of acceptance of their offer to construct one or more of said vessels on the bidders' plans they would furnish complete specifications as required by the original circular. This was agreed to by the said firm under date of September 15, 1898, and under date of September 23, 1898, their proposal for the construction of two destroyers on their own designs at a price of \$281,000 each was accepted.

The destroyers awarded them were Nos. 8 and 9, *Lawrence* and *MacDonough*. The contracts bear date of September 29, 1898, and were signed by the Fore River Engine Co. on or about that date.

IX.

About September 29, 1898, the contracts with the accompanying plans and specifications which the contractors had agreed to furnish were forwarded to the Navy Department.

These specifications were not in compliance with the requirements of the circular defining the chief characteristics of the vessels, and under date of October 19, 1898, the department returned the specifications with a list of the changes it considered necessary.

On October 20 the firm acknowledged receipt thereof, and on November 7 returned the specifications to the department, together with the firm's letter of November 2, accepting certain of the changes proposed by the department and rejecting others.

On November 19 the Bureau of Steam Engineering wrote the contractors calling attention to the fact that the specifications had not been revised to include all the changes accepted by the contractor's letter of November 2, and proposing that the specifications be changed to bring them in complete agreement with the letter. Under date of November 21, the contractor or firm authorized the changes in the specifications proposed by the bureau.

The specifications as finally changed were approved by the department December 3, 1898.

The contracts were signed by the department on the same day.

On December 6, 1898, the contractor requested that the contract times "be allowed to begin December 3, 1898, the date on which the contract was formally executed," to which the department agreed.

X.

The use of the term "as directed," or its equivalent, in the contract is necessary in the specifications of a structure as complicated as a war vessel is. This term was not used any more frequently in the specifications of the vessels in suit than in the specifications of other vessels constructed prior to and about the same time.

Whilst what would be required under this expression might mean one thing in the year 1900 and a different thing in the year 1902 or 1903, depending upon the experience and the state of development of the art, the department and its representatives were limited in their interpretation of the term by what was the accepted practice at the time the contract was signed. When a more expensive construction was adopted the contractor was allowed additional compensation.

The contractor was not bound by the decision of the local representative, but had at all times the right to appeal to the Navy Department.

XI.

The second clause of the contract specification provides that changes in the drawings, plans, and specifications may be made. Under authority of this provision certain changes were made subsequent to December 3, 1898. The changes made were all of a minor character and were made at a sufficiently early date in the construction of the vessels as not to delay their completion.

All such changes were referred to a board of naval officers for adjudication of the cost, as provided in clause 2 of the contract, and all additional sums found due the company were paid.

The additional net cost of all the changes was on the *Lawrence*, \$2,954.26, and on the *MacDonough*, \$2,825.46, being approximately 1 per cent of the contract price in each case.

XII.

The forgings entering into the construction of the principal machinery of these destroyers was of a very high grade, and but two plants in the United States, namely, the Midvale Steel Co. and the Bethlehem Co., had the facility to turn out such material as was required.

On September 23, 1898, the contractor had been advised that its proposal for the two destroyers here involved was accepted, and on the following day it placed its orders for certain essential parts entering into these boats, but they were not furnished for 14 months and then in an incomplete state. The contractor was met with a delay of several months in securing other parts entering into these boats, notwithstanding it frequently importuned the steel company for early delivery, both by correspondence and by personal interviews, as a result of visits to their plant. In order to expedite the shipment, and in the hope of saving time in the construction of these boats, the contractor accepted the rough-machined forgings and finished them at their own plant, at an increased cost, although their agreement called for the finished product. These delays materially increased the time for completing the contract.

The contractor was in no wise responsible for the delays in obtaining this material, but did all it could to expedite its delivery. To complete its contract it installed additional machinery for the purpose of finishing the forgings at its own plant, which, under its order placed with the steel company, were to have been delivered in the finished state.

XIII.

The mean trial displacement for the *Lawrence* was 412 tons and for the *MacDonough* 405 tons.

