

ROYAL COMMISSION

ON

SHELL CONTRACTS

COMMISSIONERS:

The Honourable Sir WILLIAM MEREDITH, Knight, Chief Justice of Ontario.

The Honourable LYMAN POORE DUFF, Justice of the Supreme Court.

SECRETARY:

J. A. RITCHIE, Esquire, Barrister-at-Law.

REPORT



OTTAWA

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REPORT OF THE COMMISSIONERS.

To Field Marshal, His Royal Highness Prince Arthur William Patrick Albert, Duke of Connaught and of Strathearn, K.G., K.T., K.P., etc., etc., etc., Governor General and Commander in Chief of the Dominion of Canada.

MAY IT PLEASE YOUR ROYAL HIGHNESS:

We, the undersigned, Commissioners appointed by Royal Commission, dated the third day of April, 1916, to make,—

“A full and complete inquiry and investigation into the following contracts made by the committee known as the Shell Committee, hereinafter called the Shell Committee, namely, a contract bearing date nineteenth day of June, A.D. 1915, between the International Arms and Fuse Company, a body politic and corporate, and the Shell Committee; a contract bearing date the nineteenth day of June, A.D. 1915, between the American Ammunition Company, Incorporated, a body politic and corporate, and the Shell Committee; by each of which contracts the Shell Committee agreed to purchase from the respective companies aforesaid a quantity of fuses of the description and upon the terms therein stated. Also a contract constituted by an order bearing date on or about the 16th day of July, 1915, given by the Shell Committee to the Edwards Valve Company of Chicago and accepted by that company, by which order the Shell Committee agreed to purchase a quantity of cartridge cases of the description and upon the terms therein stated. Also an alleged contract between the Shell Committee and the Providence Chemical Company of St. Louis, by which contract the Shell Committee agreed to purchase a quantity of picric acid, if it should appear that the said Shell Committee has entered into such contract, and each of the said contracts, and into the acts and proceedings of the Shell Committee, whether by themselves or by any other person or persons directly or indirectly, and of the Minister of Militia and Defence, whether by himself or by any other person or persons directly or indirectly in relation thereto or in connection therewith and into the negotiations therefor, the profits or prospective profits arising thereunder, the disposition, division or allotment of such profits or prospective profits, or of any commission or reward for procuring the said contracts or any of them, and as to the persons interested in any such profits, prospective profits, reward or commissions, and generally speaking into all other acts, transactions and matters of every kind relating to the said contracts and each of them;”

have the honour to report that we have made the inquiry and investigation which we were commissioned to make, and now beg leave to submit to Your Royal Highness our conclusions and the evidence on which they are based.

We have had the assistance of counsel appointed by the Government of Canada, and of counsel for Mr. George W. Kyte, M.P., for the Shell Committee, for Major General Hughes, for Colonel J. Wesley Allison, and for the International Arms and Fuse Company.

The taking of testimony and the argument of counsel occupied twenty-nine days. With the exception of E. W. Bassick, Eugene Lignanti, and J. B. Craven, whose connection with the transactions inquired into will be mentioned later on, the attendance of every one who it was thought by counsel might be able to throw light upon the subject of the inquiry was procured and his testimony was obtained. The three persons named are residents of the United States of America, and efforts to secure their attendance were unsuccessful.

THE SHELL COMMITTEE.

1. ITS ORIGIN, CONSTITUTION, FUNCTIONS, DUTIES, ETC.
2. SUGGESTION AS TO GENERAL HUGHES UNDULY INFLUENCING IT.

Before dealing specifically with the four transactions to be inquired into, and with the view of making more clear what we shall afterwards say as to them, it is desirable that the origin, constitution, functions, and duties of the Shell Committee should be stated.

Shortly after the outbreak of the war, inquiries were made of the Department of Militia and Defence by the War Office as to the possibility of obtaining a supply of shells from America. General Hughes, believing that the work could be done in Canada, asked leading manufacturers to meet him for the purpose of discussing the matter. The meeting was held on the 2nd September, 1914, and there were present at it representatives of a number of Canadian manufacturers, whose names appear on page 331 of the appendix; Colonel Lafferty, of the Dominion Arsenal; Colonel Benson, Master-General of the Ordnance; and Lieut.-Colonel C. Grville Harstone, C.I. General Hughes explained the object of calling the meeting, and the manufacturers, after consultation among themselves, came to the conclusion that the shells could be manufactured in Canada, and appointed Brigadier-General Sir Alexander Bertram (then Colonel Bertram), to

“act as chairman, with full power to act between the manufacturers and the Minister of Militia through Colonel Benson, with the idea of working out and formulating some plan of organization for carrying on the work.”

On the 7th September, 1914, on the invitation of General Hughes, General Bertram, Colonel Thomas Cantley (then Mr. Cantley), of the Nova Scotia Steel Company, and Lieut.-Colonel George W. Watts (then Mr. Watts), of the Canadian General Electric Company, met General Hughes at Valcartier Camp. General Hughes informed them “that the Secretary of State for War had advised the Canadian Government that the War Office were desirous of having shrapnel shells made in Canada, and that the Government had decided to entrust the matter to a committee of manufacturers, and had so advised the War Office, and had submitted the names of these three gentlemen, which suggestion, and the personnel of the committee, had been approved by the War Office; and, further, that the committee would be enlarged by the addition of three military officers.”

At this meeting General Hughes made the following memorandum:—

“Valcartier Camp, 7-9-1914.

“Colonel Alexander Bertram,
Thomas Cantley,
George Watts,
Colonel Lafferty, } Committee on Shells.

For action, S.H.

SAM HUGHES.”

General Hughes was at this time busily engaged in the preparation of Valcartier Camp and the organization and equipment of the first contingent for overseas service, and this no doubt accounts for the informal character of the appointment of the committee and the absence of any specific definition of its functions and duties. Presumably every one understood what the committee was to do, and that no time must be lost in getting about doing it.

Mr. E. Carnegie was subsequently added to the committee by General Hughes.

On the 24th September, 1914, Colonel Carnegie was appointed Expert Ordnance Adviser to the committee. Colonel Carnegie is a consulting engineer of high standing, and has had a wide experience in the practical work of fabricating munitions of war. After the dissolution of the Shell Committee, he was retained by the Minister of Munitions as Expert Ordnance Adviser to the Imperial Munitions Board, at a large salary.

Colonel Carnegie subsequently became a member of the Shell Committee, and Mr. J. W. Borden and Colonel Benson also became members of it.

General Bertram and Colonel Carnegie were practically the executive officers of the committee, and devoted the whole of their time to its work, which was of a most arduous and exacting nature, and to them were entrusted the fixing of prices and the placing of contracts. The other members did not devote all of their time to the work of the committee, but took part in the deliberations at its meetings, and otherwise assisted in the work of the committee. The services of all the members of the committee were given gratuitously. Colonel Carnegie received remuneration as expert ordnance adviser to the committee, but received nothing for his services as a member of it.

It may be mentioned here that but for the efforts of Colonel Carnegie personally and of the Nova Scotia Steel Company, it would have been impracticable to have obtained orders for the fabrication of shells in Canada. The War Office had been of the opinion that acid steel, which is not made in Canada, was the only suitable material for the manufacture of shells, and particularly of high-explosive shells. Basic steel is the only kind of steel made in Canada, and this the War Office would not accept. After elaborate and costly experiments under the direction of Colonel Cantley, the Nova Scotia Steel Company succeeded in producing a quality of basic steel which, after exhaustive tests, the War Office was finally persuaded to accept; and the placing of orders for shells to be manufactured in Canada

was assured. By the 31st of May, 1915, manufacturing establishments in Canada were employed in the fabrication of shells as follows:

Kind of Shell.	Establishments Employed.
15-pounder shrapnel	33
18-pounder shrapnel	235
18-pounder high explosives	110
4.5 howitzers.	16
Production of tri-nitro-toluol	2

The object of General Hughes in constituting, as he did, with the approval of the British Government, the Shell Committee, was to create an independent body that would, without his intervention, act for the War Office in procuring the production of shells in Canada, and in making, on its behalf, contracts with manufacturers to supply them—a work which had been entrusted by the War Office to General Hughes.

The position of the committee was, throughout, undoubtedly that of agents for the British Government, and any surplus due to the cost of manufacture being less than the prices quoted and agreed to by the War Office, belonged, *not to the committee, but to that Government.* This view appears to have been acted on throughout by the committee, notwithstanding the execution of the three contracts which were entered into between General Hughes, acting for and on behalf of the Secretary of State for War, and General Bertram, Colonel Cantley, Lieut.-Colonel Watts and Mr. E. Carnegie, as individuals, which appears to have been thought by some members of the committee to have changed the position of these four gentlemen, in a technical, and perhaps in a legal sense, from that of agents or trustees to that of contractors.

The correspondence between Sir Alexander Bertram and Lord Rhondda (then Mr. Thomas), who was in Canada as the representative of the Minister of Munitions, which was put in evidence shows that there was a divergence of opinion between them as to the expediency of the policy adopted by the committee of itself fixing the price of an article which it desired to have supplied, and contracting with manufacturers who were willing to furnish it at that price, for its supply. Lord Rhondda's view was that competition should have been invited.

When the committee began its work there was, according to the testimony of Colonel Carnegie, "a great deal of reluctance on the part of Canadian manufacturers" to enter upon what was to them a new and unknown industry, and to embark in such an enterprise the capital necessary for carrying it on, especially in view of the uncertainty as to the duration of the war. However that may be, the committee came to the conclusion that the policy which it adopted afforded the only feasible means of attaining the end for which the committee was created. It does not lie within our province to express an opinion as to the wisdom of that policy; nor, if it did, have we before us the material on which to form a judgment.

It was argued by counsel for Mr. Kyte that, in the placing and awarding of the contracts which we have been directed to investigate, the Shell Committee and its members, or some of them, were improperly influenced by General Hughes; but we are of opinion that this contention is not well founded.

It was contended that six letters written by General Hughes to General Bertram, which will be found on pages 1245-6-7 of the appendix, afford evidence that General

Hughes purposely intervened in the work of the Shell Committee, with the view to influence the awarding of contracts; but we think that no such inference can be drawn from the letters. The only one of these letters which merits even a passing reference is that of the 29th April, 1915, which reads as follows:—

“OTTAWA, April 29, 1915.

MY DEAR GENERAL BERTRAM,—You know Mr. Wilford and Mr. Carew, M.L.A., of Lindsay.

I am asking for my home town of Lindsay the small number of fifty thousand high explosive shells. These men and their associates, Messrs. G. S. Dukes, T. R. Hindes, John Carew, M.L.A., Dr. John McAlpine, and F. R. Wilford, under the name of F. R. Wilford & Company of Lindsay, will do this work up to perfection.

Faithfully,
SAM HUGHES.”

We see nothing in this letter to suggest the exercise of influence or pressure in the awarding of contracts. It was a most natural and in no way improper thing for the Minister to call the attention of the committee to the claims of manufacturers of the constituency which he represents, to consideration.

FUSES—THEIR DIFFERENT TYPES.

Before dealing with the events which led up to the making of the fuse contracts, a few words of explanation of the phrases “time and percussion fuse” and “graze fuse” seem to be necessary.

The first of these two classes, viz., time and percussion fuse, as the name indicates, is a fuse which functions in two ways, according to the way it is set before the gun is fired, by (a) bursting the shell to which it is attached, in the air, or (b) bursting the shell on impact. The device for accomplishing the result, if the fuse is set to burst within a given time after the shell leaves the gun, consists of two rings so constructed as to contain a quantity of powder which can be set to burn so as to explode a base charge in the fuse within from 0 to 22 seconds from the time of the firing of the shell. As the rate at which the shell travels is known, this time device enables the gunner to set the shell to burst in the air, at a certain distance from the gun.

The manufacture of this time fuse is a delicate operation requiring great care, as the fuse must function so as to burst the shell at the exact moment for which the fuse is marked to burst. To pass gun proof, these fuses must burst within one-tenth of a second of the specified time.

The different varieties of time fuses are known as No. 80 Mark V, No. $\frac{82}{14}$ No. 80 Mark VII, and No. 85. The first three classes are all British fuses, and there is practically no difference in their construction or functioning, except that all the parts of some fuses are made of brass, and in others some of the parts are made of brass, and some of aluminium and steel. The No. 85 fuse is an American fuse, and is not essentially different from the British fuses.

The second class mentioned, viz., the graze fuse, is one which explodes on impact only. It contains two detonators, a percussion detonator, which acts on direct impact, and a “graze” detonator, which operates where the angle of incidence is not less than three degrees.

The body of this fuse was, according to the original design, made of brass; but in the spring of 1915, the War Office decided to accept steel bodies, and the fuse contracts under consideration give the makers the privilege of supplying bodies of that material. Fuse No. 100 is a graze fuse.

EVENTS LEADING UP TO FUSE CONTRACTS.

We come now to the events which led up to the making of the contracts. In the autumn of 1914, Colonel Watts, who was works-manager of the Canadian General Electric Company, brought to the attention of Colonel Carnegie the question of the feasibility of the manufacture of fuses in Canada, and Colonel Carnegie, on the occasion of a visit to England in December, 1914, discussed with the Ordnance authorities the subject of the production of fuses, urging the desirability of developing fuse production in Canada. He obtained their consent to giving an experimental order for 20,000 time fuses, on the terms that the cost of manufacture should be paid by the Shell Committee. After returning to Canada, Colonel Carnegie took the subject up with Colonel Nicholls, President of the Canadian General Electric Company; but as Colonel Carnegie was not authorized to give any assurance of indemnity in respect of capital outlay for machinery, procuring technical staff, etc., in the event of a speedy termination of the war or of the experiment proving unsuccessful, Colonel Nicholls did not feel justified in accepting the proposal.

There were various inquiries in February, March, and April, from Canadian manufacturers, touching the manufacture of fuses, of which nothing came. In March, as the result of communications from Mr. Edmund Bristol, M.P., and Mr. Fenn, who was connected with a manufacturing company of Wilmington, Delaware, the Shell Committee cabled the War Office, on the 16th of March, stating that it had proposals for the manufacture of No. 80 fuses in Canada at the rate of 5,000 per day, commencing four months from the date of contract. The War Office answered asking the opinion of the Shell Committee as to the possibility of the proposers securing powder for time rings and commencing manufacture within the time specified. On the 21st of March, the Shell Committee cabled the War Office as follows:

"We are investigating supply correct composition for time rings eighty fuse also ability of firm to commence delivery in four months. Have other proposal before us for immediate manufacture in Canada of American fuse same as being supplied to you by U. S. A. We are satisfied of the ability of this firm to carry out its agreements. They guarantee to deliver four thousand fuses per day under direct supervision of the inventor American fuse and other experts who have actually manufactured fuses, commencing delivery three months from date of contract. Orders must be for one million fuses subject to the first twenty thousand proving satisfactory. Price each packed in cases f.o.b. Montreal, five dollars sixty cents."

The latter part of this cable was the result of a proposal made by Dr. Harris, on the 19th of March, which was the beginning of the negotiations that ultimately resulted in the contract of the 19th of June between the Shell Committee and the International Arms and Fuse Company.

The proposal is as follows:

"WINDSOR HOTEL, MONTREAL, March 19, 1916.

GENTLEMEN,—We beg to submit the following estimate for time fuses; American fuse, Frankford Arsenal type, with aluminium parts, Cushing patents, as per sample submitted:—

Lots of one million, \$5.50 each.

Lots of two millions, \$4.90 each.

Deliveries to commence three months after signing of contract.

Quantity per day, when in full operation, 4,000.

Order to be given for the full number required, with an agreement setting forth that if the first 20,000 are proven satisfactory, that our company may proceed to manufacture the balance forthwith until completion of order. The cost of the first 20,000 shall be paid for in lots of 5,000 at the rate of \$8.75 each.

Respectfully submitted.

MANUFACTURING AND CONTRACTING COMPANY OF CANADA, LTD.

JOHN A. HARRIS, *President.*

The Shell Committee,
Drummond Building, Montreal."

On the 25th of March, the War Office cabled as follows:

"3714 Cipher A 2. Your 298 of March 22nd. We should prefer the No. 80 fuse for use with H.E. shell. This is a slightly modified form. The price is very high indeed. Please wire what can be done."

The following answer was sent on the 29th of March:

"313 Cipher. Reference to your 3741 Cipher A 2. Will quote amended price on receipt of drawings, specifications, and sample of fuse for high explosive shells, but could not commence delivery under six months. Refer to our cable 298 Cipher 21st March. We can supply fuses American design with aluminium body and brass time rings, filled complete, adjusted to same weight as No. 80 fuses, prices \$5 each. Deliveries 4,000 per day commencing three months from date of contract for one million."

These communications, it will be noticed, related only to the manufacture of fuses; fuses were very much needed, and both the Shell Committee and General Hughes were naturally anxious that the manufacturing resources of Canada should be put to use in producing them. At this stage a new proposal emerged, which was accepted by the War Office, viz., that 5,000,000 complete rounds of ammunition, including fuses, should be produced under orders given by the Shell Committee. From that time on, the production of the fuse as part of the complete round of ammunition absorbed the attention of the committee.

On the 7th of April, a cable was addressed by the Prime Minister to Sir George Perley, urging that an order for four or five million additional shells be placed in Canada, and expressing the opinion that such an order could be filled. This cable was supplemented on the 14th of April by the following cable to the Secretary of State for War:

"With reference to my cable April 7. My committee prepared to undertake four to five million additional 18-pounder shrapnel and 18-pounder high explosive complete ammunition with fuse, to be divided as you think proper, prices shrapnel \$18, and high explosive \$17.50 each. Deliveries to run concurrently with those already promised as follows: In July, 150,000; August, 400,000; September, 450,000; October, 500,000; November, 700,000; December, 700,000; January, 700,000; February, 700,000; March, 700,000. Many factories are already equipped with gauges, etc., for manufacturing the above."

On the 17th of April, the War Office replied:

"4091 cipher A 7.

Your telegram No. 105 code. Can Shell Committee divide 5,000,000 rounds complete ammunition as follows:—

One-third 4.5" lyddite howitzer;

One-third shrapnel 18-pr.,

One-third high explosive 18-pr.;

and what price 4.5"?

Pre-cum propellant included? Is it cordite or nitro-cellulose?

Fuse for shrapnel must be twenty-two seconds, but for H.E., graze fuse.

Where will fuses be obtained? We are apprehensive of interfering with existing orders in the United States."

On the 23rd of April, the Shell Committee cabled to the War Office:—

"352 cipher. Your 4091 cipher A 7.

Shell Committee prepared to divide five million rounds complete ammunition as suggested, one-third each 4.5" lyddite howitzer 18-pr. shrapnel and 18-pr. high explosive.

Will supply 4.5" Lyddite at sixteen dollars fifty cents including shell complete with case, primers, etc., but not including propellant.

Will quote prices on propellant when you give us details asked for in Shell Committee cable to Director of Army Contracts, April 21st.

Propellants in 18-pounder shrapnel and 18-pounder high explosive will be cordite—fuses will be made to suit your requirements and will be obtained from large organization in the United States, who will move their plant to Canada later.

Will not interfere in any way with existing orders in States."

The correspondence was closed by cables of the 27th and 28th of April, the effect of which was that the War Office requested the Canadian authorities to proceed according to the cables of the 14th, 17th, and 23rd of April. The cables of the 7th, 14th, 17th and 23rd of April passed during the absence of Colonel Carnegie in British Columbia. He returned on the 26th, and says he saw these cables. The phrase "large organization in the United States," mentioned in the cable of the 23rd, had reference, he says, to the organization represented by Dr. Harris in his proposals of the 19th of March and of the 17th of April. On the 26th of March, in Montreal, General Bertram and Colonel Carnegie met Dr. Harris and Mr. Patterson, of the American Tobacco Company, who then presented a definite proposal for the manufacture of 5,000,000 time fuses. The terms of this proposal are set out in a memorandum made by Colonel Carnegie at the time, in these words:—

"Meeting held in office of the Shell Committee, Montreal, April 26, 1915.

Dr. HARRIS.—The organization that will manufacture the British fuse No. 80 Mark V, will be composed of the following plants:—

American Machine & Foundry Company, Brooklyn, New York.

Yale & Towne Mfg. Co. (also branch at St. Catharines, Ont. Not to manufacture).

The Keystone Watch Case Company, Philadelphia, Pa.

Mr. C. B. Lord represents six manufacturing plants, The Wagner Electric Manufacturing Company, R. Hoe & Co., New York, and another firm.

(Output)—

American Machine and Foundry Co., output.	15,000 per day.
Yale & Towne Mfg. Co., output.	12,000 to 15,000 per day.
The Wagner Electric Mfg. Co., output.	12,000 per day.
Keystone Watch Case Co., output.	3,000 "
Pittsburg firm, output.	12,000 "
	54,000

(Contract with)

The name of the firm is 'Standard Asbestos and Fuse Co., Limited, Toronto.'

Q. Mr. CARNEGIE: When do you hope to commence delivery?

A. Dr. HARRIS: Aluminium parts can be produced within three weeks. Can get 40,000 aluminium parts produced per day by these people. This is guaranteed.

(Makers): The Aluminum Castings Company of Cleveland, subsidiary of the Aluminum Company of America, the people who produce all the aluminium.

Start delivery within four months, and complete entire 5,000,000 within one year. (Memo. This clause struck out in pencil: 'Four months from now start delivery at the rate of 5,000 per day to start, gradually working up to 50,000, completing the whole in one year.')

Dr. HARRIS: Every fuse will be insured by the company.

Mr. CARNEGIE: The understanding is that the contractors be paid two-thirds of the price of the fuse on certificate from the inspectors that the mechanical parts of the fuse have been assembled and proved satisfactory without loading, and that the remainder of the price be paid on certificate of the firing and final proof of the inspector.

To be tested before going to loading plant, and that is the time they get their (1st) certificate.

To be paid for when shipped to the Shell Committee, account the Dupont Powder Company.

Two-thirds of the fuse on completion of the total mechanical parts of the fuse, assembled and passed by inspector, but not loaded.

Dupont people will charge 50 per cent on accepting order, 20 per cent when powder goes into drying, and balance on completion.

Price: \$4.50 for the No. $\frac{1}{4}$ f.o.b. duty to be arranged.

Dr. HARRIS: Will use our best endeavours to establish a fuse factory in Canada.

Have secured the entire output of the Aluminum Castings Company, which is subsidiary of the Aluminum Company of America, which makes all the aluminium on this side.

The Aluminum Castings Company have stated that they will produce 40,000 a day, and guarantee to begin deliveries within three weeks.

(The following memorandum appears in pencil and is scratched out: 'Must start manufacturing fuses in Canada after making.')

On the 29th of April, a draft of proposed clauses of a contract (Exhibit 50, appendix pp. 52-3) covering these points was sent by Colonel Carnegie to Mr. Patterson in New York, and on the 1st of May, these were put into form by the solicitor of the Shell Committee. (Exhibit 343, appendix pp. 1458-9). Mr. Patterson and Dr. Harris had told Colonel Carnegie and General Bertram that they had an arrangement with the Dupont Powder Company for

securing the blend of powder required for loading the time rings for the fuses they proposed to produce; and on the 1st of May, Colonel Carnegie visited the Dupont manufactory, where he learned that, in the meantime, difficulties had arisen, and that the Dupont Company could not undertake to supply powder complying with the specification for the No. 80 fuse. Colonel Carnegie met Mr. Patterson and Dr. Harris in New York on the same day, when they proposed that if the War Office would consent to American tolerance in the time burning, they should erect a loading plant of their own. It was at this point that Colonel Allison appeared on the scene in connection with these negotiations. He had been, at an earlier date, requested by General Hughes to "smash Harris' prices"; and at the suggestion of General Hughes, Colonel Carnegie asked Allison to bring the Shell Committee into relations with competent manufacturers who could introduce an element of competition, with the object of lowering prices; and on the 1st of May, Allison introduced Yoakum, Bassick, and Craven to Colonel Carnegie. It will be convenient, however, to conclude the history of the negotiations with Mr. Patterson and Dr. Harris, before detailing the negotiations with the group introduced by Allison.

General Bertram and Colonel Carnegie seem to have been on the point of concluding their contract for 5,000,000 time fuses No. 80 with Mr. Patterson and Dr. Harris, when the difficulty above adverted to in regard to the supply of powder for the time rings arose. Colonel Carnegie, with the approval of General Bertram, immediately communicated with the War Office, suggesting acceptance of the American fuse No. 85 instead of fuse No. 80.

The War Office replied on the 7th of May that fuse No. 85 would be acceptable, provided the body of the shell were made suitable, "Mark VI." The Shell Committee rejoined, recommending a modification of No. 85, which the War Office, by a cable dated 7th May, declined to accept. On May the 14th, Colonel Carnegie visited New York, saw the experts engaged by Mr. Patterson and Dr. Harris, and satisfied himself as to their ability to manufacture fuse No. 80, and that the proposed contractors had all the necessary aluminium at their command. On the 19th of May, the Shell Committee cabled, recommending that the No. 80 fuse, with American time burning tolerance, be accepted.

On the same day, Mr. Patterson and Dr. Harris visited Ottawa. Mr. Patterson, having in the meantime learned that there were competitors in the field, urged the Shell Committee to conclude a contract, even if it excluded him. He appears to have had no doubt as to his ability to secure a contract through the British agents in New York. The Shell Committee seemed unwilling to give more than \$4.25, while Mr. Patterson stood out for \$4.50, and refused to lower his price. On the 22nd, Mr. Patterson left Ottawa for New York, having expressed to Dr. Harris his feeling that they would not get an order, and that was communicated to the Shell Committee by Dr. Harris. Dr. Harris, however, returned to Ottawa. On the 25th of May, a letter was written to him by General Bertram, offering him a contract for 2,500,000 time fuses (the type being undefined but determinable by the committee) at a minimum price of \$4.25. On the 2nd of June, Mr. Patterson returned, and definitely rejected the proposal of \$4.25. On the 28th of May, the War Office cabled in reply to the cable of the 19th, accepting the fuse No. 80, with American tolerance. Later, between June the 2nd and June the 19th (the evidence leaves much obscurity as to the course of negotia-

tions between these dates) the original price of \$4.50, proposed on April 26th by Mr. Patterson and Dr. Harris, was accepted by the Shell Committee for 2,500,000 fuses. The evidence does not indicate that, at any time after the 26th of April, when the price of \$4.50 was fixed by them, they suggested any variation of, or contemplated receding from, that price.

To revert now to the group introduced by Allison on the 1st of May. At a meeting already mentioned, Colonel Carnegie was informed by Yoakum and Craven, neither of whom was a manufacturer, that they knew nothing of fuses, but would introduce him to manufacturers who did. On the 4th of May, they introduced Mr. E. W. Bassick, a manufacturer (who, however, had had no experience of making fuses), to whom Colonel Carnegie gave plans and specifications of the No. 80 fuse. On the 14th, Yoakum and Bassick introduced Mr. Cadwell, who was already manufacturing the graze fuse, and who, to use his own phrase, "was put forward as the manufacturer." Colonel Carnegie investigated, there and then, the qualifications of Mr. Cadwell and his expert, and afterwards on the same day visited factories which it was suggested might be utilized for making fuses. In the result, Colonel Carnegie left, satisfied that this group was capable of producing fuses as required. Mr. Cadwell says he left the negotiations for the contract in the hands of Yoakum and Bassick, who, he said, impressed him as being capable of negotiating a contract. The last two mentioned visited Montreal on the 18th, and again on the 21st of May, when a letter was written to Bassick offering him a contract for 3,000,000 time fuses, of undetermined type, at the minimum price of \$4.25. Cadwell was not prepared to accept a contract at that price, and finally, at some date not ascertained, between June the 1st and June the 5th, both parties to the negotiations became convinced that the price of the time fuse must be \$4.50, although Cadwell says no agreement was made before the 19th of June.

In the meantime, Colonel Carnegie had received a cable, on May 28th, through which he became aware that one-third of the 5,000,000 shells must be fitted with graze fuses (No. 100). Up to this time, Colonel Carnegie and the other members of the Shell Committee, notwithstanding the terms of the cable of the 17th of April relating to graze fuses, were under the impression that all these shells were to be fitted with time fuses. The order for the whole of these No. 100 graze fuses was given to this group at the price of \$1. The matters touching the fixing of this price will be dealt with later on.

On the day on which an understanding was reached upon this point, an agreement was made between Yoakum, Bassick, and Cadwell, fixing \$1,000,000 as a commission for procuring the contract, viz., 40 cents for each fuse of the 2,500,000, to be divided among them, in the proportions mentioned in the agreement, as and when the fuses were accepted under the contract. The agreement was reduced to writing and executed by the parties; and will be found on pages 804-5-6 of the appendix.

The transaction was, in substance, but the carrying out of what is a common practice of promoters who have acquired a concession or contract and bring into existence a company to which it is transferred. But for Allison's connection with Yoakum and the position Allison occupied in relation to General Hughes and the Shell Committee, to which we shall afterwards refer, the transaction would have been a matter which concerned only the parties to it and persons who should become shareholders in the company.

FUSE CONTRACTS AND OBJECTIONS URGED AGAINST THEM.

Coming now to the matters specifically referred to us for inquiry and investigation, we shall deal first with the contract with the International Arms and Fuse Company. The contract is dated the 19th June, 1915, and is set out in full on pages 121 to 125 (both inclusive) of the appendix. Its provisions may be briefly summarized as follows:—

It provides that the company shall manufacture and deliver 1,666,666 No. 80 Mark V fuses and 833,334 No. 81 fuses, in accordance with the drawings and specifications mentioned in the contract, at the price of \$4.50 per fuse f.o.b. at the company's or the sub-contractor's works for shipment to shell-loading factories designated by the purchaser (the Shell Committee); that deliveries shall commence not later than five months from the date of the execution of the contract, and that for two months thereafter they shall be at the rate of at least 5,000 on each working day, and after the two months at the rate of not less than 20,000 on each working day; that the delivery of the whole 2,500,000 shall be completed not later than 30th April, 1916; that proof of the fuses shall be made by or under the direction of the Chief Inspector of Arms and Ammunition or his deputy, at Quebec or at such other place or places in Canada or the United States as shall be designated by him; that advances shall be made to the company as follows: Ten per cent of the purchase price on the execution of the contract and the delivery to the purchaser of the agreement of guaranty which is afterwards provided for, and 5 per cent in equal monthly instalments over a period of four months from the date of the contract, commencing in one month thereafter. On the first lots of fuse parts manufactured, further advances up to, but not exceeding, 66⅔ per cent of the price of the finished fuses, on the receipt of a certificate from the Inspector of Arms and Ammunition or any of his deputies of the completion and inspection of these lots of the complete sets of mechanical parts of the fuses and of their shipment for delivery to the company's assembling and loading factory or factories; these advances being, as the contract states, for the purpose of aiding the company to finance the contract, but not in any way to constitute an acceptance of any completed fuses by the purchaser; that final payment for lots of completed fuses accepted and shipped shall be due and payable seven days after the mailing in New York to the purchaser in Ottawa, or, at the option of the company, after the delivery to the agency of the Bank of Montreal in New York, of invoices in triplicate, properly numbered, with the bills of lading therefor; that the advance payments shall be deemed to be advances made in respect of and towards payment for the whole 2,500,000 fuses, and shall be applied *pro rata* on the purchase price of lots of fuses as from time to time delivered; that the advance payments of 10 per cent and 5 per cent,

shall be deemed to be advances made in respect of, and towards payment for, the first one million completed fuses covered by this agreement and shall accordingly be applied *pro rata* on the purchase price of the first lots of fuses as the same are delivered from time to time up to the first million fuses delivered; so that on the first one million fuses delivered payment in advance will have been made to the extent of eighty-one and two thirds (81⅔) per cent of the purchase price, and only eighteen and one-third (18⅓) per cent of the purchase price on each lot of fuses making up said million fuses delivered to the purchaser shall require to be paid by the purchaser in order to ac-

plete the payment of the total purchase price therefor; and on the balance of the fuses over and above the said first one million fuses, payment in advance will have been made to the extent of fifteen per cent of the purchase price and only 85 per cent of the purchase price on each lot of fuses delivered to the purchaser shall require to be paid by the purchaser in order to complete the payment of the total purchase price therefor;"

that the purchaser shall have the right, at its option, to cancel the contract as to any deliveries as to which the company shall be in arrear, and in that case the company shall repay any advances applicable towards the purchase price of the fuses "so in arrears and cancelled," but that the company shall not be held responsible for non-performance of the contract due to any cause beyond its control, and that a time allowance shall be granted to the company for any lost time through strikes, fires, acts of God, delays in inspection caused by, or other acts of, the purchaser, or other causes beyond the company's control; and that the company shall from time to time procure and furnish to the purchaser agreements of guaranty by a guarantor or guarantors acceptable to the purchaser, guaranteeing the repayment to the purchaser by the company of all moneys advanced which in the event of cancellation for non-deliveries shall become repayable by the company to the purchaser under the provisions of the contract, and that the agreement or agreements of guaranty at any time in force may be reduced in amount from time to time as the advance payments shall be applied under the provisions of the contract, and that the first agreement of guaranty shall be in a form acceptable to the purchaser and subsequent agreements of guaranty may be in the same form.

The contract also contains the following provision:—

" This agreement is entered into by the purchaser on the understanding that the company in executing the terms and conditions of same shall not knowingly interfere with existing contracts of the British War Office or the Allies of Great Britain for the purpose of the present war."

Mr. Orde, K.C., acted as solicitor for the Shell Committee in the preparation and settlement of the contract. Its provisions correctly set forth the agreement that had been reached by the contracting parties and they are, in our opinion, adequate for the protection of the rights and interests of the Shell Committee under it.

The following advances were made under the contract: \$1,125,000 on the 14th July, 1915; \$140,625 on each of the following dates: 29th July, 30th August, and 3rd November; but no advances were made until the guaranty for which the contract provides was procured and was approved by Mr. Orde. The company whose bond was obtained is a leading Trust and Guaranty company, and the bond fully secures indemnity to the Shell Committee in the event of the contractor failing to repay any of the advances for the repayment of which the contract provides.

Counsel for Mr. Kyte, in his argument, made no attack upon the contract with the International Arms and Fuse Company, or upon its terms, or the price agreed to be paid for the fuses, beyond contending that the contract, or part of it, at all events, should have been let to Canadian manufacturers, or that provision should have been made for their manufacture, in part at least, in Canada, and that the claims of these manufacturers to consideration were overlooked or brushed aside.

In addition to what has just been said as to the price agreed to be paid for the fuses not having been attacked, the testimony of Mr. Charles B. Gordon, Vice-Chairman of the Imperial Munitions Board, establishes beyond question that \$4.50 was, in the spring of 1915, a reasonable price for such fuses. It is true that a contract was subsequently given by the Imperial Munitions Board to the American Ammunition Company at \$4.30; but it was explained by Mr. Gordon that that was less than the fuses could be obtained for elsewhere.

It is, we think, but fair to the International Arms and Fuse Company, to say that although it failed to make delivery within the stipulated time (the contract having provided for delivery of the whole 2,500,000 by the 30th of April, 1916, at which date only about 158,000 had been delivered), the company, some months ago, succeeded in overcoming its difficulties, many of them grave and beyond its control; and has been delivering fuses in large quantities, and that at the time the Commission last sat, the company's output amounted to 29,600 daily.

The company has been spoken of as a "mushroom company." While it is true that it was a new organization created for the purpose of entering into and implementing the contract that was subsequently made with it, it was not, in the sense in which that term was used, a "mushroom company." It was an organization brought into existence by a group of business men of high standing and of large means, who had determined to embark in the business of fabricating fuses, and particularly the 2,500,000 of them which the company subsequently contracted to manufacture for the Shell Committee, as a convenient mode of carrying out the joint adventure—a means usually adopted in the United States of America for such a purpose.

Although the capital of the company was but \$1,500,000, it had behind it the means and credit of the group of business men who had brought it into existence, and who had expended in the erection of its works and plant, and otherwise in connection with its business, before any payments had been made on the contract beyond the \$1,687,500 which had been advanced under its terms, more than \$4,000,000, including this advance. In addition to this, the company has, by means of a very large expenditure, secured the services of eminent ammunition experts; and, according to the testimony of Mr. Patterson, a director of the company, given on the 8th of May last, he and his associates have succeeded in establishing a company which, by the following 19th of June, would be the largest fuse-producing company in the world.

The evidence establishes and we find that no commission, reward, or remuneration for obtaining or assisting in obtaining the contract which was entered into with the International Arms and Fuse Company was promised or paid to any one; and that no person except the company and its shareholders has been or is entitled to any interest in the contract, or in the profits or prospective profits arising under it.

The contract with the American Ammunition Company bears date the 19th of June, 1915, and is set out in full on pages 115 to 119, both inclusive, of the appendix. It provides for the manufacture and delivery by the company of 1,666,666 No. 100 loaded fuses and 833,334 No. $\frac{80}{44}$ loaded fuses in accordance with drawings and specifications referred to in the contract, at a price, for the No. 100 fuses, of \$4, and for the No. $\frac{80}{44}$ fuses, of \$4.50. The times for the deliveries are the same as in the contract of the International Arms and Fuse Company, as are also the terms of

payment and the provisions as to the guaranty bond. The provisions as to advances are also similar, except that the maximum of the advances after the initial 15 per cent to be advanced, is limited to 65 per cent instead of, as in the other contract, 60 per cent, and that provision is made that if and when the amounts of the advances which have been applied towards payment for complete fuses shall exceed \$1,000,000, no further advance shall be made until the amount is reduced to that sum, and so from time to time. There is also a difference as to the mode of application of the advances, which does not seem to require further reference.

It was argued by counsel for Mr. Kyte that this contract was not only open to the objection which he urged against the contract with the International Arms and Fuse Company, but also that the price to be paid for the graze fuses was excessive, and, lastly, that the contract was entered into for the express purpose of enabling Allison to obtain a commission from the contractors, and under pressure from General Hughes, acting with the same motive; but we find that this last contention is not well founded. The other contentions we shall hereafter deal with.

It was suggested that the presence of an endorsement on the contract of a memorandum of its ratification, signed by General Hughes as "Minister of Militia and Defence of the Dominion of Canada, in accordance with authority duly conferred upon him by His Britannic Majesty's Government," indicates that General Hughes had taken part in the negotiations which led up to the making of the contract and gives support to the view that the contract was his contract and not that of the Shell Committee, and was forced upon the committee in order that Allison might obtain a commission. There is, in our opinion, no ground for that suggestion. The making of the endorsement came about in a very simple manner. The legal adviser of the company inquired of Mr. Orde, as was natural, if the Shell Committee was an incorporated body; and having been told that it was not, and how it had been constituted, he and Mr. Cadwell (the president of the company) told Mr. Orde that it would be necessary for the company to raise money in New York on the strength of the contract, and that they were much afraid, with the agreement in that form, that the company's bankers would not understand about the Shell Committee, that it was a purely voluntary body, and they desired to have some further certificate to it, or something that would give it authenticity. They suggested that the Dominion Government or the War Office should execute the contract. Mr. Orde stated that this would be impracticable; and they then asked if General Hughes, who had, on behalf of the War Office, appointed the Shell Committee, would be willing to ratify the contract on behalf of the War Office. This appeared to Mr. Orde to be reasonable and practicable and he then prepared the memorandum endorsed on the contract and subsequently procured the signature of General Hughes; and a similar endorsement was made upon the contract of the International Arms and Fuse Company.

No fault is, we think, to be found with the terms of the contract or with the price of the No. $\frac{3}{4}$ fuse; but, in our opinion, the price agreed to be paid for the graze fuse was excessive. With this aspect of the case we shall deal later on.

The following advances were made under the contract: \$1,040,000 on 14th July, 1915; \$130,000 on each of the following dates: 10th August, 30th August, 28th September, and 3rd November. These advances were fully secured by the guaranty bond of the same company which gave its guaranty in the case of the International Arms

and Fuse Company, and no advances were made until the bond for which the contract provides had been given, and approved by Mr. Orde, or otherwise than in accordance with the terms of the contract.

Mr. Cadwell, who controlled the American Ammunition Company, by himself or his associates had command of sufficient capital to provide all the financial resources needed to carry out the company's contract. He was not himself a manufacturer, but had been connected for many years with the Standard Screw Company and other manufacturing establishments; and Colonel Carnegie was satisfied, from his interview with him on the 14th May, of Mr. Cadwell's ability to organize and procure the effective execution of the work of manufacturing parts; Mr. Cadwell's plan being that a loading plant should be created by the American Ammunition Company, and that the fabricating of parts should be let to sub-contractors. As to the loading plant, Colonel Carnegie was satisfied with the competence of the technical assistant, Mr. Gladick. Mr. Cadwell was connected with companies already engaged in executing contracts for the manufacture of fuses for the British Government, and that he was entering seriously into the business of carrying out the contract with the Shell Committee is not open to doubt. He and his associates appeared to Colonel Carnegie to be capable of carrying out the contract, and they undoubtedly intended to do so. The term "mushroom company" was therefore inapplicable to the American Ammunition Company, as it was to the International Arms and Fuse Company. It is true that the American Ammunition Company failed to make the stipulated deliveries. It was bound to deliver by April 30, 1916, 833,331 time, and 1,666,666 graze fuses; but had then delivered only 2,000 of the first type and 870,000 of the second. It is only fair to add that its loading plant was ready to be operated before the time for deliveries had arrived; and that the deliveries were delayed owing to the failure of its sub-contractors to make deliveries as they had contracted to do, and owing to the difficulty the company met with because of the failure of the finished fuses to pass the firing test, the reason for which had not been discovered until after the inquiry was begun, and that the failure to deliver cannot be attributed to any want of good faith or, in recent months at all events, to want of earnest efforts on the part of the contractor. We may add that these difficulties have since been overcome, and that fuses are being delivered which have passed the firing test.

Apart from the commission provided for by the agreement of the 10th June, to which we shall afterwards refer, there is no evidence that any commission, reward, or remuneration for obtaining, or assisting in obtaining, the contract which was entered into with the American Ammunition Company, was promised or paid to any one; and, so far as appears from the evidence, no person, except the company and its shareholders, has been or is entitled to any interest in the contract, or in the profits or prospective profits under it, and we are satisfied that neither General Hughes nor any member of the Shell Committee has been or is so entitled, or was promised or paid any such commission, reward or remuneration.

ALLEGED DISCRIMINATION AGAINST CANADIAN MANUFACTURERS.

1. MANUFACTURE OF TIME FUSES IN CANADA.
2. MANUFACTURE OF GRAZE FUSES IN CANADA.
3. PRICE OF GRAZE FUSES.
4. PROPOSAL OF RUSSELL MOTOR CAR COMPANY FOR MANUFACTURE OF TIME FUSES.

We shall now deal with the contention that the fuses ought, in whole or in part, to have been manufactured in Canada.

1. MANUFACTURE OF TIME FUSES IN CANADA.

Colonel Carnegie was undoubtedly anxious that all munitions of war that the Shell Committee desired to obtain which could be produced in Canada, should be made in Canada, and he made considerable efforts to bring about the manufacturing of time fuses in Canada, and it was owing to his persuasion that the War Office was induced to consent to the Shell Committee placing the experimental order for the manufacture in Canada of 20,000 time fuses. He ultimately came to the conclusion that it would be impossible to insure the production by Canadian manufacturers of such fuses, at all events with the dispatch that was necessary. Such knowledge as he had of the conditions of the manufacturing industries of Canada and the facilities which Canadian manufacturers then possessed for entering upon the work of manufacturing time fuses, convinced him that they had not them, and could not obtain, the machinery, tools, and trained experts that, in his judgment, were essential to enable them to produce the loaded fuses with the dispatch that he considered necessary.

It is quite clear that, down to the latter part of May, the members of the Shell Committee had not given up the idea of having time fuses manufactured in Canada by Canadian manufacturers, or having them manufactured there, in part at least, by American companies, who would ultimately establish their manufactories in Canada.

We are not, we think, called upon to express an opinion as to whether the view that was taken by Colonel Carnegie and the Shell Committee was a sound view; but the decision of the committee is not fairly open to adverse criticism, and there can be no doubt that it was honestly arrived at; and it is equally clear, when all the circumstances are considered, that it cannot be said to have been unreasonable. In our judgment, the members of the Shell Committee would have assumed a grave responsibility and would have exposed themselves to severe criticism, if the opinion of their expert adviser, which ultimately carried their judgment, had been disregarded, and the contracts had been given to Canadian manufacturers, and their efforts to produce the fuses had resulted in failure.

It is gratifying to know that the efforts that have been made by the Imperial Munitions Board have demonstrated the possibility of successfully producing time fuses in Canada by Canadian manufacturers, and producing them with a rapidity at least equal to that of any production elsewhere. The success that has attended the efforts of the board is, no doubt, largely due to its having established an assembling and loading plant of its own, under the superintendence of Mr. Hathaway, of the Northern Electric Company, which has patriotically placed part of its staff at the disposal of the Imperial Munitions Board. It would have been mere folly for the Shell Committee, organized as it was, to have attempted, in May 1915, the establishment of an assembling and loading plant of its own. It had not been authorized by

the War Office to provide one, and, if it had been, the whole weight would have fallen upon Colonel Carnegie—and he was already overburdened with the details of transactions, the burden of which ought not to have been cast upon the shoulders of the committee's technical adviser. It is quite evident that, at that time, the work of the committee had increased enormously, and that the committee's organization was not adequate to deal with it; and the attempt to do, with the organization it had, what the Imperial Munitions Board has been able to accomplish in the establishment of its assembling and loading plant, would probably have ended in failure.

2. MANUFACTURE OF GRAZE FUSES IN CANADA.

What we have said as to the time fuses does not apply to the graze fuses. It is undoubted that that type of fuse could have been produced in Canada, within the time required by Canadian manufacturers, as has been demonstrated by what they, and especially the Russell Motor Car Company, have since done.

The explanations of Colonel Carnegie for giving to the American Ammunition Company the contract for the manufacture of the 1,666,666 of these fuses which were required by the War Office, and the Shell Committee was authorized to obtain, were that the Shell Committee, by the letter of the 21st of May to Bassick, and the negotiations with him and his associates, had committed itself to give him a contract for 2,500,000 time fuses, if he and the committee were able to agree upon the terms of the contract, and he should be willing to undertake the production of them at a price upon which they should agree, which should not be less than \$1.25; that when the cablegram of the 28th of May brought home to him that graze fuses were required for one-third of the 5,000,000 complete rounds, the committee was in the awkward position of having committed itself to do what it could not then do, to persons who, on the faith of what had been promised to them, had taken steps to complete their organization, to obtain options on materials and offers from manufacturers for the production of the component parts of the fuses, as well as to secure the expert assistance that was needed for the work they purposed to undertake; that in proposing to them that the quantity of time fuses should be reduced to 833,334 and to substitute for the remainder of the 2,500,000, an equal quantity of the graze fuses, was to offer to them a less advantageous contract than had been proposed; that the Cadwell Company was then under contract with the War Office to supply large quantities of these fuses; and that, having regard to these considerations, his judgment was that the course which he took, in giving the contract for the graze fuses to the Cadwell group, was a proper one, and the only course that reasonably could have been taken in fairness to the persons with whom he was dealing.

General Bertram appears to have been of the same opinion as Colonel Carnegie as to the effect of the negotiations with Bassick and his associates and of the letter to Bassick of the 21st of May.

Colonel Carnegie's view as to what it was his duty to do may account for his failure to consider the placing of the contract for the graze fuses with Canadian manufacturers or with the International Arms and Fuse Company, which might otherwise be inexplicable.

Fully recognizing as we do the imperative duty of persons in the position in which Colonel Carnegie found himself, to deal honourably with those with whom they are negotiating, and to carry out promises they have given, though not legally bind-

ing on them, even if loss may be suffered in doing it, we feel bound to say that we do not think a high-minded business man, with Colonel Carnegie's responsibilities, and experienced in affairs, having a full sense of his duty and desirous of fulfilling it, would have come to the conclusion to which Colonel Carnegie came as to the obligation the committee was under, or that he would have hesitated to make what arrangements the new conditions called for, regardless of the fact that the persons with whom he was negotiating might be disappointed, or even suffer loss.

It is plain that the difficulty the Shell Committee found itself in, after the receipt of the cable of 28th of May, would have been avoided if, before Colonel Carnegie and General Bertram took steps which they considered had the effect of committing them to purchase 5,000,000 time fuses, the instructions from the War Office in the cables of the 17th of April, which explicitly required at least one-third of the complete rounds to be supplied with graze fuses, had been examined with care. And we think it regrettable, especially in view of Colonel Watts' letter of the 4th June, in which he called attention to the fact that the draft contracts for fuses contained no stipulation requiring manufacture in Canada, that before finally concluding the contracts of the 19th June, 1915, Colonel Carnegie did not inform the other members of the Shell Committee, and Colonel Watts in particular, of the fact that these contracts provided for the making of 1,666,666 fuses of a kind which could be produced in Canada with due expedition.

We do not doubt that, in the actual circumstances in which he found himself on the 28th of May, Colonel Carnegie was actuated by what he rightly deemed to be the urgency of the case. Weeks had been spent fruitlessly by the Shell Committee in endeavouring to reduce the price of time fuses below \$4.50. To open a new negotiation on the subject of graze fuses, or to reopen the subject of manufacture in Canada with the committee as a whole, would probably present to his mind possibilities of delay from which he would naturally shrink. It should be understood that, by the cable of the 14th, the War Office had been assured that 150,000 complete rounds with fuses could be furnished in July; 400,000 in August; and 2,900,000 by the end of 1915; and while he no doubt recognized that these assurances could not be fulfilled, the fact that they had been given must have exerted no little pressure upon Colonel Carnegie; although, in justice to him, it should be said that they were given in his absence, and that he was in no way responsible for them.

Nothing that we have said is intended to suggest or to imply any doubt as to the integrity of Colonel Carnegie, or to reflect upon his standing or capacity as an expert ordnance adviser; but we feel bound to say that, in our opinion, a mistake was made in placing upon his already overburdened shoulders the work of conducting what may be called the business or commercial part of the transactions with which he had to deal, which was work for the performance of which, so far as we are able to judge, he possessed no special qualifications.

3. PRICE OF GRAZE FUSES.

Returning now to the question of the price of the graze fuses. We have said that the price agreed to be paid for the 3,333,334 time fuses (\$4.50) was a fair and reasonable price. For the 1,666,666 graze fuses, the price of \$4 was fixed by Colonel Carnegie. It was an estimate made by him in the exercise of his judgment as a mechanical engineer, based, in part, upon a tentative estimate received from Mr. Sise, of the

Northern Electric Company, who had not seen a sample and who had explicitly stated that he had not sufficient information to quote a firm price; and, for the rest, upon a drawing and a sample furnished by Mr. Cadwell, but in the absence of a specification. The practice of the Shell Committee had been to arrive at prices, not by competition or by obtaining and comparing rival quotations, but by such estimates.

We think that a fair price for the loaded graze fuse would not, at this time, have exceeded \$3; and we are satisfied that, had Colonel Carnegie been aware of the prices then being paid in the United States on behalf of his own principals, the War Office, to Mr. Cadwell himself, he would not have agreed to a higher price than \$3.

It was argued that Colonel Carnegie's conduct in proposing such a price is only explicable on the theory that he was intentionally allowing a high price in order to provide a commission for Allison and his friends. We are of opinion that this hypothesis must be rejected. The argument rests, in part, upon a misconstruction of Colonel Carnegie's attitude. His attitude was not entirely that of a bargainer. He, believing himself to be fully competent to do so, and acting in accordance with the practice mentioned, fixed a price which in the exercise of his judgment, he conceived to be a fair one. He exposed himself, no doubt, to criticism in failing to check his judgment by reference to available information as to prices, especially when he knew he was dealing with a maker who was then filling orders for the same article for his own principals, the War Office.

The loss to the Imperial Government which would have been entailed if the whole 1,666,666 graze fuses had been furnished at the contract price, has been fortunately minimized owing to the fact that the American Ammunition Company did not make delivery within the stipulated time, and was subject to have its contract cancelled, which enabled the Imperial Munitions Board, in April last, to readjust the terms of the contract, and to reduce to \$2.34 the price of the 1,066,667 undelivered graze fuses (the original price of \$4 having, in October, 1915, been reduced to \$3.72½ by reason of the elimination of detonators and firing test).

What we have said, in dealing with the giving of the contract for the graze fuses to the American Ammunition Company, as to not intending to reflect upon the integrity of Colonel Carnegie or his standing or capacity as an expert ordnance adviser, applies equally to what we have just said as to his action in fixing the price of the graze fuses.

4. PROPOSAL OF RUSSELL MOTOR CAR COMPANY FOR MANUFACTURE OF TIME FUSES.

It was contended that the evidence establishes that Mr. Lloyd Harris and Mr. Thomas Russell, of the Russell Motor Car Company, who were desirous to obtain, and had negotiations with the Shell Committee with a view of obtaining, a contract for their company for the production of time fuses, were informed by Colonel Carnegie that a contract could be secured only through the intervention of Allison; and later, in explaining why a contract had been let to the two United States companies, that it was on account of pressure from "higher up," which it was contended by counsel for Mr. Kyte, meant pressure from General Hughes.

In order to determine whether this contention is well founded, it is necessary not only to ascertain what was said by Colonel Carnegie, but also to consider the circumstances under which the words he used were spoken.

Harris and Russell, having been informed that the War Office had given an order for 5,000,000 time fuses, when in New York, on the 30th April, 1915, communicated

with General Hughes, who was also in New York; and Russell was told by him that he believed there was such an order, that the matter was in the hands of the Shell Committee, and that if the Russell Company "wanted to do anything on it, to get busy and scratch gravel."

Harris met General Bertram and Colonel Carnegie on the 6th May, and was informed by them that the Committee had instructions from the War Office to purchase 5,000,000 time fuses, and was negotiating with United States interests, with the view of placing contracts with them; and it was upon this occasion that the statement as to Allison is said to have been made. The statement as to "pressure" is said to have been made on the 26th of the same month, when, after the letters to Dr. Harris and Mr. Bassick had been written, Harris and Russell met General Bertram and Colonel Carnegie.

Mr. Harris kept and produced before us a memorandum of what took place at the interview of 6th May. (Exhibit 273, p. 588). Referring to what Colonel Carnegie said, it states, in part: "Have arranged with firms to co-operate and the matter is in the hands of Colonel Allison and advised our getting in touch with him." In his examination, Mr. Harris testified that he understood that the work would have to be done in different plants, and that Colonel Carnegie thought that he and Russell should get in touch with Allison and work with him; and that he understood that these firms were to co-operate in making the fuses, a substantial part to be made in Canada, and that he told them he would not do so. Accepting this memorandum as a correct statement in brief of the impressions of Mr. Harris at the time, read in the light of these statements in his evidence, there is, we think, nothing to warrant the conclusion that Colonel Carnegie said anything that was intended to convey the meaning that a contract could be obtained only through the intervention of Allison; and that all that he intended to convey by what he said was that it would be impossible to give a contract to the Russell Company for the loaded fuses, and that the only chance the company would have of securing any part of the work would be to arrange with the firms whose co-operation Allison was endeavouring to secure. Colonel Carnegie was firm in the conviction that time fuses could not be produced by Canadian manufacturers under the then existing conditions, at all events, with the dispatch that he deemed necessary; and he so informed Harris. Harris vigorously combated this position, and asserted as vigorously his confidence in the ability of Canadian manufacturers, including his company, to make the fuses. General Bertram, as Mr. Harris testified, expressed the opinion that the fuses could be made in Canada. It is evident that Harris made it clear to General Bertram and Colonel Carnegie that he would not adopt this suggestion, and that his company would make a proposal direct to the Shell Committee for the manufacture of the quantity of loaded fuses, the fabrication of which his company desired to undertake.

There was another interview on the 13th May, at which Mr. Russell was also present. This interview resulted in a promise that the Shell Committee would retain 1,000,000 to 1,500,000 of the War Office order until the Russell Company was in a position to make a proposal for the manufacture of that number of fuses. General Bertram and Colonel Carnegie told Mr. Harris and Mr. Russell on this occasion, as Mr. Harris testified, that it might be necessary, in the meantime, to close with the concerns with which they were negotiating as to the remainder of the fuses beyond the 1,000,000 or 1,500,000 that were to be reserved.

Our clear conclusion is that, whatever impression Mr. Harris may have gathered from what was said at the interview on the 6th May, it was not in the mind of either General Bertram or Colonel Carnegie to convey, and that neither of them intended to convey, the idea that negotiations with the Russell Company for a fuse contract must be carried on only through Allison. The subsequent negotiations and correspondence took place directly with the Shell Committee, and it is evident that Mr. Harris did not believe that the only way his company could obtain a contract was through the intervention of Allison as a middleman, or he would not have persisted in negotiating directly with the Shell Committee—a course of action which, in that case, would have been fatal to the success of his efforts.

There is a somewhat important difference between the recollections of Mr. Harris and Mr. Russell as to the words that were used by Colonel Carnegie, when it is said that the contracts had been let to the United States companies on account of pressure from "higher up." Mr. Harris' testimony was:—

"Colonel Carnegie did make the statement that pressure had been brought to bear to place these contracts. I did not ask him what the pressure was." (P. 568.)

Mr. Russell's testimony, though he did not profess to give the "exact conversation," was as follows:—

"The other point was that he was pressed by these people to close up because they had certain options on different things which they had to protect, and finally he said that perhaps it was not too much to say to us that there has been pressure brought to bear—I am pretty sure the words were used—from higher up to get the thing closed up without delay.

Q. Closed up without delay?—A. Yes. I understood from that that either meant the Minister of Militia or the War Office. That is what it conveyed to me.

Q. But to get it closed up without delay. Is that it?—A. I am not repeating the words, I am repeating the sense that he conveyed to me.

Q. That is the effect that it conveyed to you?—A. That is the effect that it conveyed to me.

Q. There were two matters, first of all he practically gave you the impression that he had not considered you very seriously until he saw this proposal?—A. Until he saw this proposal worked out, that he had never been to our plant.

Q. And that the other parties that he closed with had options and had pressed him, and pressure had been brought to bear higher up, which you thought might mean the Minister of Militia, although he did not say so, or the War Office, although he did not say so, to close?—A. Yes."

We do not see anything in the statement that Colonel Carnegie is said to have made that indicates that he intended to convey the impression that pressure had been brought to bear by any one to close the contracts with either of the United States companies with any other object than to prevent delay. There was no evidence that even such pressure as that had been used by General Hughes; but if there had been his conduct would not be open to criticism as having been in any way improper—he would have been doing only what it was his duty to do, if he believed that the prompt delivery of the fuses was a matter of urgent necessity, as it undoubtedly was.

Nothing we have said is intended to suggest any doubt as to the truth of the testimony of Mr. Harris or of Mr. Russell as to the impression made upon their minds by what was said by General Bertram and by Colonel Carnegie at these interviews or as to their having stated correctly, according to their recollection, what was said.

COMMISSION TO ALLISON.

Returning now to the agreement of the 10th June, 1915, between Bassick, Cadwell, and Yoakum, providing for the commission, the evidence establishes that, about the month of February in the same year, an arrangement had been made between Yoakum and Allison that they should share equally in any commissions which should be obtained for procuring contracts for munitions of war or supplies required for the purposes of the present war. Both of them were at this time endeavouring to obtain contracts for these things from the Russian Government, and from the Governments of other countries in alliance against the Central Powers.

After the contract with the American Ammunition Company was executed, Yoakum and Allison dealt on the footing that Allison was entitled to receive one-half of what, under the terms of the agreement of the 10th of June, it was provided should be Yoakum's share of the commission; and Allison's right to one-half of this, after deducting the legal and incidental expenses that had been incurred by Yoakum, which amounted to \$3,385, and \$30,000 which it was agreed that Craven should receive in settlement of a claim that he made that he was entitled to a part of Yoakum's share of the commission for having introduced Cadwell to Yoakum and Allison, was recognized by Yoakum. Allison subsequently gave orders on Yoakum as follows:—

An order dated 2nd September, 1915, authorizing the payment to George Washington Stephens 'out of the commission due' to Allison on account of the contract with the American Ammunition Company of \$10,000;

An order bearing the same date authorizing in similar form the payment to E. E. Lignanti of \$50,000;

An order dated 20th January, 1916, authorizing in similar form the payment to Colonel William McBain of \$30,000;

An order dated 3rd March, 1916, authorizing in similar form the payment to M. G. Edwards of \$105,000.

and after deducting the amount of these four orders from Allison's share of the commission, there remains due to him \$25,807.

All of the orders state that the sums mentioned in them are to be paid "on a *pro rata* basis as and when commissions are received by you" (Yoakum).

Payments on account of these orders have been made as follows:—

Stephens, \$1,299.99, Lignanti, \$6,500.80; McBain, \$3,899.99; and Miss Edwards, \$16,809.02.

Stephens and Allison appear to have had an arrangement for sharing commissions, and the \$10,000 which Stephens was to receive was his share of the commission out of which Allison authorized the payment to be made. The payment to Lignanti was in pursuance of an arrangement with Allison that Lignanti should receive a "proportion" of the money that Allison was to receive from Yoakum, in respect of

"deals" in which they were both interested. The \$30,000 order in favour of McBain was given in settlement of a claim which he had against Allison, not connected with the fuse contracts.

The order in favour of Miss M. G. Edwards was a voluntary gift to her by Allison. She is his sister-in-law, and had been from infancy a member of the Allison family, and for thirteen years Allison's secretary; and the gift was made in recognition of this, and as a provision for her.

According to the testimony of Cadwell, he did not know that Allison was entitled to any share or interest in the commission, and the evidence establishes that neither General Hughes, General Bertram, Colonel Carnegie, nor any member of the Shell Committee, had any knowledge of the arrangement between Yoakum and Allison as to commission, or suspected that Allison expected to receive any commission or reward on account of or in connection with the contract or the negotiations which led up to the making of it. On the contrary, Allison gave General Hughes to understand that, in all that he had done or would do in the matter, he was actuated solely by his friendship for General Hughes, and that under no circumstances would he take any reward or commission for his services.

Allison's position, as stated by him to Colonel Carnegie, was that of a personal friend of General Hughes, anxious, on account of that friendship, to render any assistance he could to the Shell Committee; and neither Colonel Carnegie nor General Bertram knew or suspected that in what Allison was asked to do and was doing in connection with the fuse contracts, he was acting with a view to any profit or remuneration to himself from any contract that was contemplated or might be entered into.

The evidence establishes beyond question that after Allison had introduced the Cadwell group and their experts to General Bertram and Colonel Carnegie, his participation in the matter, so far as they knew, came to an end; and in all the negotiations between the Shell Committee and the Cadwell group that led up to the making of the contract with the American Ammunition Company and in the settlement of the terms of the contract, Allison at no time appeared or took any part; and, so far as General Bertram or Colonel Carnegie knew or suspected, Allison had no part in the negotiations or in the making of the contract.

According to the testimony of Yoakum and Cadwell, Allison had nothing to do with the arrangements or negotiations between them and Bassick, and had no part in them or in settling the terms of the contract; and testimony to the same effect was given by Allison himself.

In view of all the circumstances and the subsequent conduct of Allison when, as he said, he first learned that provision had been made for a commission to Yoakum, it is difficult to accept his statement that, throughout the transactions in connection with the contract with the American Ammunition Company, he had no thought of a commission or of the possibility of Yoakum receiving a commission in which he would be entitled to share, and that he supposed, until he learned otherwise after the contract had been entered into, that Bassick, Cadwell, and Yoakum would unite in providing the necessary capital, and themselves undertake the production of the fuses, either as co-adventurers or through a company which they would organize, and of which they would be the shareholders.

After having given the matter our gravest consideration, we are compelled to the conclusion that Allison's explanation cannot be accepted, and to find that, while professing to be acting as the friend of General Hughes and to be doing what he did solely out of friendship for him, and without any expectation or intention of receiving any remuneration for his services, Allison was instrumental in bringing about a contract in which, through his agreement with Yoakum of February, 1915, he was pecuniarily interested, with the knowledge that he would be entitled to share equally with Yoakum in any benefit that Yoakum might receive, either by way of commission or otherwise. We have only to add that if we had come to a different conclusion and had accepted Allison's statement, we would have been bound to say that his conduct in taking the benefit of the agreement as to the commission and accepting a right to share in it equally with Yoakum, without informing General Hughes and the Shell Committee and obtaining their consent, could not be either justified or excused.

What we have said as to Allison's receiving this commission and the absence of knowledge on the part of General Hughes, Colonel Carnegie and the other members of the Shell Committee, that Allison was to be paid any commission or other reward or remuneration, applies also to the order for cartridge cases that was given to the Edward Valve and Manufacturing Company, and to the commission to which Allison would have been entitled if the company had made delivery of the cases according to the terms of the order, to which we shall afterwards refer.

ALLEGED CONTRACT WITH THE PROVIDENCE CHEMICAL COMPANY FOR PICRIC ACID.

The question as to the alleged contract between the Shell Committee and the Providence Chemical Company of St. Louis for the purchase by the Committee of picric acid, may be disposed of in a word. There never was any such contract or any such purchase.

THE EDWARD VALVE AND MANUFACTURING COMPANY'S ORDER FOR CARTRIDGE CASES.

The order given to the Edward Valve and Manufacturing Company is now to be considered. It is dated 16th July, 1915 (appendix, page 892), and is as follows:—

"This order confirms arrangement made with your Mr. Sheraton by our Mr. Carnegie that the Shell Committee will accept all the 18-pr. brass cartridge cases manufactured in accordance with specification L-3307 and drawing No. RL-20711 by your company up to 500,000 during a period of eighteen weeks commencing July 25, 1915.

The said cases to be proved at Quebec, P.Q., or at any other place in America designated by the Chief Inspector of Arms and Ammunition, Quebec, and cases will only be accepted on certificate from Chief Inspector that same have satisfactorily passed the required tests.

Price, \$2.43 each f.o.b. your works Gary, Indiana, or Chicago, Illinois, packed ready for shipment in wood boxes, each containing 25 cases.

Shipments are to be made as instructed by the Shell Committee."

The circumstances which led up to the giving of this order were that orders had been given by the Shell Committee to Canadian manufacturers for from five to six

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million of these cases and, with a view of expediting the production of them, the committee had purchased a large quantity of brass which was supplied to the manufacturers. The cases were not being produced by contractors in sufficient quantities, with the result that shells were piling up rapidly without having any cartridge cases for them. Confronted with this difficulty, the Shell Committee made efforts to get cases made elsewhere, and on the 10th of June, 1916, Colonel Carnegie, with that object in view, communicated with Allison in New York by telephone, telegraph, and letter. The letter is as follows:—

"DEAR COLONEL ALLISON,—I am enclosing specification No. L-3307 and drawing No. 20711, dated February 24, 1915, of cartridge case empty Q.F. M.K. II-L eighteen-pounder. Do you know where we could get a supply of these from stock? The plants we have now manufacturing for us are not yet in full swing and production is rather slow.

We should like to get 200,000 to 300,000 within the next few weeks if at all possible. Our price would be in the region of \$2.10 each.

Hoping you are keeping well,

I am, yours very truly,

"DAVID CARNEGIE."

and the telegram reads:—

"OTTAWA, June 10, 1915.

"COLONEL ALLISON,

Manhattan Hotel, New York City.

Confirming our telephone conversation, weights, cartridge cases empty without primers as follows: Eighteen-pounder high explosive Mark II three pounds four ounces. Eighteen-pounder high explosive Mark I two pounds nine ounces. Four point five two pounds seven ounces.

"SHELL COMMITTEE."

Allison then got into touch with Yoakum, who obtained from the company a proposal to make cases for \$2.47 each. This price was subsequently reduced to \$2.39. When the representatives of the company met Colonel Carnegie for the purpose of settling the terms of the arrangement, it was found that the company had based the price of \$2.39 on the understanding that an advance of 25 per cent would be made by the Shell Committee. At an earlier period the committee had intimated that if a contract were entered into such an advance would be made. Colonel Carnegie, however, explained that the conditions were then different, that a contract was not being entered into but only an order given which would afford the company an opportunity to manufacture and deliver the shells within the stipulated time, but did not bind it to do so; and that under those conditions the Shell Committee would not make any advance. After some discussion as to this feature and a consultation between Colonel Carnegie and General Pease, who was in America making investigations for the War Office, and was present and took part in the discussion, they decided to agree to a price of \$2.43, and that was assented to by the company. It appears that the company had agreed with Yoakum to pay him a commission of 4 cents per fuse for the fuses which should be delivered; and under Allison's arrangement with Yoakum he was entitled to one-half of this commission. Neither Colonel Carnegie nor the Shell Committee had any knowledge of this, or that

any commission was to be paid to any one. Colonel Carnegie communicated with Allison in consequence of Allison having told him some time previously, in New York, that "he would be prepared to give any information he could regarding the manufacture of any kind of munitions that were required if he could help in any way or be of any service"; and Colonel Carnegie was told by Allison that what he offered to do he would do out of pure friendship for General Hughes—and this statement Colonel Carnegie believed. General Hughes had nothing to do with the making of the contract or with the request that Colonel Carnegie made to Allison; and indeed, so far as appears from the evidence, knew nothing about the transaction being entered into or contemplated. The difference between the price proposed by the company (\$2.39) and that finally settled upon (\$2.43) happens to be the same as the amount of the commission which Yoakum was to receive, but this was a mere coincidence, and the increase of the price came about in the way stated.

The company did not make any deliveries within the stipulated time; but, on applying to the Imperial Munitions Board and giving explanations of the causes for its failure to deliver, it received, from the Board, a new order for the cases.

The only persons interested in the order given by the Shell Committee or in the profits which would have been made if it had been filled, were Yoakum and Allison, to the extent of the commission that it was agreed should be paid, of four cents for each cartridge case which should be delivered, and the company itself.

In concluding our report, we deem it proper to say that we have reviewed the evidence at considerable length, in order that Your Royal Highness may be informed, not only of our conclusions, but also of the reasons on which they are based.

W. R. MEREDITH.

L. P. DUFF.

OTTAWA, July 20, 1916