

1924.



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

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REPORT *G. Sturrahaw*

Clerk of the Senate.
3rd Oct, 1924

FROM THE

JOINT COMMITTEE OF PUBLIC ACCOUNTS

UPON

CERTAIN TRANSACTIONS BETWEEN THE CO-OPERATIVE ESTATES LIMITED, OF HOBART, AND THE WAR SERVICE HOMES COMMISSION.

Presented pursuant to Statute; ordered to be printed, th, 1924.

[Cost of Paper:—Preparation, not given; copies; approximate cost of printing and publishing, \$]

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by H. J. GREEN, Government Printer for the State of Victoria.

No. —F.12424.—PRICE 6D.

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

REPORT

UPON

CERTAIN TRANSACTIONS BETWEEN THE CO-OPERATIVE ESTATES LIMITED AND THE WAR SERVICE HOMES COMMISSION.

INTRODUCTORY.

On the 17th July, 1924, the honorable member for Denison (Mr. D. J. O'Keefe) moved the adjournment of the House of Representatives for the purpose of discussing a definite matter of urgent public importance, namely, "The actions of the War Service Homes Commission in its transactions with the Co-operative Estates Limited of Hobart." During the debate a request was made that the matter be referred to the Public Works Committee for consideration and report, and at the close of the discussion the then Minister for Works and Railways (Mr. P. G. Stewart) intimated that "In deference to the expressed wishes of honorable members in all parts of the Chamber I am agreeable that the claim by the company shall be investigated by the Public Works Committee."

On the 25th July the Minister informed the House that, on proceeding to take the necessary steps to place the matter before the Public Works Committee, he found that, under the Public Works Committee Act, that body had no power to make such an inquiry, and that he proposed to have the matter placed before the Public Accounts Committee for inquiry and report.

On the same day Mr. Stewart addressed a communication to the Chairman of the Public Accounts Committee in which he stated—

In accordance with my intimation to the House, and the concurrence of that body, I am presenting for inquiry by your Committee the representations of the Co-operative Estates Limited, which were brought before the House on the 17th instant by the Honorable D. J. O'Keefe, M.P.

The Commission has issued a writ against the company for a total of £2,827 6s. 0d, judgment in connexion with which has been signed. This amount is made up as under—

| | £ | s. | d. |
|--------------------------------------|--------|----|---------|
| Balance of advance due by company .. | 2,742 | 5 | 11 |
| Interest at 5 per cent. | .. | .. | 69 8 1 |
| Costs | .. | .. | 15 11 6 |
| | £2,827 | 5 | 6 |

The advances were made to the company to enable it to acquire plant to satisfy two contracts entered into with the Commission, one for the erection of fifteen houses at Belmont, Sydney, and the other for the erection of 64 concrete "shells" at Sydney. The preliminary agreements entered into, which define the relationship of the parties, in the event of the company being successful in tendering for the erection of homes, are dated the 31st January, 1920, covering fifteen homes

at Sydney; 31st January, 1920, covering 80 homes at Hobart and Launceston; and the 4th September, 1920, covering the construction of 64 "shells" at Sydney.

As I understand the case put forward by the company, it is that the company was led to believe that contracts for the building of a considerable number of houses would be entered into with the company, and that as those contracts did not result the company is entitled, on a moral basis, to either compensation or, alternatively, that the debt by the company to the Commission should be waived.

The Commission claims that the contracts entered into with the company speak for themselves, and by their terms show that no such inducement was held out to the company, and that the company is not entitled to any compensation or relief from its debt.

"Shell" was the term used by the company to indicate the concrete portion of a cottage comprising foundations, walls, and chimneys.)

COMMITTEE'S PROCEEDINGS.

The Committee opened its inquiry in public on the 6th August, 1924, and the following witnesses were examined—

William Gordon Murchison, managing director of the Co-operative Estates Limited, Hobart, on 6th, 8th, 7th, 8th, 9th, 12th, 13th, 14th, and 25th August.

Charles Wentworth Peterson, secretary to the War Service Homes Commission, on 11th, 12th, 14th, and 25th August.

Gilbert Macpherson Johnstone, solicitor, Melbourne, formerly chairman of directors of the Co-operative Estates Limited, Hobart, on 21st and 22nd August.

Messrs. Murchison and Peterson, representing the company and the Commission respectively, were present during the taking of all evidence.

There were also made available to the Committee the files of the Central Office and the New South Wales branch of the War Service Homes Commission, relating to its transactions with the Co-operative Estates Limited, and numerous files of correspondence and other documents belonging to the company.

The Committee inspected one of the Wilson patent plants in operation, and two houses erected by this system near Melbourne.

MEMBERS OF THE COMMONWEALTH PARLIAMENTARY JOINT COMMITTEE OF PUBLIC ACCOUNTS.

(Fourth Committee.)

JAMES GARFIELD BAYLEY, Esquire, M.P., Chairman.

JAMES EDWARD FENTON, Esquire, M.P., Vice-Chairman.

Senate.

- *§ Senator BENJAMIN BENNY.
- † Senator WILLIAM KINSEY BOLTON, O.B.E., V.D.
- † Senator RICHARD BUZACOTT.
- * Senator HAROLD EDWARD ELLIOTT, O.B., C.M.G., D.S.O., D.O.M.
- || Senator HATTIE SPENCER FOLL.
- ‡ Senator JOHN DUNLOP MILLEN.
- * Senator EDWARD NEEDHAM.

* Appointed 6th July, 1923. † Retired 20th June, 1922. ‡ Resigned 29th June, 1922. § Elected 20th August, 1924. || Appointed 10th August, 1924.

House of Representatives.

- JAMES AITCHERSON JOHNSTON HUNTER, Esquire, M.P.
- NORMAN JOHN OSWALD MAKIN, Esquire, M.P.
- WALTER MOFFITT MAKIN, Esquire, M.P.
- THOMAS PATERSON, Esquire, M.P.
- JOHN EDWARD WEST, Esquire, M.P.

OUTLINE OF TRANSACTIONS.

The Co-operative Estates Limited is a company which was established in Hobart for the purchase and subdivision of suburban properties, and, whilst not trading as an ordinary building contractor, it built houses for the purchasers of its subdivided allotments on the Crédit Foncier system. The company also holds the patent rights for the Wilson steel moulding plant for monolithic hollow wall concrete construction.

In September, 1910, the company, at the request of Mr. W. J. Earle, then Deputy Commissioner for War Service Homes in Tasmania, contracted to erect a group of houses near Hobart. Whilst this work was in hand the company was asked whether it would negotiate to build on the mainland. At first it declined to undertake building operations, but offered to grant a licence to the Commission to build on a royalty basis. Eventually, however, Mr. W. G. Murchison, managing director of the company, addressed a communication to the Deputy Commissioner for Tasmania on the 21st October, 1910, in which the following paragraphs appear:—

I have pleasure in submitting herewith for your further consideration the basis of co-operation which should enable your department to effect a saving of at least One million pounds (£1,000,000) if only half the War Service Homes were built under our system.

We will take the responsibility of the purchase of 225 plants on the terms submitted, and by devoting all our energy and organizing experience to the work we have no doubt that we can arrange for the erection of at least 10,000 houses each year, and further believe that sufficient men can be trained in the first year to double the output if necessary.

The "rough headings of proposition" submitted with this letter were—

Company to purchase 225 plants to enable erection of 10,000 cottages per annum throughout Commonwealth. This will require £150,000 outlay, and the company will need to be financed up to 75 per cent. The amount advanced to be repaid with interest at 5 per centum per annum by the payment of £5 for each cottage of five (5) rooms constructed, with larger payments, pro rata, on larger houses.

The Commission to have first call on the plants on a royalty basis of £2 per house. When Commission erects for itself, it purchases the plant at cost price to company, plus 5 per cent.

The Commission to advance the company £25,000 against royalties, to be repaid with interest at 5 per centum per annum out of the first royalties payable by the Commission.

(This advance was required by the company to enable it to organize and develop its operations for private construction in the Commonwealth and other countries.)

The company will, if desired, erect the cottages in all States of the Commonwealth at actual agreed cost, plus 10 per cent., on the basis of constructing concrete portions only. In this case the Commission also pays the royalties of £2 per house.

The company will erect ten demonstration cottages at both Sydney and Melbourne, at actual cost, plus 10 per cent., and royalty. The cost to include travelling expenses—incurred beyond wages—of foreman and workmen, if any are necessary. The company will, in these cases, erect concrete only.

If the Commission desires to erect cottages as provided in paragraph 2 the company will provide, at the Commission's expense, an expert foreman to teach workmen the use of plant.

In order to enable the company to undertake extensive building operations throughout the Commonwealth, and to organize its operations effectively, it must be relieved of the

unpaid balance of the New Town and Newlands properties. Otherwise neither the managing director nor its foreman (Mr. Robert Wilson) would be free to leave the State. . . .

A few days later the Commissioner (Colonel James Walker) appointed Mr. Earle "Supervising Engineer on the Central Administration Staff," and instructed him to proceed to New South Wales—his duties to include "immediate commencement of vigorous building policy." Before leaving Hobart, Mr. Earle arranged that he would take this matter up at the earliest possible date, and on the 31st October, 1910, he telegraphed to the company from Sydney—

If you are ready to take contract here, say for 500, or less, groups of 100, plus 5, come Sydney. Bring your figures, quantities your tenders Tasmania. Same types here. Reply.

In response to this communication the company sent Mr. G. M. Johnstone, chairman of directors, to Sydney as its representative, and he discussed the matter with Colonel Walker and Mr. Earle for some days. Mr. Johnstone informed the Committee that throughout the discussions he took up the attitude that his company would only grant a licence over its plants to the Commission, and would neither build nor become a contractor, but, as the Commissioner insisted that the company should build a small block of concrete shells to show definitely the saving as against brick, so that the Commission would not subject itself to any criticism through people interested in other forms of construction, he agreed to the company building fifteen concrete shells as a demonstration only, on the understanding that the Commission would then proceed to build on a larger scale. The Commissioner agreed to finance the purchase of one plant, but later, according to Mr. Johnstone's evidence, this was increased to three, as Mr. Earle stated that three, and many more, plants would be required when his big scheme came into operation.

Mr. Johnstone intimated that it was on this basis that Mr. Earle, with his assistance, prepared a memorandum for submission to the Commissioner. This memorandum reads as follows:—

Sydney, 11th November, 1910.

The Commissioner, War Service Homes Commission, Melbourne.

SUBJECT: BUILDING OPERATIONS IN NEW SOUTH WALES—REINFORCED CONCRETE.

I have been in communication with Messrs. the Co-operative Estates Ltd., of Hobart (who are building under contract for us a group of houses at Moonah), the construction of which the Commissioner saw in course of erection on his last visit to Tasmania.

In order to expedite the work of building homes in this State, I have invited the firm to confer with me here, and their managing director has arrived in Sydney, and they are prepared to meet me on this object.

They are, as you know, possessors of the Wilson's Patent Steel Moulding Plant for hollow wall construction, detailed plans of which I have already forwarded to Central Hobart. I have proved the reliability and efficiency of this construction by various tests and inspection of properties constructed by them, the periods of erection being from nine years to newly completed homes.

I am satisfied as to the hygienic, sanitary, and sound efficiency of the construction, and the firm have proved the advantages as regards its cheapness to me by signing the existing contracts with the Commission for a group which showed a saving of approximately £40 per house on types 2 and 22.

I have a big scheme to put up to the Commissioner whereby I can build 10,000 houses per year by means of this plant, and I estimate that I can make a saving on cost of construction throughout the Commonwealth, in connection with the Commissioner's activities, of an amount of anything up to One million pounds (£1,000,000), but this will be the subject of a later and more detailed report.

For the purpose of demonstrating the possibility of considerable saving being effected on actual cost of constructing homes in this State, which saving I estimate as being certain, vide my contracts in Tasmania, I desire authority to enter into an agreement with the company based on the following lines:—

1. The company to erect a group of fifteen homes with three plants in Sydney suburbs, similar types of houses as at present building in Hobart for the Commission.
2. The Commissioner to advance 90 per cent. of the cost of purchase of plant. The company will repay this sum at the rate of £10 per house, with interest at 5 per cent. per annum. If, on the completion of the fifteen homes constructed, it is decided not to build any further homes with the plant or by the company, the company will forthwith pay the total moneys advanced on the plant, being the balance due, with interest as above, namely, 5 per cent. on all outstanding balances.
3. Erect concrete (shell only) homes complete with chimneys, &c., at agreed cost price, plus 5 per cent. The Commissioner to have a clerk of works on the job to check costs, &c., eliminate waste, and to look after the Commissioner's interests generally.
4. A royalty of £1 per house to be paid by the Commission, which sum is nominal, and is charged purely to pay the patent.
5. Progress payments, 80 per cent., 10 per cent. on completion, and 10 per cent. on completion of the term of maintenance, say, three (3) months.
6. Mr. R. Wilson, managing foreman, Co-operative Estates Limited, to be resident on the job, and supervise the erection of the plants and construction on behalf of the Co-operative Estates Limited.

I should be glad to be advised of your decision by wire, as Mr. Johnstone is at present holding his staff in Hobart in readiness to come to Sydney immediately on receipt of my notifying him in the above terms.

(Sgd) W J EARLE, Supervising Engineer

This memorandum was referred to the Director-General of Works for the Commission (Mr. J. C. Morrell), who recommended that a practical experiment be made by the erection of fifteen houses under this system.

On the 14th November, 1910, the Commissioner endorsed a carbon copy of Mr. Earle's memorandum, "Approval given, and authority hereby to prepare an agreement in accordance with, and on above, basis."

It is noticed that on this carbon copy, on the official file, the rate of interest to be paid by the company for the advance referred to in paragraph 9 has been altered in pencil to read 6½ per cent. in lieu of 5 per cent.

A copy of the Supervising Engineer's memorandum with the Commissioner's endorsement was later on the same day handed to Mr. Johnstone, as it was stated by Mr. Murchison on one occasion when giving evidence, "the basis of operations," and on another occasion as "the basis of negotiations for the contract." The copy supplied to the company evidently showed the rate of interest at 6½ per cent., as that figure appears in the copy of the memorandum submitted by Mr. Murchison to the Public Accounts Committee. No exception appears to have been taken at any time to the higher rate of interest.

The Committee was informed by Messrs. Johnstone and Murchison that, on the same day, Mr. Earle sent an urgent telegram to the company in Hobart asking "to come to Sydney immediately to commence operations." The company's representatives were not able to produce this telegram to the Committee, nor was there any record of it on the official file. There is however, on the file a letter, dated 22nd November, 1910, addressed by Mr. Murchison, in Hobart, to Mr. Earle, in which he wrote—

I received a wire from Mr. Johnstone, on Wednesday, suggesting that Mr. Wilson should sail by the *Mirina* to-day. Mr. Wilson was the managing foreman for the company referred to in paragraph 6 of the memorandum.

On the 20th November, 1910, Mr. Earle submitted to the Commissioner a draft contract providing for the erection of fifteen shells at cost price, plus 5 per cent., covered by the following minute:—

Does Colonel Walker approve of my draft agreement hereto being forwarded to Crown Solicitor to advise further as to legality and protection to the Commissioner?

Just to be a straight-out tender for construction of building. We will agree to supply any or all material at the price scheduled by company, as is the case in other contracts now being let.

The Commission will then agree to purchase standards and forms as mentioned, such plant to remain the property of Commission until such time as it is paid for by company.

That the Commissioner desired the erection of complete homes following upon the submission of satisfactory tenders is emphasized by his letter of the 1st March, 1920, to the company, as follows:—

I desire to state, in answer to your letter—

I did not request you to establish branches in Sydney and Melbourne, with the object of your taking in hand the construction of 1,000 homes in each place.

My discussion with you arose out of my inspection of concrete houses in Tasmania, and your very strong representation that with your system you could build concrete houses considerably cheaper than similar houses in brick. On your figures, paragraph 2 of your letter, you apparently estimate £100 per house can be saved; and, in paragraph 9, you state, "We can positively and conclusively prove that a saving of £50 per house can be effected if brick is taken against concrete."

Agreements were completed with you for an advance of 90 per cent. on cost of plants, subject to contracts being entered into for the erection of fifteen buildings in New South Wales and 80 in Tasmania.

When you submit satisfactory tenders in accordance with clause 15 of the agreements entered into between your company and myself on 31st January, 1920, I will immediately deal with same.

This communication was sent in reply to a letter from Mr. Murchison, dated 25th February, 1920, in which it was stated—

We desire to express our appreciation of the request you made at Wentworth-street, that we should establish branches in Melbourne and Sydney, with the object of our taking in hand the construction of a thousand homes in each place, following, as it did, your inspection of the first group of the 500 cottages being erected by the Electrolytic Zinc Company with our patent plant.

We also wish to thank you for furnishing us with copies of the minutes, written by your constructional engineer, from Sydney, under dates of 11th and 14th November, in which entire approval of our construction is recorded, and in which a basis of operations was arranged. . . .

construction of 64 concrete shells at Belmore, near Sydney. The amount of the contract was £11,478 3s., and the work was to be completed within six months from the date of delivery of the plant, towards the cost of which the Commission agreed to advance 90 per cent. The amount advanced under this contract was £1,803. The conditions of this contract were similar to those obtaining in the agreement for fifteen houses, dated 31st January, 1920, already quoted.

Notwithstanding the specific conditions of the agreement, the Deputy Commissioner, on the 27th November, 1920, agreed to allow a proportionate increase in the contract price equal to any increase in wage rates of pay; on the 16th idem, although no deposit had been paid by the company in this case, he approved of progress payments being made up to 90 per cent. of the work done, and on the 22nd February, 1921, he issued the following instruction:—"It has been decided to apply the principle of payment in full as soon as the work on each house is completed for the contract with the Co-operative Estates for the erection of 64 shells in concrete. No retention need be made for maintenance on this work."

During the currency of this contract, Mr. Hutchings retired from the Deputy Commissionership and joined the New South Wales Concrete Company as managing director. This company was formed for the purpose of acquiring and taking over the business and operations in New South Wales of the Co-operative Estates Limited; and, having taken over the patent rights for the plant in New South Wales, it offered, in December, 1921, to tender for the erection of War Service Homes.

The New South Wales Concrete Company subsequently went into liquidation, and the plant reverted to the Co-operative Estates Limited, which company had, on 7th February, 1922, been served with notice forbidding it to sell or dispose of the plant until the money owing thereon to the Commissioner had been paid.

Although the Commissioner had approved of contracts for shells being entered into on the understanding that the cost of the completed homes would not exceed the maximum allowed under the Act, the costs of the houses erected under this contract ranged from £781 to £382, inclusive of land and all other charges, only sixteen of the houses being below £800.

REPAYMENT OF ADVANCES.

During the progress of these contracts the re-organization of the War Service Homes Commission was being effected, and the Government's change of policy concerning the War Service Homes scheme was announced, whereby day-labour work and the building of groups ceased, and only single houses for specific applicants were to be erected by contract.

A Business Adviser (General Sir J. W. McCoy) having been appointed to advise the Minister concerning the various contracts of the Commission, the agreements with the Co-operative Estates Limited were referred to him. General McCoy interviewed representatives of the company, and reported extensively on the different aspects of the transactions. In the course of these interviews he was informed that the company would be satisfied (a) if it had fair opportunities of

tendering for shells, or (b) if that were impracticable, of tendering for concrete cottages complete, and (c) if modifications for the repayment of advances could be made, so that the company would not be called upon for, approximately, £4,000 in a lump sum.

Frequent and lengthy representations by and on behalf of the company were also made to the Assistant Minister (Mr. Rodgers), and these were continued with his successor (Mr. Lamond).

The company was invited to tender for the works advertised from time to time by the Commission, but no tenders were received from it.

As the Commission did not propose to let any further contracts to the company under the original agreements, the amounts advanced by the Commission to the company became due on the completion of the 64 shells, viz., about 10th January, 1922. The first definite demand for repayment of the outstanding balance of the advances was made on the 13th April, 1922, and on the same date the company was advised that, although the Commission could not accept any responsibility or liability for the payment of a claim made by the company in respect of increases in award rates of wages paid in connexion with the contract for the erection of 64 shells, the Commission was agreeable to meet the claim to the extent of £207 6s. 5d. as an act of grace, provided that it was satisfied, after inspection of the company's books, that a loss had been sustained by the company, and on condition that the amount be credited to the company in reduction of the money owing to the Commission for advances.

In view of the financial difficulty with which the company stated it was faced, it was decided to extend the period for the repayment of the amounts due, and, on 18th July, 1922, the company accepted an agreement which provided—

(a) That on 6th April, 1922, an amount of £3,438 16s. 6d. was still due and unpaid; and

(b) that in consideration of the Commissioner refraining from requiring immediate payment of the above amount, the company would pay £250 each quarter, plus interest at 5 per cent. to date of payment, on the 1st September, 1st December, 1st March, and 1st June in each year—the first instalment being payable on 1st September, 1922;

(c) that the Commissioner would credit, in part payment of the first instalment and interest, the amount of £307 6s. 5d. being allowed to the company for increased cost of labour in the performance of its contract, so that the instalment due on 1st September, 1922, would be met by the payment of the sum of £307 6s. 5d.;

(d) that upon failure by the company to pay any instalment or interest on its due date, the whole amount outstanding would be immediately payable and recoverable by the Commissioner.

When giving evidence before the Committee concerning this agreement, Mr. Murchison stated—

Confronted with the peremptory demand, and hesitating to enter upon expensive litigation with the Government, my company, after making strenuous and ineffective protests, accepted, as the lesser of two evils, and, I now think, mistakenly, the unconditional responsibility for the balance of the money advanced to purchase plant which, with interest added, amounted to £3,438 16s. 6d., to be paid in quarterly instalments at the rate of £1,000 per annum of principal, with interest added. Although thoroughly solvent, my company, through the calls made on its cash resources, owing to having taken on the contracts for the Commission, which, as I have previously shown, were never contemplated, and from which we had incurred an overdraft with our bankers of over £5,000, was unable to meet this unexpected demand.

and later—

I acted then without legal advice, and that is where I made a serious mistake. I felt that we had undertaken an obligation which was our pigeon. I naturally did not want to quarrel with the War Service Homes Commission, which I thought would be our biggest customer.

The payment of £50 7s. 4d. due on the 1st September, 1922, was made.

On the 15th November, 1922, Mr. Murchison approached the Assistant Minister (Mr. Lamond) with a request from the New South Wales Concrete Company, which had made itself responsible to the Co-operative Estates Limited for the money advanced on the plant, that, as it was unable to meet its obligations, the capital liability on the plant should be reduced to its actual value at the time building operations ceased for the Commission, repayments of principal should be deferred for twelve months, and payment of twelve months' interest waived.

The Minister declined to re-open the question, on the ground that it had been fully discussed when the agreement was entered into.

Two days later, however, Mr. Murchison wrote to the Minister—

At the time the recent agreement was arranged, we had every reason to believe that the New South Wales Concrete Company would be able to meet their obligation to us, which would have covered our obligation to the Commissioner, and, therefore, we did not unduly press that the plant should be written down to its real value.

We are not in any way interested in the New South Wales Concrete Company beyond their obligation to us in connexion with the plants, and I have satisfied myself by personal investigation that they are not in a position at this juncture to meet their obligation, but am equally satisfied that they will be able to do so if the concession asked for is granted and, if not, I am in a position to say positively that the obligation can, and will, be met later on without further question by my company.

As the instalment due on the 1st December, 1922, was not paid, the matter was referred to the Crown Solicitor for action under paragraph (d) of the arrangement accepted on 18th July, 1922, and, after further correspondence between the company, the Crown Solicitor, and the Commission, a writ was issued and served on the company on the 25th January, 1923, whereupon the managing director of the company, after an interview with the Crown Solicitor, undertook that, if the payment which was due on the 1st December, 1922, were held over and made payable three months later than the final payment arranged in the agreement, all subsequent payments would be met on due dates. In view of the undertaking, the Commission instructed the Crown Solicitor to withdraw proceedings.

The payment of 1st March, 1923, was duly made.

In settlement of the amount of £200 14s. 0d. due on the 1st June, 1923, the company paid the sum of £200 in cash, and for the balance forwarded a promissory note due in one month. The promissory note was declined, and the cash was paid before the end of the month.

As the result of an interview between the Minister for Works and Railways (Mr. P. G. Stewart) and Mr. Murchison, on the 23rd August, 1923, at which Senator H. J. M. Payne and Mr. A. C. Seabrook,

were present, and the whole matter fully discussed, the Minister deferred the payment due on the 1st September, 1923, for 30 days to enable the company to meet its obligation, and on the distinct understanding that future instalments would be paid on their due dates in accordance with the agreement entered into by the company. The Minister also intimated by letter to the parties concerned that, "I have perused the voluminous correspondence in the Department in regard to the transactions of the Co-operative Estates Limited and the Commission, and I find that the then Business Adviser in the Commission was directed by the then Assistant Minister to inquire closely into the representations previously made by Mr. Murchison. The Business Adviser did this, and reported that the company had neither a legal nor a moral claim for compensation or other benefit from the Commission; and after perusal of the file, I share this opinion. I cannot, therefore, accept Mr. Murchison's claim for compensation to be decided on a 'moral' basis."

Concerning this payment due on 1st September, there was addressed to the Commission, on the 20th August, 1923, a letter signed by Messrs. H. Nairn Butler, A. E. Ray, W. F. Dennis Butler, and D. H. Lines, four of the directors of the company, reading—

Our company is due to pay to the War Service Homes Commission the sum of £224 on the 1st proximo, being an instalment and interest on the part of the company's indebtedness of £2,725.

Just at present, the directors are negotiating with the Tasmanian Finance Company Limited with a view to altering the management of the company and reducing its annual expenditure. If this can be effected, it should make the payment of the future instalments of the indebtedness on a surer basis. Pending the finalization of the negotiations, it is inconvenient for the company to pay its coming instalment, and we are therefore writing to ask for a month's grace to enable us to endeavour to finalize the negotiations. If the Commissioner can see his way to consent to this course, it will materially assist us in our endeavour to place matters on a surer footing.

After this communication had been quoted during the evidence given by Mr. Peterson before the Public Accounts Committee, Mr. Murchison placed the following letter before the Committee, dated 8th August, 1923:—

Regarding the use of this inquiry of the letter of the 20th August, 1923, signed by the directors of the company, I can only regard this as being done for the purpose of endeavouring to discredit my evidence.

I would point out that, even accepting the statements contained in the letter as true, they have no relation whatever to the original negotiations and agreements, nor any of the events upon which the company's disputes with the War Service Homes Commission now under investigation are based.

The hostile attitude of the directors towards myself at the time the letter was written was, on the other hand, due to their regarding me as, to some extent, responsible for what had happened to the company, through my placing too much trust in the Commission, and not being sufficiently present to see that the company was legally protected from the Commission taking up the attitude it did.

I would further point out that, of the directors who signed this letter, only one now remains on the Board. Doctor Butler, who instigated the letter, subsequently resigned, and recorded on his written resignation the fact that he had lost the confidence of the shareholders. I have sent to Hobart for the original, which I will produce on its arrival. I have

the confidence of the directors who still remain on the Board, and the confidence of an overwhelming majority of the shareholders.

Since the appointment of the receiver, which immediately followed the issue of the writ by the Commission, I have for nine months devoted practically the whole of my time in endeavouring to have the wrong done to the company righted. During the whole of that time, I have not been paid any salary, but have had to pay my own living expenses by raising a second mortgage on my home in Hobart.

I submit it is grossly unfair that this letter should now be used for the purpose of discrediting me in the eyes of the Committee. It is significant that this letter arrived shortly after a letter I had written to the Minister on 24th August, 1923, in which I strongly protested against Mr. Peterson's obvious hostility to my company, and which the Minister, in my presence, told the Prime Minister he had never received.

In the course of a letter, dated 7th September, 1923, Mr. Murchison informed the Minister—

In the meantime, however, the crux of the matter lies in the fact that your decision with regard to future payments will obviously force my company, with a capital of £25,000, into liquidation. I regret to say that it is very doubtful if the Commission could then recover any further payments for the plant, as in order to meet previous payments, our properties were all mortgaged to the extreme limit, and the Bank of Australasia holds a debenture for £9,000, which becomes operative to the full amount of our overdraft should a writ be served on us.

On the 27th September, 1923, Mr. Murchison waited on the Minister with a request that, as the company was being reconstructed, the payment of instalments be deferred for twelve months to enable it to realize on some of its properties; and on the 2nd October he submitted a statement of the company's receipts and expenditure in support of his contention that the company could not for the time being pay its way.

The deferred payment was not made on the 1st October, and the Crown Solicitor was instructed to issue a writ for the balance owing to the Commission. Following the issue of this writ, special representations were made on behalf of the company by the Honorable L. Atkinson, M.P., and the Crown Solicitor was informed that if the company tendered the instalment due, together with interest to date and the legal costs, he was authorized to accept the money and withdraw the writ. No payment was made, and the Minister decided that the action instituted must proceed. This decision was endorsed by Cabinet on the 10th November, 1923. When this writ was issued, the Bank of Australasia demanded immediate payment of the sum of £4,103 10s. 0d. owing to it. This sum not being forthcoming, the Bank appointed a receiver under its debenture, and took control of the company's affairs. This, it was stated by Mr. Murchison, precipitated action by a number of other creditors of the company. Since that time, the Bank has collected all moneys payable to the company, which has consequently had no funds of its own to meet the amounts owing to the Commonwealth or any other creditors. Just prior to this time, the company was negotiating with a certain financial institution to lend it, on first mortgage, a sum sufficient to liquidate its liabilities, approximately £70,000. On the issue of the writ, these negotiations ceased. Mr. Murchison stated that it was practically certain the Commission would get no results from its action, because forced liquidation would cause the

first mortgagees to go into possession, or otherwise realize on their securities. In such a case, he pointed out that the shareholders would lose their capital of approximately £28,000, which had been invested for about twelve years without paying a dividend, and also all prospective profits.

During the existence of the writ, a number of deputations took place. The first of these was a deputation of shareholders who waited on the Minister for Defence (Mr. Bowden) at Hobart on the 8th February, 1924. The second was a deputation of several Tasmanian members of the Federal Parliament, who desired to interview the Acting Prime Minister (Dr. Baile Page), but who were received by the Minister for Works and Railways, at Melbourne, on the 28th idem; whilst the third deputation comprised creditors and instalment purchasers of the company, who placed the case before the Vice-President of the Executive Council (Mr. Atkinson), at Hobart on the 28th March last.

As a result of the second deputation, the Minister announced that he was prepared to give still further time to the company by staying proceedings under the writ for six months, provided that the Bank would withdraw its receiver and agree with the other creditors not to take any legal action, or press the company for payment during that period, and that at the expiration of that time the company would pay the amount owing to the Commission. The Bank, however, refused to agree to this course unless the Commission guaranteed the amount of the Bank's debt at the expiration of the six months.

Although the company entered a formal plea of denial of liability, this was admitted to be simply an expedient to gain time, and was subsequently withdrawn. Judgment was signed at the sittings of the Supreme Court, at Hobart, in March, 1924, for the amount of the debt, £2,742 6s. 11d.; interest to 30th March, 1924, £60 8s. 1d.; and costs, £15 11s. 0d.; or a total of £2,827 5s. 0d.

On the 4th April, 1924, the Right Honorable S. M. Bruce, P.O., M.P., the Prime Minister, was approached, and it was decided that action to execute the judgment would be deferred for six months, provided that all the company's creditors agreed, in writing, not to take legal action during that period.

A legal agreement, embodying this proposal, was executed on the 10th May last, between the Co-operative Estates Limited, the judgment creditors, and the ordinary creditors. The particulars of the judgment creditors are as follows:—

| Name. | Date of Judgment. | Amount of Debt. | Costs. |
|--------------------------------------|-------------------|-----------------|---------|
| | | £ s. d. | £ s. d. |
| G. W. Richardson | 10.3.24 | 104 12 4 | 17 10 0 |
| War Service Homes Commission | 28.3.24 | 2,841 14 0 | 15 11 6 |
| David Ross | 2.4.24 | 339 12 0 | 7 1 4 |
| Barnet Glass Rubber Co. Ltd. | 8.5.24 | 28 17 7 | 3 0 0 |

The three first-named creditors have also lodged caveats against the lands of the company.

The ordinary creditors numbered seventeen, with claims totalling £377 6s. 4d.

In addition to the preceding there are a number of secured creditors, and sums totalling £1,365 14s. 2d. are owing by the company for rates and taxes.

Mr. Murchison contended that this extension was of little value to the company as the bank was already in possession with instructions to force immediate settlement.

Following further representations by the company that it had a strong moral claim, the Prime Minister arranged for all files and documents to be submitted to the Attorney-General for his opinion. In his memorandum, dated 3rd July, 1924, Sir Littleton Groom stated—

In this matter the claimant company clearly has no legal rights, and the only question raised is one of moral obligation. The files disclose no case in support of any moral obligation to the company on the part of the Government. The claim is based on statements alleged to have been made to induce the Co-operative Estates Limited to go to Sydney to engage in construction work in connection with the War Service Homes Commission. It is urged that the company did not go to Sydney as contractors. No written statements of independent persons have been produced to confirm these allegations. The two sworn declarations produced do not provide such direct testimony.

and, after reviewing the facts of the case he concluded—

In support of the allegation that the company was induced to go to Sydney to undertake larger contracts, the minutes of the meeting of 17th February, 1920, and a declaration by Mr. Butler have been produced. The minutes disclose that a copy of Earle's letter to the Commissioner was read at the meeting. Mr. Murchison, reported "Negotiations practically reached finally with regard to the fifteen demonstration houses. The Government advancing 50 per cent. on account of plant, and the company 10 per cent." The resolution was passed next day—"That building in Tasmania be proceeded with only at discretion of directors, and that building outside this State be confined solely to demonstration." In Mr. Butler's declaration he states that it was the directors who informed him that "They hoped to make a very advantageous agreement with the Commission by which the company would receive royalties on a large number of houses to be constructed by the Commissioner." These two documents do not carry the matter any further. They do not furnish any evidence that the Commission made definite representations to them that they would receive contracts. The question has been asked—

Whether the demonstration of the process was successful in Sydney, to the point that if the Commonwealth had not reversed its policy of building soldiers' homes through its own Commission, the plant would have been taken over and the company freed from the obligation to repay the Government the moneys advanced for the erection of the plant.

The question of taking over the plant was merely an afterthought on the part of the company. The memorandum of 11th November, 1919, sets out clearly the fifteen houses were for demonstration purposes, and, if the Commissioner decided not to build any more, the advance was to be repaid. The agreement of 31st January, 1920, simply carries out the proposal as to repayment. The company lost £2,900 on the contract.

The evidence shows there is, perhaps, a saving of 5 per cent. on the cost of a complete house.

The contract for the fifteen houses was unsatisfactory. The first prices submitted were 550 per house over brick. Apart from the fifteen demonstration houses, the company were never willing to build anything but shells. As late as 24th August last, Murchison stated in his letter to the Minister for Works and Railways that "After we had incurred a liability of over £3,000 on the strength of his minute we were induced to take a contract for fifteen complete houses,

instead of shells." The reversal of policy of the Government would not affect the company, as the policy of the Commission was always averse to building shells.

The company had ample opportunity to tender for houses, but did not submit a single tender—they were prepared to build shells only and, even then, the resolution of the 17th February, 1920, forbade them building on the mainland except for demonstration purposes.

The amount of the advance was formally demanded on 13th April, 1922—over two years ago, and since then the company has received every consideration from the Government.

Briefly summarized, I am of opinion that there never was any understanding or agreement that the War Service Homes Commission should in any event take over the plant; that there was a contract to build houses for demonstration purposes, and that the demonstration possibly established a saving of perhaps 5 per cent., but that the reversal of the policy of the Government did not affect the situation, as there was no legal or moral obligation on the part of the commission to enter into further contracts with the company."

OFFERS BY THE COMMISSION.

Although the company claims that the Commission did not proceed with the "big scheme" forecasted by Mr. Earle, the evidence shows that during the progress of the negotiations early in January, 1920, the company had been given an opportunity to contract for 240 houses, but had declined.

On 28th June, 1920, the Deputy Commissioner for New South Wales placed before the company a proposal for the erection of 500 houses per annum in Sydney, and 120 houses per annum in Newcastle, to which the company's representative (Mr. L. H. Payne) replied on the 8th July, 1920:—

"That the policy of my directors, while they appreciate the financial possibilities in extending their activities to the mainland, has been to confine their building operations, as far as possible, to Tasmania, and to dispose of the letters patent of the "Wilton Patent Concrete Moulding System" in other parts.

In pursuance of this policy, therefore, I have pleasure in submitting for your consideration the desirability to the Commissioner of acquiring the rights to the invention for the construction of homes.

The company is prepared to dispose of these rights, that is, for the construction in New South Wales of homes under the War Service Homes Act, to the Commissioner for £10,000, which sum is approximately equivalent to one year's contractor's profit on such a contract as has been suggested, with an option for twelve months over the remainder of the Commonwealth at £40,000.

When questioned by the Committee concerning his company's rejection of this offer, Mr. Murchison stated that immediately following the original arrangements he went abroad for twelve months, but that had he been in Australia when the offer was received, as managing director of the company he would have felt it sufficiently important to have formed a subsidiary company after being fully satisfied that the Commission intended to proceed with the business. In his absence the company had contented itself with carrying out a demonstration by building 64 shells.

Mr. Johnstone, who was a director of the company at the time the offer was made, was of opinion that the company could not construct houses because it had neither the staff nor the organization. He had, in effect, objected to the contract for the construction of 64 shells, but was, of course, willing that the work should be undertaken under this system on payment of a royalty.

PLANT.

The actual plant which is in question consists of many pieces of angle, sheet and T-iron, clamps, clips, bolts, yokes, brackets, feeders, cavity boxes, &c., and comprises the following:—

| | | | |
|--|------------|------------|------------|
| (I) procured under the agreement, dated 31.1.1920, for the erection of 15 houses— | | | |
| 3 Wall plants at £280 | £1,740 0 0 | | |
| 1 Foundation plant at £280 | 280 0 0 | | |
| 3 Concrete mixers at £140 | 420 0 0 | | |
| | | £2,440 0 0 | |
| | | | |
| (II) procured under the agreement, dated 4.0.1920, for the erection of 64 shells— | | | |
| 1 Wall plant at £380 | 580 0 0 | | |
| 1 Foundation plant at £280 | 280 0 0 | | |
| 1 Concrete mixer at £140 | 140 0 0 | | |
| | | £1,000 0 0 | |
| | | | |
| and under an addendum to this agreement, dated 15.11.1920— | | | |
| 1 Wall plant at £730 | 730 0 0 | | |
| 1 Foundation plant at £240 | 340 0 0 | | |
| | | 1,070 0 0 | 2,070 0 0 |
| making the total cost of the plant | | | 4,810 0 0 |
| | | | |
| Of this amount the Co-operative Estates Limited met 10 per cent. and an additional amount of | 481 0 0 | | |
| | 0 17 3 | | 4 81 17 3 |
| or total amount advanced by the Commission of | | | £4,068 2 9 |

The following is a statement of the "Plant Account" of the Co-operative Estates Limited standing in the books of the War Service Homes Commission as at 30th March, 1924:—

| | | | |
|--|------------|----------|-------------|
| Total amount advanced for the purchase of plant | £4,068 2 9 | | |
| Interest to 30.3.24 at 6½ per cent. per annum | 647 10 1 | | £4,706 1 10 |
| | | | |
| Less— | | | |
| Deductions from payments due under contracts towards repayment of plant— | | | |
| Contract for 15 houses— | | | |
| 15 houses at £10 each | 150 0 0 | | |
| Amount allowed by Commission for delay in supply of material | 180 0 0 | | |
| | | £300 0 0 | |
| Contract for 64 shells— | | | |
| 64 shells at £10 each | 640 0 0 | | |
| | | 640 0 0 | |
| | | | |
| Repayments by the Company— | | | |
| 20th September, 1922 | 50 7 4 | | |
| 20th March, 1923 | 335 10 4 | | |
| 12th June, 1923 | 200 0 0 | | |
| 30th June, 1923 | 90 14 0 | | |
| | | 667 1 5 | |
| Allowance granted for increase in award rates and utilized towards repayment of advances for plant | 267 0 5 | | 1,894 7 10 |
| | | | £2,811 34 0 |
| Balance due for payment by Co-operative Estates Limited | | | |

It was for this amount, together with costs, that judgment was obtained by the Commission in March, 1924. Interest on the outstanding balance is accruing from day to day.

The company now contends that five plants represented more than were actually necessary to carry out the work under the agreements, and maintains that it would not have incurred the liability for so much plant if further work had not been expected.

On the completion of the work to be performed for the Commission in Sydney, the company was informed, in response to its request, that there was no objection to the plant being utilized for private work, and the company was also granted permission to transfer one

complete plant to Victoria, where it desired to carry out a demonstration with a view to selling its Victorian rights.

It is understood that portion of the plants in respect of which the Commission made the advances, is at present being used by Mr. Wilson, the patentee, in the erection of houses around Melbourne, and that other portions are in Sydney and Cown, New South Wales.

CLAIMS BY CO-OPERATIVE ESTATES LIMITED.

After the second writ had been issued, it was claimed on behalf of the company that, as the Commission was responsible for its financial difficulties, the company should be compensated, the plants taken over by the Commonwealth, and the claim waived. These requests

were refused by the Minister, because he could see no justification for such action, and, moreover, he considered that the Commission was not in any way responsible for the position of the company. In support of this attitude he pointed out that the Commission had no use for the plant, as it was not building homes—the policy of the Government being to submit all constructional work to competition by public tender, and quoted the following extracts from the reports of the Business Adviser to the Commission (General McCay) on 6th September, 1921:—

I am unable to accept the company's view that there was anything more attached to either contract than a reasonable hope of further business, whose realization or non-realization was an ordinary business risk.

and, on 19th December, 1921—

I adhere to my views as expressed, that the company has not, on the whole, any moral claim against the Commission in respect of alleged broken promises for larger orders.

When Mr. Murchison appeared before the Public Accounts Committee, he concluded the statement of his case, which had been specially prepared for submission to the Committee, with the following appeal:—

I believe that I have conclusively proved that the company was induced to go to Sydney, and that the demonstration was highly satisfactory; also, that the only reason for not proceeding with the big scheme after the company had incurred all the expenditure was the hostility of certain of the Commissioner's officers to concrete, and the easy means afforded them, through the change of Government policy, of abandoning it. The issues in this case are—(1) Was the company induced to go to Sydney to demonstrate? (2) Was the demonstration successful? If so, the plants should have been taken over at cost, and if the Commission decided not to proceed with concrete construction in spite of the demonstration having been successful, the company should have been reasonably compensated for its expenditure. To this should now be added some recognition for losses sustained through the Commission trying to force the company to pay even beyond the extreme limit of its capacity. The company only asks for a fair deal and no favour beyond what the merits of the case warrant. The business-like way out of the difficulty would be to take over the plants and use them, either at Canberra, or for demonstration purposes in the different States, and provide whatever plant can be put in hand by the various contractors so as to give the soldiers and the country the benefit of a new industry and cheaper houses. The credit of the company, which was shattered by the issue of the writ, should be re-established, or the company should be compensated for the consequential losses it has sustained in its operations. The Government, we think, should also cooperate in every way possible to encourage the adoption of this Australian system in England and elsewhere, and thus in some measure compensate the company for the serious loss it has sustained through being so crippled that it could not develop its patent rights in those countries owing to its experience with the Commission.

In support of his contention that the company did not proceed to Sydney as ordinary building contractors, he submitted a number of sworn declarations concerning meetings of the directors of the company. These are the declarations referred to by the Attorney-General, which, in his opinion, do not provide the necessary direct testimony.

In order that the Committee might have some definite claim before it, Mr. Murchison undertook to prepare a specific claim for presentation to the Committee, and on the 8th August he handed in the following:—

In submitting the claim, I should like to mention that I did not formally do so before, because my desire was to place

the whole position of the company before the Committee. Since I have been requested to do so, however, I now furnish a definite claim. It is in the following terms:—

1. That the Commission take over the plant.
2. That a refund be made to my company of all amounts of principal and interest already paid on account approximately £3,000.
3. That a certificate of satisfaction of the judgment be registered in Tasmania.
4. That the total loss sustained by my company in its Sydney operations be refunded, amounting to approximately £3,000.
5. We also claim that all losses which will be sustained by our purchasers and shareholders as a result of the action of the Commission in destroying the credit of the company should be made good. These losses, if the company is forced into liquidation, which it certainly will be unless something is done by the Government to restore its credit, will be as follows:—

(a) Share capital, £23,000.

(b) Prospective profit, £10,000.

(c) Losses (if any) sustained by purchasers on terms.

We believe, however, that the whole of the losses included in paragraph 5 can be prevented by the credit of the company being re-established by a guarantee from the Government for the amount necessary. The Government could be secured by a debenture on the same footing as that at present held by the Bank.

The company would willingly forgo the claim made in paragraph 4 if the Commission will co-operate in giving the benefit of concrete houses to the soldiers under the contract system to the extent that the amount would be covered by royalties, and subject to the soldiers being encouraged, but not compelled, to avail themselves of concrete construction.

The company will gladly undertake to co-operate in every way possible to make the plants a good asset for the Government, and I submit herewith copies of a letter which was referred to the Minister by Mr. Seabrook in February last bearing on this proposal.

You will notice that we are not making any claim for losses sustained through having been crippled from developing our patent rights in Australia and other countries, nor other consequential losses, which have been most serious to the company in its trading operations.

This claim represents, in round figures, £70,000.

Mr. Johnstone considered that this claim was so framed that it would be difficult of assessment; he was of opinion that a fair claim would be—

- (a) remission by the Commission of the balance of the money due;
- (b) refund of amounts paid by the company on account of the plant;
- (c) compensation to the company for losses sustained on the contract for the fifteen complete houses, and for expenditure incurred at Sydney;
- (d) a reasonable sum for consequential damage incurred and losses sustained by the company through the action of the Commission.

He estimated that a total of approximately £15,000 would cover these claims. Under this arrangement the Commission would own the plant and pay the company royalties for its use.

At a later stage of the inquiry, Mr. Murchison informed the Committee that in submitting his claim he only did so formally to place something concrete before the Committee at its special request. He added that he made no arbitrary demand and was prepared to accept the decision of the Committee as absolute and final.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS.

From the knowledge acquired by the Public Accounts Committee during its various investigations concerning the War Service Homes Commission, it is aware that at the outset of the scheme the Commissioner embarked upon an ambitious building programme without fully taking into consideration the amount of labour and material available. Urged on by public and press criticism, and anxious to show results, the Commissioner was eager to avail himself of any means which promised the early achievement of his desire, and possibly the proposition put before him in the Supervising Engineer's memorandum of 11th November, 1919, appealed to him.

The claims now made by the Co-operative Estates Limited are based on what it considers to be a moral obligation on the part of the Commonwealth Government in view of the contents of the official memorandum addressed to the War Service Homes Commissioner on the 11th November, 1919, wherein the Supervising Engineer to the Commission forecasted a "big scheme" for the building of 10,000 houses per annum by means of this company's patent plant. But it is clearly indicated in the memorandum, a copy of which was supplied to the company, that this scheme would form the subject of a later and more detailed report. Such a report, however, never eventuated.

The only authority sought and given in the memorandum was to enter into an agreement with the company for the erection of a group of fifteen houses in Sydney under certain conditions, and to make an advance to the company towards the cost of the plant. Mr. Johnstone, who, as chairman of directors of the company, conducted the early negotiations with Colonel Walker and Mr. Earle, quite candidly informed the Committee that he assisted Mr. Earle in the preparation of this official document, and that he considered the Commissioner's approval covered all the contents of the memorandum, the preparation and signing of which led the company to believe that the Commission would carry out the proposal to the full extent of 10,000 houses per annum. Mr. Johnstone added, however, that his own opinion, at the time, was that the Commission would not build that number of houses, and, personally, he would have been satisfied if 1,000 houses per annum had been erected.

It is maintained on behalf of the company that it did not proceed to Sydney as a building contractor. Whatever views other directors and shareholders may have recorded subsequently, the communication of the 21st October, 1919, signed by Mr. Wm. G. Murchison, as managing director, claimed not only that the company had erected cottages to the value of £50,000 in Hobart, and that orders were being refused daily, but that it was quite willing, subject to financial assistance, to erect cottages for the Commission in all States of the Commonwealth. Under examination, however, Mr. Murchison informed the Committee that the building operations were his pet scheme, which, he added, was

resented by the shareholders, as they wanted to make bigger and quicker dividends by land transactions. Mr. Johnstone affirmed that, from the outset, he recognized the company had neither the capital nor the organization available for construction work; but eventually he agreed to the erection of a demonstration group of shells, and then went on to explain that "it was only when Mr. Murchison came to Sydney that the Commissioner persuaded him to alter the arrangements and to enter into a contract to build complete homes."

The fact remains, however, that on the 31st January, 1920, the agreements relating to the erection of fifteen houses in New South Wales and 80 houses in Tasmania were signed by Mr. Johnstone himself, and executed under the seal of the company. There appears, therefore, to be little doubt that the company was quite ready to take advantage of the opportunity afforded to participate in the scheme for the housing of the returned soldiers, and was willing to accept any contracts with the Commission, in the hope that further business would follow.

Declarations by directors and shareholders have been produced with the idea of supporting the contention that the company did not desire to become a builder, but that the benefits to accrue to the company would be in the form of royalties. But, even so, the company did not appear to have any very definite ideas as to the amount of royalty which should be demanded. According to Mr. Murchison's letter of the 21st October, 1919, the Commission was to have first call on the plant on a royalty basis of £3 per house. In Mr. Earle's memorandum of the 11th November, 1919, a royalty of £1 was to be paid by the Commission as a nominal sum charged purely to pay the patentee, and this sum is provided in the various agreements. In his evidence, however, Mr. Murchison stated that the amount intimated to the Commission originally was £5 per house, which was half the company's usual charge. On another occasion the company offered the Commission the patent rights for construction in New South Wales for the sum of £10,000, with an option over the remainder of the Commonwealth for £40,000.

The company complains that its present unsatisfactory financial position is due to its dealings with the War Service Homes Commission; but the capital of the company was admittedly too small for it to undertake building operations. Although the company was solvent, it was heavily encumbered. Statements submitted by the company indicate that it sustained heavy losses on its contracts with the War Service Homes Commission. In the case of two contracts in New South Wales, the loss was set down at £4,698, including an amount of £739 written off plant; whilst the sum of £961 is shown as having been lost by the company in connexion with the erection of eight complete houses and eight shells at Hobart. The company's loss on this Tasmanian work is particularly significant, in view of Mr. Earle's statement that the contracts for the group of houses at Hobart had shown a saving of approximately £40 per house—presumably as against brick:

Whilst the Committee cannot accept the view that the transactions of the company with the Commission are responsible for its present position, they would appear to have been a contributing factor

Mr. Murchison alleges against the Commission hostility to his company and to concrete construction and harsh treatment in the demands for the repayment of the advances; the Committee is of opinion, however, that the evidence does not support these assertions. Repayment of the advances fell due legally in January, 1922, and repeated requests by the company for consideration, supported by representations on its behalf by members of the Federal Parliament, were granted. It is complained that the Commission acted precipitately in issuing the writ in October, 1923, but it must be remembered that at that time the debt had been due for nearly two years, and that the company had made little effort to fulfil its obligations, notwithstanding frequent definite promises that it would meet its liability.

The claim that the Commonwealth should take over the plants is one that the Committee considers cannot be entertained. It was never intended that the Commission should become the ultimate owner of the plants, although, naturally, it desired to retain ownership until the advances made to the company to assist in their purchase had been repaid. This claim, as stated by the Attorney-General, appears to have been an afterthought on the part of the company, and it is evidently designed to further the company's wish that it only desired royalties.

It has been suggested by Mr. Murchison that the plants should be utilized for concrete construction at the Federal Capital. The Committee ascertained that models submitted by him have already been examined by expert officers of the Department of Works and Railways, and it had been explained to him that, as the policy of the Government is to have the buildings at Canberra erected by contract, it was not purchasing plant which involved doing work by day labour. Mr. Murchison's attention had been drawn to the fact that tenders were being called for cottages, and it had been suggested to him that he should tender, or induce likely contractors to do so, using the Wilson patent.

Since the Commission's operations with the plants ceased, no supervision appears to have been exercised to see that they have been kept complete or in good order, and their present value to the Commission would be problematical.

A study of the evidence placed before the Committee does not reveal any facts which were not before the Government when its decision concerning this matter was given. The outstanding balance of the advances made to the Co-operative Estates Limited by the Commission is admittedly legally due, and the Minister, in taking steps to recover the amount, was merely performing a public duty.

CONCLUSION.

From a careful consideration of the circumstances surrounding the negotiations and transactions between the Co-operative Estates Limited and the War Service Homes Commission, it would appear that the company made itself liable for a larger quantity of plant than was wise in view of the work actually undertaken; but, as the Commission had agreed to advance 90 per cent. of the cost of such plant, actually made advances on a number of plants which could only be justified by the prospect of further constructional work, and, moreover, took an active part in obtaining quotations, &c., the Commission is not entirely free from the allegation of having offered inducements to the company. As a result, the company undertook the demonstration work with a reasonable hope that further business would ensue. Its subsequent transactions with the Commission, no doubt to some degree, contributed to its present unsatisfactory financial position, and for some time to come there appears to be little hope of improvement in this direction.

The Committee is of opinion, therefore, that without admitting any responsibility or liability in the matter, the War Service Homes Commission should waive the amount owing by the Co-operative Estates Limited, give a certificate of satisfaction for its debt, and permit the company to retain possession of the plant for its own use.

Office of the Joint Committee of Public Accounts,
Federal Parliament House,
Melbourne, 1st October, 1924.

J. E. FENTON,
Vice-Chairman.

(Observations and Recommendations of Minority on page xvi.)

OBSERVATIONS AND RECOMMENDATIONS OF MINORITY.

We accept entirely the opinion of the Attorney-General (Sir Littleton Groom) as quoted herein, that, "in this matter, the claimant company has no legal rights, and the only question raised is one of moral obligation. The files disclose no case in support of any moral obligation to the company on the part of the Government."

The company admittedly entered into a definite contract to repay the amounts advanced by the Commissioner for the plants under certain conditions which have been fulfilled. Any legal claim is thus disposed of.

The company's claim on a moral ground rests entirely on the statement that it was induced to go to Sydney to give demonstrations, and thus incur unnecessary expenditure in the expectation of the Commissioner acquiring the right to use the company's patented apparatus on a royalty basis. It is quite evident that the company was most anxious to induce the Commission to acquire the use of the plant on this basis. Nothing, however, approaching such an agreement can be discovered or could be indicated by either Mr. Johnstone or Mr. Murchison after a most patient hearing. The Commission was influenced to give the company contracts to demonstrate the value of its system, on the assertion—quite erroneous, as it turned out—that a saving was shown by the use of the plant in Hobart. Mr. Earle's memorandum on this point reads:—". . . the firm have proved the advantages as regards its cheapness to me by signing the existing contracts with the Commission for a group which showed a saving of approximately £40 per house

on types 2A and 2B." This apparent saving was, however, only arrived at by the company making a heavy loss, viz., £361 on eight shells and eight complete houses, which was never disclosed until the Public Accounts Committee insisted upon the figures being produced. Had the Commissioner been aware of this loss the proposal would not have appeared as attractive as it prima facie did. The Commissioner was thus directly misled by the company. These figures also supply one explanation of the company's extreme reluctance to enter into further contracts.

Mr. Johnstone relied on the memorandum of 11th November, 1919, addressed by Mr. Earle to the Commissioner, as having misled the company, but on cross-examination he admitted that this memorandum was practically drafted by himself. This does away with any question of the company having been misled by it.

These considerations effectually dispose of any moral claim on the part of the company.

Having regard, therefore, to all the circumstances, we are of opinion that there is no reason why the debt owing by the Co-operative Estates Limited to the War Service Homes Commission should be waived.

Under the present arrangement the period of grace expires on the 10th November next, but, as it does not appear likely that the company will then be in any better position than at present to meet this liability, it is recommended that arrangements be made for the acceptance of the amount on extended terms.

H. E. ELLIOTT.
H. S. FOLL.

Melbourne, 1st October, 1924.

H. S. Foll
H. E. Elliott