The actual displacement on trial was about 3 per cent in excess of the designed displacement in case of the *Lawrence* and about 2 per cent in case of the *MacDonough*.

This excess did not materially affect either the cost or the speed of the vessels.

XIV.

The contracts for the *Lawrence* and *Macdonough* specified a speed of 30 knots per hour for two hours continuous running, but provided for the acceptance of the vessels at a reduced price in case a speed of not less than 28 knots was attained on trial. The deduction to be paid was at the rate of \$32,000 per knot. Neither vessel ever attained the contract speed. A board of naval officers that reported November 25, 1901, stated that the highest speed attained up to that date was about 26 knots per hour.

In response to the request of a committee representing the builders of the various torpedo boats and destroyers under the act of 1898, appointed January 14, 1902, the department, under date of February 26, 1902, authorized a change in the speed requirements to provide for a speed of 28 knots per hour on the standardization runs and 26 knots for one hour continuous running.

Supplemental agreements embodying said changes were signed March 17, 1902.

This reduction in the speed requirements was made without any reduction in the contract price. The builder of the *Lawrence* and *Macdonough* was not successful in meeting the reduced speed requirements until the early part of 1903. The principal difficulty experienced in connection with the trials of the vessels was due to the excessive vibrations that developed in the engines when the higher speeds were attempted.

After numerous builders' trials the difficulty was remedied to a sufficient extent to permit the reduced speed of 28 knots being finally attained. The successful standardization trial of the *Lawrence* was run October 10, 1902, and a one-hour endurance trial, January 7, 1903. The standardization trial of the *Macdonough* was run January 4, 1903, and the one-hour endurance trial May 27, 1903.

XV.

The circular of May 16, 1898, specified a maximum period of construction of 18 months for the destroyers. The times offered by the proposal of the contractor, which were incorporated in the contracts, were 16 months for the *Lawrence* and 17 months for the *Macdonough*. This would have required the completion of the *Lawrence* by April 3, 1900, and the *Macdonough* by May 3, 1900.

The construction of both the *Lawrence* and *Macdonough* was retarded from the beginning on account of the delays in procuring materials and of the difficulty of securing an adequate force of skilled workmen. To these causes of delay was added the delay incident the removal of the plant from Weymouth to Quincy some time prior to April, 1901.

Unusually inclement weather caused a further delay of about three months on the *Lawrence* before the builder's trials could be actively proceeded with.

As a result of these delays the *Lawrence* was not ready for her builder's trials until January, 1901, about 9 months after the expiration of the contract time, and the *Macdonough* was not ready until May, 1901, about 12 months after the expiration of her contract time.

The *Macdonough* was ready for a builder's trial in May, 1901, but its first trial was not run until October, 1901, because it was apparent from the experience on the *Lawrence* that the same principal difficulty of excessive vibration of the engine would be encountered on the *Macdonough*, and these were remedied before the first trial of the latter vessel was run.

The experience gained in the construction of the *Lawrence* was a material aid in discovering the difficulties incident to engine vibrations in the *Macdonough*, and aided in eliminating them with a less number of trials.

The *Lawrence* was completed and preliminarily accepted March 19, 1903, and the *Macdonough* July 3, 1903.

The delays from May, 1901, until the final completion of the vessels were due to the difficulties that developed in connection with the trials of the vessels.

XVI.

The causes that operated to increase the cost of the destroyers over what might have reasonably been anticipated at the time the contracts were made were the inexperience of the builders, the delays in the receipt of certain important materials, the increase in the cost of some of the materials, the difficulty in securing an adequate force of skilled workmen and the increase of wages paid, the delays due to unusually inclement weather, and the delays incident to the removal of the plant from Weymouth to Quincy.

XVII.

On February 16, 1900, the company requested an extension of the contract time of 12 months on each vessel, giving as the reason "the utter uncertainty of the delivery of the nickel-steel forgings." On April 1, 1901, the company requested a further extension on the *Lawrence* of six months, and in their letter of April 22 they gave reasons therefor as follows:

"1. The necessity for designing and building special machinery instead of commercial machinery to keep down the weight.

"2. The removal of the plant from Weymouth to Quincy.

"3 and 4. Inclement weather.

"5. Difficulty in securing skilled workmen."

An extension of three months was granted to cover the delays caused by the unusual inclement weather. A similar request for six months' extension was made on the *Macdonough* May 9, 1901, and an extension was granted for the same reason as on the *Lawrence*.

The time for the completion of the *Lawrence* was further extended to March 19, 1903, and of the *Macdonough* to April 9, 1903, no penalties for delays having been exacted. The delay last mentioned was due to the difficulties in connection with the speed trials of the vessels.

The cost of the trials for the two vessels amounted to the approximate sum of \$62,428 each. This covered the expense of labor, power, oil, commissary, and the general expenses of operating the vessel while away from the wharf and of maintaining it while at the wharf, but excludes the cost of repairs due to such damage as occurred during the trials and costs of changes made to obviate the difficulties encountered.

XVIII.

Each of the 11 contractors for the torpedo boats and destroyers under the Act of May 4, 1898, prior to their completion sought relief of the Government on account of their losses. In response to these requests there was made, under date of January 22, 1902, a joint report by the Chiefs of the Bureau of Construction and Repair and the Bureau of Steam Engineering recommending the creation of a board to determine the fair average price for the construction of each class of these vessels and admitting that had the department and the contractors been possessed in 1898 of the experience gained in connection with these boats, the contracts could never have been made, and that the circumstances were such as to warrant the department in sharing with the contractors the financial loss which had occurred.

XIX.

On February 26, 1902, the Navy Department appointed a board of officers, of which Rear Admiral Ramsay was president, to examine the accounts of the contractors for the torpedo boats and torpedo-boat destroyers, with instructions to report the proper average cost of each class of vessel, including all direct charges for materials and labor and all proper indirect expenses.

The board reported the proper average cost of the destroyers as \$734,200.

In making its investigation the board examined the accounts of five out seven of the destroyers built on the contractor's designs, including the two built by the Fore River Co., and two out nine of the vessels built on the department's designs, selecting in each instance the vessels with the highest reported cost.

On April 25, 1902, Secretary Long in transmitting the report of the Ramsay Board and other papers relative to the building of the torpedo boats and destroyers to the House Committee on Naval Affairs, among other things, said:

"Referring to your letter of the 21st instant, requesting the views and recommendations of the committee as to the amendment that has been proposed to the naval appropriation bill providing for the payment to the several contractors who are building the torpedo-boat destroyers and the torpedo boats authorized by the act of May 4, 1898, of one-half of the difference between the proper average cost of one vessel of each of said classes as shown by the report dated April 9, 1902, of the board of which Rear Admiral Francis M. Ramsay is president, and the contract price plus authorized extras in such case * * *"

The concluding portion of said letter is as follows:

"It appears from the foregoing and accompanying papers that the plans and specifications furnished by the department to the contractors for the building of the torpedo boats and torpedo-boat destroyers, and which were based upon the most successful local and foreign experience, were not impracticable and admitted of the production by development, with the application of skill and experience, of successful boats, but with a narrow margin.

"It having been developed that the contractors, nearly all of whom were without the requisite skill and experience and had had great difficulties in obtaining the necessary materials, were encountering additional obstacles in the trials of their boats, and were suffering severe losses under the terms of their contracts, the department considered it wise to eliminate, so far as practicable, further unnecessary expenditure upon these boats by reducing the contract requirements in regard to speed in each case to the minimum acceptable conditions originally contemplated in its designs, which the contractors, in their inexperience, in many cases, had undertaken to succeed. The department also, acting within its discretion, released and made payable, so far as practicable, such installments of contract price and reservations as had been clearly earned, fully protecting the interests of the Government by obtaining the consent to such changes of the sureties on the bonds.

"With reference to your inquiry concerning the further relief of the contractors by Congress, it appears to be clearly established by the report of the Ramsay Board, transmitted herewith, that the contractors have suffered heavy losses in the building of these boats. It also appears from the accompanying reports of the bureaus concerned that these losses have been due to causes almost wholly beyond the control of these contractors under the circumstances set forth, thereby entitling them, in the opinion of the department, to equitable consideration."

On January 25, 1904, Acting Secretary of the Navy Darling, in reporting to the chairman of the Senate Committee on Naval Affairs upon a bill for the relief of the various contractors, in transmitting a copy of the Ramsay Board report of April 25, 1902, said:

"The comments made in the aforesaid letter of transmittal, and the opinion therein expressed as to the consideration the contractors should receive, should conform to the department's present views in the premises." (S. Doc. No. 112, 58th Cong., 2d sess.)

Under date of February 15, 1905, Secretary of the Navy Morton reported to the chairman of the House Committee on Claims with reference to a bill for the relief of the contractors, and said:

"While the cost of these torpedo boats and destroyers, if built at the present time by the same builders, should undoubtedly be less than the actual cost by reason of the excessive rise in the price of the material and labor at the time of their construction, the department is of the opinion that the prices established by the Ramsay Board and named in H. R. 10346 are fair and reasonable for boats constructed at the time in question, and that the value of the boats to the military service is fairly represented by the prices established by the said board and noted in the bill."

XX.

The books of original entry of the partnership, the Fore River Engine Co., containing the records of expenditures on the *Lawrence* and *Macdonough* to February 21, 1901, have not been accessible. They were destroyed about April, 1908.

The evidence adduced to show expenditures are summaries made prior to the destruction of said books, one of expenditures by weeks and the other of expenditures by job orders.

The total direct cost to said firm of Fore River Engine Co. and said Fore River Ship & Engine Co. of labor and material, including extras, in building each of said vessels was \$336,094.49.

This sum does not include overhead or indirect expense, and the evidence fails to show to the reasonable satisfaction of the court the amount of any overhead or indirect cost or expense not included in the above-named amount.

Said Fore River Ship & Engine Co. was paid for said vessels as follows:

FORE RIVER SHIPBUILDING CO.

	Lawrence.	Macdonough.
Contract price.....	\$281,000.00	\$281,000.00
Additional, for charges.....	2,954.26	2,825.46
Total.....	283,954.26	283,825.46
Deducted for uncompleted work.....	1,337.74	774.13
Paid contractor.....	282,616.52	283,051.33
Total paid for the two vessels.....		\$565,667.86

Paragraph 7 of the eighteenth clause of the contracts for the building of the vessels provided for the termination of the contract by the execution of a final release to the Government in the following words:

"When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled by and on the part of party of the first part, said party of the first part shall be entitled, within 10 days after the filing and acceptance of its claim, to receive the said special reserve, or the surplus, if any, of said reserve fund, or so much of either as the said party of the first part may be entitled to, on the execution of a final release to the party of the second part, in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of this contract."

On January 4, 1904, receipt of the final payment on the *Lawrence* was acknowledged by the Fore River Ship & Engine Co., and the following release was executed:

"The Fore River Ship & Engine Co., represented by me, F. T. Bowles, president of said company, does hereby, for itself and successors and assigns and its legal representatives, remise, release, and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims and demands whatsoever, in law and in equity, for or by reason of, or on account of, the construction of said vessel under the contract aforesaid."

On April 7, 1904, receipt of the final payment on the *Macdonough* was acknowledged by the Fore River Ship & Engine Co., and a release in identical terms with that above was executed.

The difference between the entire cost above stated of both vessels to the builders and the amount paid to them by the United States is \$106,521.12.

CONCLUSION.

(1) Section 3477 of the Revised Statutes provides that all transfers and assignments made of any claim upon the United States shall be void unless made after the allowance of the claim.

(2) The Court of Claims is without jurisdiction to adjudicate and determine the rights of the petitioner further than to report the facts found. Whether petitioner shall be paid anything rests in the sound discretion of the Congress.

BY THE COURT.

Filed October 13, 1919.

A true copy.

Test this December 13, 1919.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk.