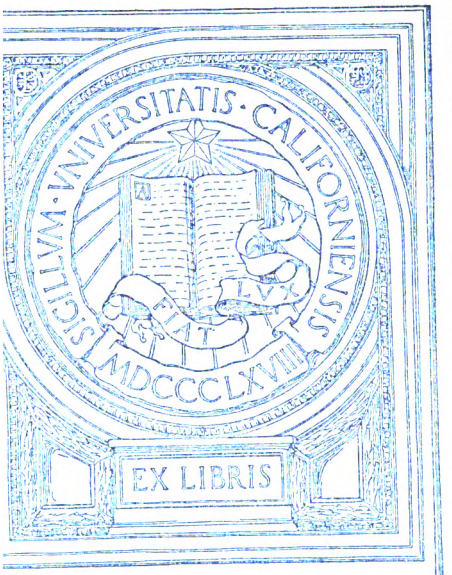

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NEW YORK.

The Conspiracy

in the

U. S. Navy Department

Against

Franklin W. Smith

Of Boston—1861-1865.

"These proceedings all concern the administration of justice; which is the last resort of outraged liberty, and the main defense of individual rights."

HARPER'S WEEKLY, APRIL 5, 1890.

1890.

THE undersigned would solicit of all who read the accompanying history, that they will not omit the business details in the first chapters of the document.

These reveal clearly the inciting cause of the assault by officials in the Navy Department; and show proof that it was their revenge for his fearless exposure of fraud in that Deparment, upon a special demand of the Senate of the United States.

Franklin W. Smith.

The Conspiracy

in the

U. S. Navy Department

against

Franklin W. Smith

Of Boston—1861-1865.

A Record of Flagrant Abuse of the War Power in the late Civil War.

"Is there no Danger that it (the war power), may be Used to Sub-"serve the Purposes of Malice and Revenge? Let the Case of Smith "Brothers Give a Most Emphatic Answer."

Valedictory lecture to Harvard Law School, January, 1867, by Hon. Joel Parker, Royall Professor of Law in Harvard and Dartmouth Colleges.

"The First and Principal Misprison is the Mal-Administration of "High Officers, who are in Public Trust and Employment."

"A Conspiracy to Indict an Innocent Man Falsely and Maliciously, "who is Accordingly Indicted and Acquitted, is a Further Abuse of Public "Justice, for which the Conspirators were by the Ancient Law to Receive "what is Called the 'Villenous' Judgment, viz., to be Discredited as Jurors "and Witnesses; to Forfeit their Goods and Chattels and Lands, for Life; "and to have their Bodies Committed to Prison."

—Blackstone's Commentaries.

Extracts from an Editorial in the "New York Journal of Commerce," January 20th, 1866.

"Mr. Franklin W. Smith is a well-known merchant of the city of Boston. Boston is the principal city of Massachusetts. Massachusetts is the principal State of New England. New England governs the United States for the present. The United States compose a country distinguished as the patron of justice, and the paradise of free principles. This is the 19th century.

"All these facts must be carefully borne in mind, lest any one should imagine that it is a romance which forms the subject of this article.

"We have before us a pamphlet of sixty-one pages, being the report of a special committee of the Boston Board of Trade, which vouches for the truth of the story it contains. The statements in the pamphlet are signed by the following names: W. B. Spooner, Charles G. Nazro, Charles O. Whitmore, Otis Norcross, James C. Converse, Joseph M. Wightman, Lorenzo Sabine. These will be recognized by many as the names of highly respectable merchants in the said city of Boston, State of Massachusetts aforesaid. They are men of truth and veracity."

* * * * *

"Mr. Sumner and the Board of Trade make it clear enough that Mr. Smith was the victim of persecution on the part of the government officials."

* * * * *

"Let us find a lesson in all this. The Boston Board of Trade has done well to print such a pamphlet."

* * * * *

"Reparation can never be made for these wrongs. The national debt doubled would not suffice to make due return. Money can never do it."

LETTER FROM HON. H. L. DAWES

U. S. SENATOR FROM MASSACHUSETTS,

— TO —

FRANKLIN W. SMITH.

PITTSFIELD, MASS., August 20, 1889.

MY DEAR SIR: I am in receipt of your communication in reference to the court-martial proceedings instituted against you during the war. I am reminded by it of a long delayed duty. Of those to whom your long and honorable career as a business man is known; who were familiar at the time with that transaction, and had occasion and opportunity to know its animus, few are now living. I was in Congress at the time, and with my then colleagues, was called upon to make myself familiar with all its details, and with the result most honorable to you. I have wondered that you have not published to the world the entire record, with Mr. Lincoln's endorsement upon it, in his own hand-writing, of his estimate of your integrity and his trenchant words dismissing the case.

I write this because, those who instituted the proceeding, and the great President who condemned it, and those of my colleagues, who with me specially examined it, are all dead. I think I ought to leave on record the opinion which I then formed, after an exhaustive examination, and in which I know the entire Massachusetts delegation in Congress at the time shared, of the outrageous and unjust character of the whole pro-

ceeding. This examination was made by Mr. Sumner and the late Hon. B. F. Thomas and myself for the delegation.

It is true that in the exciting times of the war, when large transactions were often from necessity carried on in a hurried and careless manner, and when bad passions were rife and ugly purposes were engendered, a prosecution by court-martial was instituted against you; at the time a large contractor for supplies for the navy. Courts-martial were then so frequent and resorted to so often for sinister ends that it came to be a saying that "courts-martial are organized to convict." This one conducted the trial in a manner and with a relentless pursuit which, looked at from the standpoint of these calm times, would be pronounced brutal by all fair-minded men.

It not only seized the accused by military force but entered his private dwelling and carried off all his private as well as business papers, even breaking locks and possessing itself of the letters that had passed between him and his wife. It examined, as with a microscope, every item of a business with the government, covering several years and twelve hundred thousand dollars, searching for fraud as a hunter pursues his game, and after months of such a trial of such varied and complicated transactions, they could only find, and that on technical grounds, that the government had been defrauded in the sum of one hundred dollars. When this record came up to Mr. Lincoln for approval, he set it all aside in words endorsed on its back, which carry with them the highest testimonials to your integrity. The result made it clear to every judicial mind which examined it, that the prosecution was instigated and pressed, because your straightforward ways interfered with questionable methods of transacting business, and their success rendered your removal necessary. I have good reason to know that Secretary Welles himself became convinced of this, and deeply regretted that he had unwittingly been made the instrument of such injustice.

I am glad of the opportunity to furnish you with this statement, and remain as ever, Truly yours,

H. L. DAWES.

It is with pleasure that I respond to the suggestion of Senator Dawes, by this publication of a personal experience during the War of the Rebellion—the full history of which was prepared more than twenty years ago to be issued in the event of my decease. Inasmuch as I have been mercifully spared to see the maturity of a new generation (while almost all of those who sought my destruction have been called to their final account), this recital becomes a duty, since few now living are cognizant of that case. It is therefore revived, in order that partial or erroneous statements relating thereto may be avoided; as well as the grave responsibility attending the utterance of such statements.*

In abnegation of personal feeling toward my persecutors; burying bitter memories of them in their graves, I suppress their names, and tell the story from official and public documents. These are indisputable, impartial and final.

The report of the Boston Board of Trade in review of the case, and the paper of Senator Sumner to President Lincoln, quote a threatening letter from the chief of a Naval Bureau. It is known as "THE-DEAD-COCK-IN-THE-PIT" letter. Vide p. 51 and Addenda III.

The writer of the Report submitted to me whether the name of the author of the letter might be suppressed. I assented to the erasure—but with keen remembrance that he had aimed a deadly assault upon my own.

The following statement is a slight compensation for

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*I am advised by eminent counsel that any distorted or injurious mention of this history exposes the author to severe legal retribution.

the injustice recited; for, while many may be conscious of integrity, there is no instance of its vindication against the war power and treasury of the National Government, wielded with like desperation and malignity. Personal satisfaction at the defeat of this onslaught is of slight importance compared to its public relations:

First. Toward protection of witnesses summoned by Congress against the revenge of officials implicated by their testimony.

Second. As a warning against the surrender of civilians to military power.

The seriousness of the above considerations was recognized in consequent repeal by Congress of the law which permitted the outrage; and it has given to the case of the U. S. Navy Department *vs.* Franklin W. Smith the historical status of a *cause célèbre.*

The Act of Congress of July 17, 1862, provides that "any person who shall contract to furnish supplies of any kind or description for the army or the navy, he shall be deemed and taken as a part of the land or naval forces of the United States, for which he shall contract to furnish said supplies, and be subject to the rules and regulations for the government of the land and naval forces of the United States."

The Report of the Boston Board of Trade upon the case of Franklin W. Smith comments upon this legislation as follows:

"The committee quote the act of Congress and say, that upon the construction which has been given to it they do not see why every person who contracts to furnish a lump

of chalk, for the use of the army or navy, is not liable—on offence to some official personage—to a trial by court-martial. * * *
This is unconditionally monstrous. No trial by jury!''

* * * * *

''I will maintain as long as I live,' said Dupin, the great French advocate, 'that the condemnation of Marshal Ney was not just, for his defence was not free.' Can there ever be a *free defence* for a civilian arraigned under the act of July 17, 1862?

''We have read that Niceron, a merchant, and the agent of commercial companies in Paris, was committed to the Bastile simply for remonstrating against a projected monopoly in the article of whale oil; so, too, we have read that the Star Chamber imposed a fine of £2,000, sterling money of the realm, on Chambers, a merchant of London, for refusing to pay poundage and tonnage, and for saying that 'merchants were more screwed up and wronged in England than in Turkey.'

''The sixteenth section of the act of Congress of July 17, 1862, as relates to a class of citizens in civil life, revives the Bastile and the Star Chamber. Nay, more; overleaping eighteen centuries of Christian civilization at a single bound, goes back to heathen Rome and revives maxims of Cæsar, that 'arms and laws do not flourish together;' that 'war will not bear much liberty of speech.'

''We measure our words; for, aside from our own reputation, this Report, if accepted, will become the judgment of this Board, and a part of the commercial history of Boston. We measure our words. Seldom in legislation has there been a more terrible, a more appalling mistake, and the very member of Congress who reported it in bill to the House, magnanimously owns it now, and, on the second day of March, 1865, stood up in his place and confessed his error.''

In the U. S. Senate, February, 1865, in debate upon the prosecution of Smith Brothers, under the above law,

Hon. John P. Hale, Senator from New Hampshire, spoke as follows:

* * * * *

"Sir, it is impossible for me to scan the motives of men; it is enough for me to deal with my own; but, standing here under all the responsibilities which attach to me—fond as any man of what little reputation belongs to me—careful of my word, I think, as most men—I aver before the Senate, before the country and before God, that I have not a shadow of doubt that the sole offense for which Mr. Smith was arrested was the evidence that he gave upon the occasion."

In a subsequent debate, March, 1865, Hon. H. L. Dawes, of Massachusetts, upon the same subject, said:

"I do not say why this unjustifiable course was pursued toward these men. I only say that it happened immediately after they had testified before an investigating committee of Congress, in reference to certain frauds that had come to their knowledge, very near the doors of certain naval officials. Now, sir, I submit that it is time for us to act."

* * * * *

Mr. Davis, of Maryland, moved as follows:

"That no person shall be tried by court-martial, or military commission, in any State or Territory where the courts of the United States are open, except persons actually mustered in the military or naval service of the United States, or rebel enemies charged with being spies; and all proceedings heretofore had contrary to this provision are declared vacated."

Mr. Dawes, of Massachusetts:

"Mr. Chairman, I believe that, during the time I have served in Congress, I have, to the extent of my ability, de-

voted myself to the effort to ferret out and punish those who have been engaged in defrauding the Government."

* * * * *

"In carrying out what I was endeavoring to do, I, in co-operation with others, reported to the House a bill which became a law, making contractors with the Government subject to trial by court-martial. I was aware that it was an extreme measure. In putting into the hands of the officers of the Government this extreme power, I had confidence that they would exercise it with moderation and reason. But, Mr. Chairman, I am sorry to say, that my observation of the administration of that law, of which I take to myself some part of the responsibility, has been such during the past year or two as to compel me to support this amendment. Sir, we seem to have lost sight, in the execution of that law, of the guarantees of the Constitution.

"It is because I had a little something to do with furnishing the Department with this artillery which they have turned so much upon the people of the Northern States, and so administered as to become the potent instrument for trampling upon the rights of the citizens, that I have ventured to raise a protest against the very Bill I reported myself, that has been perverted from the honest use for which it was enacted by the last Congress of the United States, and to ask the House to do this much and this little for the protection of our citizens."

Hon. Charles Sumner wrote to President Lincoln concerning the violence of Navy officials toward Smith Brothers, as follows:

"I am not astonished that these proceedings were used in the House of Representatives as an argument for the total repeal of the act of Congress authorizing the trial of civilians by courts-martial. Such a case as this must make us fear, that under this act, justice may be sacrificed. It must make honest merchants hesitate to enter into business relations with the Government."

Hon. Joel Parker, Law Professor of Harvard College, at his retirement in 1866 for age, delivered a valedictory course of lectures upon the Executive, Legislative and Judicial Functions of the U. S. Constitution, which were published.

In the first he cited three instances of atrocious abuse of the war power during the Rebellion, giving the case of Smith Brothers pre-eminence. He declares that these gentlemen were prosecuted "*because they refused to participate in frauds upon the Government.*"

Horace Greeley wrote in the N. Y. *Tribune:*

"The celebrated case of Franklin W. Smith and brother was one of those which largely helped to bring military tribunals into public contempt."

After the vindication of Smith Brothers by President Lincoln, the tyrannical law was repealed. Thence afterward the zeal of chiefs of bureaus subsided, and parties against whom allegations had been made by a committee of the U. S. Senate upon their testimony were undisturbed by civil process.

War is merciless. Its miseries do not culminate in the aggregate slaughter of armies. Its demoralization awakens avarice, deadens sympathy, hardens conscience and lowers the standard of public morality. In the din of its conflict and the intensity of its anxieties, conspiracy steals forth ruthlessly; its steps unheard and its plots unnoticed. Thence follow crimes unseen and cruelties unknown

Power delegated for National deliverance reaches bad hands and is turned to tyranny. If, herein, atrocities have been recorded, to stimulate future jealousy of military absolutism and watchfulness of its administration, this experience of its abuse will not have been in vain. Individual persecution will have contributed to future public protection.

F. W. S.

"This is indeed a strange history to be enacted in this loyal commonwealth, where the courts of justice are in peaceful operation and the laws obeyed with cheerful alacrity; but it is one only of the many illustrations, with which history is full, with what facility in times of great civil convulsions, the highest functions of government are used by subordinate agents to accomplish personal ends under the guise of public justice."—*Hon. B. F. Thomas, (late Judge of the Supreme Court of Massachusetts, and member of Congress from Boston), upon the case of Franklin W. Smith.*

EXTRACTS FROM PUBLIC RECORDS

— OF A —

CAUSE CÉLÈBRE.

THE U. S. NAVY DEPARTMENT *vs.* FRANKLIN W. SMITH.

PART FIRST.

Reform of the Old Contract System Through the Effort of F. W. Smith.

Upon the election of Abraham Lincoln to the Presidency of the United States, the hardware house of Smith Brothers & Co. made their first tenders for supplies to the Navy Department.

On the 24th of February, 1862, and before the fulfilment of their first contract, Mr. Franklin W. Smith addressed a printed paper to the Chief of the Bureau of Yards and Docks, in argument that the contract system as then existed, opened facilities for gross wrong upon the government. This paper, with others hereinafter mentioned, may be found in the Report of the Select Committee on Naval Supplies of the United States Senate of July 4, 1864.

The following extracts will indicate its tenor:

"Having decided to attempt some government contracts *we analyzed the published reports of the department in previous years to discover the modus operandi.* We were astonished that a system that left such records of bargaining could have been so long maintained.

* * * * *

"We (Smith Brothers), shall be glad to aid in any effort to replace the system by one far more agreeable to those who would be honorable competitors for government business."

* * * * *

On the 10th of February, 1863, he addressed a printed paper to the Secretary of the Navy and Mr. Sedgwick, chairman of the Committee on Naval Affairs, proposing a remedy for the discreditable system hitherto existing by law; extracts from which are as follows:

PAPER TO THE SECRETARY OF THE NAVY AND HON. CHARLES B. SEDGWICK.

WASHINGTON, February 10, 1863.

The bill before the House proposes to remedy evils in the contract system of the Navy Department that have existed for many years. The disadvantages that have followed to the government have been inherent in the *system* itself. In two bureaus of the department a system of proposals by advertisement has been maintained, that in result was a mere matter of chance to the respective parties. Thus in the Bureau of Yards and Docks it has been customary to advertise for a great variety of articles which were only to be called for *if wanted.* The chance, therefore, for the bidder to calculate upon is: *What articles will be wanted?*

* * * * *

If the contracts of the department, as published for years past, be analyzed, it will be found that a system of bidding has been maintained by which the merchandise advertised has been offered to the government at very much less than its value in the market; the bidders having calculated according to their estimate of the *real wants* of government. The law has required that the lowest bid, in aggregate upon the whole, should be accepted.

The merchant, therefore, who would approach the government with his offer, must follow these old precedents or be entirely distanced by his competitors.

Honorable mercantile houses have desired and urged a reform in the system that would place the transactions of the department upon a more legitimate basis to all parties concerned.

* * * * *

THE REMEDY.

The bill reported by the committee is an advance towards remedying the evils of the system. In two of its provisions, however, in my judgment, it is defective:

First. By providing that there may be an increase of *fifty per centum* or a decrease of *twenty-five per centum* upon the quantities advertised; the game of chance is still open.

Let the Navy Department, as the War Department, advertise *for precisely what is to be received; no more, no less.* There can then be *no* "nominal prices." They will disappear; for the merchant will know that the merchandise described is *to be furnished.* If the War Department wants 100 ambulances and 200 wagons, they contract for and demand like quantities as advertised. There is no chance to estimate that there may be delivered, under the contract, 50 ambulances and 500 wagons. The War Department, therefore, receives no bids at "nominal prices."

If the Navy Department is uncertain as to its want of some articles, let them be bought when the demand shall arise. It can buy in open market, or it can direct its agents to advertise, at any time, for one day, or one month, for any additional articles that may be demanded.

If the schedules, as contracted for, are being rapidly exhausted, the department can, before the contracts expire, advertise for more merchandise, by the provision of the bill of the committee.

Second. Having thus effectually removed all occasion or opportunity for nominal prices, the clause allowing the

rejection of bids for nominal prices can be omitted. It gives an opportunity for unfairness by an arbitrary decision, as to what is a nominal price. One merchant, perhaps, by unusual facilities possessed, may afford to supply articles less than any other parties. The government would suffer, and the merchant be wronged, if the bid were to be rejected because the price appeared too cheap.

The amendments to the resolution suggested by the above are:

First. The omission of the clause allowing variations from the quantities advertised.

Second. The omission of the clause allowing the rejection of bids for nominal prices: because, if the quantities are fixed as above mentioned, there *can be no nominal prices.*

Respectfully submitted.

FRANKLIN W. SMITH.

HON. CHAS. B. SEDGWICK,
Chairman Committee on Naval Affairs.

Letter to HON. D. W. GOOCH, M. C., from Massachusetts. Printed in U. S. Senate Report.

NEW YORK, February 12, 1863.

MY DEAR SIR: I am glad to notice by the papers that the resolution concerning contracts was recommitted after debate, as I feared my suggestions were too late.

We have really no pecuniary interest in the amendments suggested; for it is impossible to estimate whether the bill with or without them will be most favorable to our profit, if we make further contracts. My motive in the effort made was, sincerely: *first*, for the good of the government; *second*, that it might appear that all merchants who became contractors were not inevitably, because in business connections with the government—selfish sharpers.

The record we have made to date is a clear one; we are content to be judged by it. I regard it as most fortunate

that, without knowledge that any such legislation was pending, it happened in my way to place our record with the Naval Committee.

If in the course of the debate sweeping animadversion may be made upon contractors under the system hitherto, your sentiments of fairness, regard for the fame of Boston merchants, and (may I presume!) your confidence in the undersigned, may prompt you to speak in reply.

With reference to "nominal prices," upon which so much is said, this is our reply: We were compelled to use an old system, provided by law, as it long had been used and accepted by the department, or retire from the competition.

If all houses who would be honorable dealers with the government thus retired from the field, the government, with a bad system, would be entirely in bad hands.

We did our part, as soon as we comprehended the evils of the system, in recording our regret that they existed, and our desire for their remedy.

With a renewal of thanks for your courtesy,

I am yours, respectfully and truly,

FRANKLIN W. SMITH.

Hon. D. W. GOOCH, *Washington, D. C.*

Through the concurrent effort of Hon. Messrs. Gooch and Sedgwick, and in accordance with the recommendations of Smith Brothers & Co., the joint resolution approved March 3, 1863, which was in place of that recommitted in February, provided that "every contract shall require the delivery of a specified quantity."

This requirement of the law, that the Navy Department should contract for fixed quantities, caused nominal prices to disappear at once from the bids upon the next proposals for supplies.

Thus, as was remarked to Mr. Sedgwick, "paradoxical as it may appear to some minds, *contractors have been reformers.*"

FARTHER EFFORTS OF FRANKLIN W. SMITH

TO IMPROVE THE SYSTEM FOR

PURCHASE AND PROTECTION OF NAVAL SUPPLIES.

PART SECOND.

[*Correspondence—Senate Report, p. 22.*]

NAVY AGENT'S OFFICE,

BOSTON, December 1, 1853.

FRANKLIN W. SMITH, ESQ.,

SIR: In a communication, under date of the 17th ultimo, Hon. Charles B. Sedgwick, Commissioner of the Naval Code, expresses a desire to obtain from "gentlemen practically acquainted with the subject," information as to "the best and most economical mode of purchase of supplies for the navy, and the one most likely to protect the government from fraud."

Among others, he submits the following questions:

First. "Whether the present contract system might be modified and changed so as to avoid objection and prevent fraud."

Second. "Whether any more thorough and strict system of inspection and accounting for supplies and material purchased ought to be adopted to secure the department against imposition."

I should be glad to have you state your judgment upon these questions, to be inclosed to the Commissioner, as suggested by your observation and experience during the period of your business relations with the department.

I am, sir, very respectfully,

Your obedient servant,

E. L. NORTON, *Navy Agent.*

FRANKLIN W. SMITH, ESQ., *Boston.*

BOSTON, December 11, 1863.

HON. E. L. NORTON,

SIR: I respond with pleasure to your request for the statement of my judgment upon inquiries submitted by the Commissioner of the Naval Code, viz.:

First. "Whether the present contract system might be modified and changed, so as to avoid objection and prevent fraud."

Second. "Whether any more thorough and strict system of inspection and accounting for supplies and materials purchased ought to be adopted to secure the department against imposition."

"The joint resolution regulating contracts with the Navy Department," approved march 3, 1863, provided "that every contract shall require the delivery of a specific quantity." This was a decided reformation of the old system for unlimited supplies, upon the lowest aggregate bid upon a quantity; which left upon the published report of the department, for several years, such absurd records of government bargains.

In a communication addressed by me to the chairman of the Committee on Naval Affairs, in February, 1863, the prediction was made that if the Navy Department would advertise for "no more and no less" than the quantity to be received under the contract, fictitious and excessive prices, which had been an evil and a reproach, would disappear. Existing contracts for specific quantities, executed under the present law, demonstrate the truth of the assertion. By this reform, therefore, the most prominent evils of past years have been removed.

Yet additional safeguards of law, scrupulously applied by the authorities, are requisite before the confidence of the community can be commanded, and before there can be certainty that the obligations of contractors are faithfully fulfilled.

These safeguards are required as to the following questions:

First. Is there assurance to the public of absolute fairness in the reception of bids and award of contracts?

Second. Are the schedules of merchandise for which bids are invited sufficiently explicit in the description of merchandise to be furnished?

Third. Is the system for the receipt of merchandise so systematically protected that government cannot be defrauded in quantity or quality?

For satisfaction to the mercantile community upon the first inquiry above suggested, it must be known that all preliminary arrangements for the award of contracts are scrupulously guarded against collusion of clerks with favored parties, and against inaccuracy in computations or irregularity in the form of bids.

The advertisement for proposals should state that the opening of bids (no longer, as formerly, in secret with chiefs and clerks of bureaus), is by law provided to be in the presence of bidders.

Bids should be received in closed safes prepared for the purpose, secured against all inspection until the hour of opening named in the advertisement. Then, in presence of competing parties or their agents, they should be withdrawn, sorted and stamped with a seal privately retained by chiefs of bureaus for the purpose.

No bids should be received after the hour of opening.

Bids should not be indorsed with the numbers of the classes named within them.

(*From such indorsements it may be learned by clerks that there are no bids for certain classes; and through collusion, exorbitant prices may be named for said classes. It is believed that in the case of certain contracts where enormous prices were obtained, such wrongful advantage must have been employed.*)

All bids containing erroneous computations, omissions of prices for any articles, figures or writing in pencil, or having other suspicious appearances or informalities, should be rejected.

(*Bids have been received containing several arithmetical errors, but all against the government, wherein, while prices have been exorbitant, the extensions have been minus, and the aggregate the lowest. It is a discreditable fact that such bids have been actually executed in contract. Ordinary*

mathematical calculations, in private life made sure with the grocer and baker, have passed the inspection and notice of government offices, grossly erroneous; the result of these errors being in such loss to government and such gain to the contractor as to suggest that they could not have been in all intents MIS-*calculations.*)

The opening of bids should be at a continuous sitting if practicable.

If adjournment be necessary, unopened bids should be secured from the inspection of all parties in the interim.

Examination of computations and forms should be made only in the offices of the department; and for no purpose whatever should bids be removed therefrom until contracts have been executed.

(*Instances have been remarked where bids for different yards have been taken by clerks to their homes for examination.*)

These details are by no means over-cautious in transactions which involve not only large expenditures of money, but the good faith of government toward the people. Officers who have in charge such important business interests *should not be satisfied merely with their own belief that there* IS *no wrong committed.* They should be eager to arrange evidence for the pnblic, that *no wrong* CAN *be committed.*

* * * * *

Thirdly. Is the system for the receipt of merchandise so systematically protected that government cannot be defrauded in quantity or quality?

This is a question vital to the interests of the government under any system of purchase. No fairness of price, no high standard of quality, can compete against the fraudulent collusion of dishonest traders with weighmasters and receiving clerks.

Suspicions have long existed as to the prevalence of this style of robbery in navy yards. Indeed, it is frequently remarked, as an irremediable evil, that government must be robbed to some extent in the delivery of merchandise; because it is inevitable that there will be some dishonest men. Yet because of this extraordinary exposure to wrong,

extraordinary protective and detective measures are demanded at the hands of executive officers in the departments. A system should be devised so thorough in its checks and counterchecks, that rogues cannot disarrange its machinery without being caught in its traps.

I do not hesitate to state as my belief, based upon unusual facilities for judgment, that there is not at present a system in navy yards sufficiently protective against short weights and measures.

Doors are open which should be closed and doubly locked.

There are means for the perpetration of this wrong, without and beyond the knowledge of the naval storekeeper, who may be honest meanwhile in the exercise of his functions. I am aware this is an important statement. It is made in full conviction of its importance and its truth.

It must be entirely practicable to remedy all exposure to this evil, and, through enterprise and ingenuity, not only to devise an effective system of protection against fraud in the delivery of merchandise, but to insure its faithful execution.

* * * * *

The Bank of England, in its internal administration, is like an apartment walled with mirrors; each action therein is reflected in various directions to the observation of others, as honest or dishonest.

When the Navy Department is developed upon so vast a scale as to require an appropriation of $140,000,000, like precision in system will be required to afford protection to government. As additional security to the present system, I venture the suggestion *that there should be in every navy yard a naval store receiver, as well as naval storekeeper.*

* * * * *

When such reforms as these, above detailed, are applied in the administration of the bureaus and at the yards, it will be difficult to show objections to a contract system, or opportunities for fraud in purchases by either contract or open purchase.

It is possible that the suggestions herein submitted may

be regarded as intrusive by some to whose official functions they have special relation.

Yet it may without presumption be assumed that the business transactions with the department of the house of which the writer is a member, amounting to more than a million of dollars, and demanding of him during two years almost daily visitation of the workshops and offices of the navy yard, involving the supply of a great variety of articles entering into consumption and use throughout the mechanical departments and on shipboard, ought to have furnished to a merchant facilities for judgment as to the system in practice entitled to some consideration.

Faithful officers of the government who would vigilantly guard its interests and exact its claims will invite the thorough scrutiny and welcome the respectful suggestion of citizens, as zealous as themselves for the welfare of government, and contributing, perhaps, as much to its support.

An ex-President of the United States has said: "It is a condition for the enjoyment of liberty that our rulers be narrowly watched. It can never be long preserved without popular jealousy. It is a maxim of despots that the people should never inquire into the concerns of government."

Transactions with government have been subject to such general suspicion that merchants sensitive to their good name are reluctant to engage in them, exposing themselves to disparagement and scandal. Yet shall those of the mercantile community who would maintain their own integrity abandon the competition? Or shall they enter the lists, to strive against temptation to themselves and for its removal from others?

The case seems to be this: Rogues, as may be expected, approach government for business. Executive officers are not sufficiently expert for their detection; therefore, all who solicit government patronage are under distrust and suspicion.

Again: It is not through the dereliction of citizen contractors alone that government may be defrauded. Evidence is on record that government employés, either by mal-intent or through inadvertence, have been as greatly

in fault. Results may be known outside of government offices which are individual secrets within them.

* * * * *

While in compliance with your request, and under impression of the importance of the subject, I have frankly advocated amendment in details of administration, it has been without the least impulse of disrespect for officers of the government or the disparagement of their services; but for a record against evils from which the business world believes our government to receive material injury.

We improved the earliest opportunity after apprehending the evils of the contract system (in 1861), to expose them to the department, remarking: "We shall be glad to aid any effort to replace it by one more distinct in its demands upon the seller of merchandise, and therefore far more agreeable to those who would be honorable competitors for government patronage."

It was a gratification that opportunity occurred to press legislation for this purpose, and that reform was accomplished. during the subsequent period, as observation informed of remaining facilities for wrong, impatience has been felt for their removal.

At a time when our government is engaged in an exhaustive struggle for life, I have been compelled as a citizen to urge its protection against unfaithfulness in its service and fraud by those enjoying its patronage.

I remain, sir, most respectfully,

Your obedient servant,

FRANKLIN W. SMITH.

THE PAMPHLET OF F. W. SMITH

EXPOSING FRAUDS IN CONTRACTS

WITH THE NAVY DEPARTMENT.

Its Investigation and Endorsement by a Special Committee of the United States Senate.

THE PLOT FOR REVENGE.

PART THIRD.

Letter to the Secretary of the Navy, with an analysis of certain contracts of the Navy Department, as appendix to paper addressed to the Commissioner of the Naval Code.

[Privately printed for the Secretary of the Navy and the Committees on Naval Affairs of the Senate and House of Representatives.]

BOSTON, January 29, 1864.

TO THE HON. THE SECRETARY OF THE NAVY,

SIR: In the communication to the Commissioner of the naval code, copy of which I had the honor to address to you on the 29th ultimo, reference was made to the *erroneous computations and enormous prices of certain contracts* by which it was believed that the government had suffered loss.

At that time the statement was fully warranted upon the personal knowledge of the writer. The suggestion of the existence of such wrong to the department was supposed by him to be the entire fulfilment of his duty. Facts which have subsequently been made public compel him now, in faithfulness to the country and to himself, to place before you a more distinct statement of the case.

The Boston *Journal* recently published a copy of one of these suspicious contracts—that, wherein $150 per dozen

were paid for wrenches worth $10 to $15 per dozen. The writer of that article proceeds to explain the transaction, "in justice to the Navy Department," as attributable to the system (formerly existing under law of 1855), of bidding at high prices and low prices, according to the quantities likely to be required. This theory was probably accepted from the speech of Senator Grimes (Cong. *Globe*, Jan. 9), but is altogether erroneous; since *all the prices were exorbitant, and the quantities limited* under the act of March, 1863.

It was also asserted that the bid was a fair specimen of the bids for every contract; when, in fact, the contract mentioned (and others on record as bad), is *exceptional, extraordinary, and must have had a peculiar history.*

* * * * * *

Some contracts have appeared in the reports of the bureaus of an unprecedented character. The only explanation for them yet made to the public is incorrect; in fact, their peculiar history is as yet a secret. In the absence of authentic statements, false and exaggerated theories are applied; scandal becomes excessive and wide-spread. *Suppressio veri, suggestio falsi.*

It is especially unjust that merchants who have had no part in wrongful acts should be defamed in mass with those who have committed them. If obloquy is to be scattered broadcast over all concerned with government, because of the dishonor of individuals; if integrity is not to be recognized when found, and vindicated from undeserved suspicion and reproach, the business of the nation will be yielded entirely to those who care not for reputation, having none to defend.

We are not willing to share with others, in the least degree, the imputations of wrong in our relations to government, but will rather make an effort to place the discredit where it belongs.

Upon our first movement for navy business, in 1861, we were repelled by records of the absurd bargains published in the reports of previous years. We were obliged to follow precedents established under the law, or retire from the competition. The evils existing could only be appre-

hended by tracking them over forbidden ground. We vigorously joined in the raid upon them, by which the most prominent of those evils were remedied.

During the period when contracts could only be obtained by calculation as to *quantities* instead of *values* of merchandise, and consequently by bids of anomalous prices, we improved an opportunity to demonstrate by figures to the Bureau of Yards and Docks that the average per cent. of profit to us did not exceed or equal a fair mercantile rate. We invite, and will aid in like manner, the utmost scrutiny of all our transactions with the department.

The files of the bureaus, and the testimony of members of Congress from Massachusetts, will witness that we have advocated the remedy of abuses at once upon their discovery. The following pages will discover an onerous task assumed in this service.

* * * * * *

In full confidence of your eager desire for the detection and remedy of abuses in the administration of the Navy Department, and realizing that amid your most arduous and important services for the country you must necessarily be uninformed of such statements as are annexed, they are respectfully submitted to your consideration.

I remain, sir, most respectfully,

Your obedient servant,

FRANKLIN W. SMITH.

TO THE HON. SECRETARY OF THE NAVY.

With this letter, Mr. Smith's pamphlet was presented to the Secretary of the Navy, in person, and in company with Hon. A. H. Rice, of Massachusetts. It was subsequently printed in full in the Report of the Select Committee on Naval Supplies of the U. S. Senate, July 4. 1864, and quoted by Hon. John P. Hale in his speech in the Senate, in defense of the Report.

The pamphlet was a mathematical analysis of certain contracts, covering thirty-eight pages, and with the annexed recapitulation :

Statement of loss to government upon contracts analyzed:

Amounts of the contracts as awarded.	Excess in these contracts above market rates, at prices on other bids of the same time.
$11,860 00	$1,262 00
16,060 00	3,250 00
1,278 65	635 00
652 50	405 50
1,370 00	400 00
4,807 20	1,000 00
1,200 00	912 50
6,545 00	581 00
4,227 50	1,692 50
8,054 00	2,265 00
21,612 18	11,208 40 !
280 00	125 00
1,400 00	300 00
2,350 00	200 00
9,760 00	1,760 00
4,687 00	2,094 16 !
$96,144 03	$28,091 06

Thus it appears that the government suffered, on awards of $96,144.03, the amount of $28,091.06, and by erroneous computations $4,476.99. Total, $32,568.05.

The analysis above, with the statement of aggregate loss to government, all apply to the awards under advertisements of Bureau of Construction and Engineering of February, 1863, with the exception of one erroneous computation from the Bureau of Yards and Docks.

Awards In June.

On the morning of the 24th of June, 1863, the Secretary of the Navy, acting upon special warning from

Senator Sumner,* took measures for the protection of an opening of bids to be made that day. Several mercantile houses of Boston were by mutual arrangement represented on the occasion. The opening was, according to their request, prosecuted through a continuous sitting. Bids were inspected, copies taken, etc., etc. The interesting revelations made at that time do not appear in the reports of the bureaus; but were fully revealed subsequently in the Senate Report.

The pamphlet above mentioned was referred by the Secretary of the Navy to Chiefs of Bureaus for examination and reply. It received only acrimonious comments evasive of its figures and conclusions. To these replies Mr. Smith made a rejoinder. For the entire correspondence, Vide Sen. Report, pp. 44–60.

Extracts from "Rejoinder" of F. W. Smith to the Chiefs of Bureaus.

* * * * *

"Charges, such as these, wer not made without careful consideration. The evidence upon which they are based, after compilation from the Report of the Secretary of the Navy, was examined in detail by gentlemen, whose competent judgment of evidence would be admitted.

"After the paper was placed in type for greater distinctness, the proof was submitted to a counsellor of this city, eminent for character as ability.† Upon a critical examination thereof, in connection with the Secretary's Report, he pronounced it a conclusive statement of evidence, sufficient to prove the allegation to any intelligent jury beyond a

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*Through information from Members of Congress in Boston, communicated by F. W. Smith.

†The late Hon. Edward S. Rand of Boston.

reasonable doubt ; and furthermore declared it my personal duty as a citizen to place said paper with the Secretary of the Navy, that the serious wrong discovered might be thoroughly investigated. In this opinion of my duty members of Congress fully concurred.

"The unpleasant and, as might have been expected, thankless duty was performed."

* * * * *

The statement closed as follows :

"The above review of all points bearing upon the serious allegation which is set aside as 'hypothetical and imaginary,' leaves the evidence of its truth still unbroken and conclusive. The unanimous verdict of those to whom it is submitted successively for examination (beyond those who assume an attitude of defense), is that the facts collated sustain the charge.

"I doubt not but that an intelligent jury, or a committee of the Boston Board of Trade, would indorse the opinion of the legal gentleman under whose advice I have performed this unwelcome duty, viz.: That the said 'analysis of certain contracts' proves, beyond a reasonable doubt, that certain contractors could not have obtained the extraordinarily profitable contracts in question through any mere chance of bidding ; but that through information, by collusion, said results were obtained.

"Besides, however, the internal evidence of the Report of the Secretary which the writer has collated, (at expense of personal labor, time and money, and exposure to resentful attacks), *there can be other collateral evidence to substantiate the truth.*

"I cannot conclude without again soliciting your attention to the resentful disposition of the chiefs in reply. Their unwarranted insinuation and weak satire will have full exposure in a subsequent paper. The communication which required their attention, so far from implying distrust of either of those functionaries, referred to them in terms of confidence personally, of respect for their ability, and consideration of their arduous labors. It was not, therefore, to have been anticipated that evidence of wrong within their

offices, the suspicion of which, as was remarked to the writer by the Secretary, was not new in the department, would be set aside as 'hypothetical and imaginary,' and returned with angry recrimination. Yet, despite this ready dismissal by the bureaus, the importance of this evidence, in fact and inference, will remain.

"I am, sir, very respectfully,

"Your obedient servant,

"FRANKLIN W. SMITH.

"HON. JOHN P. HALE,

"*Chairman of the Senate Select Committee on Naval Supplies.*"

Reports of these revelations, by Mr. Smith, reached Congress, and resulted in the appointment of a "Special Committee of the U. S. Senate," consisting of Senators Hale, Buckalew and Doolittle to investigate them.

On the 11th of February, 1864, F. W. Smith testified before this Committee in Washington, and subsequently also at length, until the committee had placed upon record every detail of his "Analysis of Certain Contracts."

The papers above mentioned, and the testimony, fill seventy pages of the "Senate Report," of which 3,000 copies were ordered to be printed.

The investigation of the committee lasted four months, until their Report on the 29th of June, 1864; making a volume of 231 pages.

The following are extracts from the Report:

* * * * *

"As public attention was first called to this subject directly by the publication of a series of papers concerning the purchase of naval supplies, with an analysis of certain

navy contracts by Mr. Franklin W. Smith, of Smith Brothers & Co., a mercantile house in Boston, and as the matter then presented was deemed of sufficient importance by the Secretary of the Navy to submit the same to certain heads of Bureaus in the Navy Department, and they severally made answer thereto, the committee have decided to report the pamphlet before referred to, the answers of the chiefs of bureaus, and the rejoinder of Mr. Smith thereto, together with the evidence taken in the case, leaving the Senate to form such conclusion therefrom as the facts and allegations therein shall justify.

"The committee will now present to the Senate certain statements of facts which they think the evidence by them taken will justify. They have confined themselves in their examination to recent occurrences, thinking that the latest transactions will afford the best evidence of the present state of affairs, and show most clearly what are the evils for which remedies should be sought.

"In the first place, then, your committee start with the announcement that the investigations which they have made satisfy them beyond a doubt that, in the matter of naval supplies last year, the government has been grossly defrauded by having to pay most exorbitant and enormous prices for very many of the articles procured by contract with the heads of several of the bureaus. They will submit a few of the more gross and palpable instances in support of this assertion, and suggest some of the means by which these frauds have been, or many have been, perpetrated."

Here follow several contracts brought to light in the above "Analysis of Contracts by F. W. Smith."

* * * * *

"At a time like the present, when taxes are so high, and the burden of the war falls so heavily on the people, they have a right to expect and demand from those intrusted with the disbursement of the public money fidelity, vigilance, and economy.

"In conclusion, your committee submit the following as the result of the examination they have made :

"1. In the matter of contracts for naval supplies last year, the government has been grossly defrauded.

"2. These frauds could not have been perpetrated without aid from those in the employment of government in the bureaus.

"3. These remarks apply to the Bureau of Steam Engineering, the Bureau of Construction, etc., and the Bureau of Yards and Docks."

Views Submitted by MR. BUCKALEW.

* * * * *

"2. The undersigned concurs in the conclusion drawn in the report from the evidence, that in particular cases of contracts for naval supplies the successful bidders had information from the department with regard to the biddings, or assistance therein in arranging their bids to secure success. No other explanation of several of these contracts can be reasonably given."

* * * * *

"3. This inquiry into this subject of naval contracts mainly arose upon an exposition of them by Franklin W. Smith, a merchant of Boston, and the evidence and papers herewith reported will show the thoroughness and ability with which his examination was made, and the particular replies on the different points given thereto on behalf of the department. The recriminations against him appear in the replies and in the testimony taken before the committee. There can be no question of his intelligence and capacity, nor would it be unreasonable to assert that the public are indebted to him for much of valuable information upon the subjects covered by this investigation. Since his examination before the committee, he has been arrested at Boston, it is believed at the instance of the Navy Department, upon some accusation or allegation of over-charge or imposition in furnishing naval supplies. It is to be hoped, for the credit of the government, that this arrest, following close upon his examination before the committee, will be fully justified upon due investigation and fair trial, and that the proceeding will be relieved from all appearance of persecution or vengeance. "C. R. BUCKALEW."

Immediately upon the publication of this Report, rumors of retaliation upon F. W. Smith, by officials of the Navy Department reached Boston, and were brought in person by Hon. J. P. Hale, on his way to New Hampshire, who called at the warehouse of Smith Brothers, and said "The Navy Department will slaughter Franklin W. Smith."

A Preliminary Assault of the Navy Department in the U. S. Senate.

On the 23d of May, 1864, the Senator from Iowa, spoke at length in reply to an adverse report by the Committee on Naval Supplies, upon a proposition from the Navy Department, that purchases should be made by regular officers of the Navy, instead of Navy agents who were civilians.

Extract from Correspondence of the "BOSTON DAILY ADVERTISER," June 8, 1864.

"Our readers will observe that the Senator singled out "Mr. Franklin W. Smith, of Smith Brothers & Co., for "his severest denunciation. In doing this the Senator did "great injustice to the house in question. As to the injus- "tice, we will call attention to the letter by Mr. Franklin "W. Smith, embodied in Mr. Hale's reply, which, we "believe, supplies a complete answer to the substance of "the charges made by Mr. Grimes.

"It is proper to add that, at the close of the debate, "Mr. Sumner rose to express his confidence in the entire "good faith with which the Messrs. Smith had dealt with "the government.

"Nearly the whole Massachusetts' delegation in both "Houses, we believe, would have joined in this expression; "and one member, himself a merchant of high standing in

" this city, who knows their course thoroughly, has said
" that not only have their transactions been honorable and
" executed faithfully, but that they have labored diligently
" to break up that system of awarding contracts which has
" been the source of so much fraudulent dealing with the
" government. It is, indeed, the fact, we believe, that
" Mr. Franklin W. Smith has acted as a zealous reformer
" in this matter, and is now meeting the reformer's custo-
" mary reward, after having been largely instrumental in
" overturning the old system of fictitious bidding."

In proof of the vindictive character of this attack, the following fact is stated: Haying heard that it was intended, Mr. F. W. Smith, with his brother, and partner Mr. Benjamin G. Smith, met the Senator from Iowa in the Senate ante-chamber and placed with him copies of the printed correspondence of F. W. Smith with the Secretary of the Navy and Chiefs of Bureaus, herein above cited, in advocacy of the reform which he finally accomplished, calling the Senator's attention to their date as early as February, 1862, and before the completion of their first contract. *Yet with this correspondence in his hands, the Senator insinuated to the contrary,* by an interrogation in his speech: " Did they ever address the Department on the subject? "

Hon. John P. Hale replied at once in support of the Report of the Naval Committee, and in vindication of Mr. Smith.

Extracts from Speech of HON. JOHN P. HALE, of New Hampshire, in the United States Senate, May 23, 1864, (as follows):

* * * * *

"A great portion of the labor of this effort of the Senator is made upon Mr. Smith, of the firm of Smith Brothers & Co., of Boston. Let me say this of Mr. Smith: I know him; he is a merchant of the highest character; of unimpeachable integrity, and unblemished reputation with all who know him. There is not a mercantile house in Boston, and that is a place, I think, where the standard of mercantile integrity is as high as it is in any city of this Union—there is not a mercantile house nor a mercantile man in Boston whose reputation excels that of Mr. Smith. Mr. Smith is not only a man eminent in the walks of mercantile and private life, of unspotted integrity, and of unsuspected fairness, but, beside all that, he is an able man; he is a keen man as well as an honest man; and do you want to know the secret of this *hostility to Mr. Smith?** I have it in my hand here now (holding up the pamphlets of Mr. Franklin W. Smith).

"When the report of the Secretary of the Navy communicated to the two Houses of Congress, on the 7th of December last, was published, Mr. Smith saw, as every man can see that will look at it, evidence of the grossest and most outrageous frauds under the published evidence of the Secretary of the Navy—not one of them perpetrated through the agency of the Navy agents. As became a man of integrity and of keen intellect, he, in a little pamphlet which I hold in my hand, exposed some of these frauds perpetrated, not through Navy agents, but through officials here at Washington. He exposed them in his pamphlet. Let me call your attention to one or two of them."

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* Quotation of these personal allusions to the defendant will be pardoned in view of the malignant disparagement which they would counteract. The gentle proprieties of ordinary life are perforce suspended in a mortal conflict for life's chief treasure—a spotless reputation.

(The contracts cited and the details of wrong and loss exposed can be found in the official report of the debate.)

* * * * *

"Mr. Smith brought these facts to light and published them, and for it he is entitled to the thanks of every man who desires purity in the administration of the government. Instead of it he has received and secured to himself, and probably to his children after him, the undying hatred of the men whose conduct is thus implicated.

Mr. Smith's Vindication.

"Again, Mr. Smith has not only exposed these wrongs, but he has been guilty of another gross offense in the view of the heads of these bureaus. When his attention was first called to this subject of fictitious bidding, he looked back to years ago when it went on quietly year after year; and not a word was said against it; but the very first year Mr. Smith's attention was called to it he did what the Senator said he ought to have done; he notified the heads of bureaus and the Secretary of the Navy of these frauds by correspondence. He had correspondence, too, with the gentleman appointed to prepare a naval code, and made a suggestion of the very frauds that had been practised, and the mode in which they might be practised; and for that, too, he has committed, in the eyes of this gentleman, an unpardonable sin.

"I have said that Mr. Smith is not only an honest man, but he is a keen man. I do not know that I shall be doing any injustice to the Senator from Iowa—I certainly do not mean to do any—if I say to the Senator from Iowa that he is quite as keen a man as he is, and I think he is a little keener in one respect. The Senator from Iowa—I do not mean to say anything unkind or disrespectful to him—is charged and surcharged with the concentrated venom of all the men that Mr. Smith has disturbed by writing this pamphlet, and he has been so highly charged that he let some of it off before he made his speech here, as I think the Senator will see when I read, as I propose to read, Mr.

Smith's answer to the speech of the gentleman, made before the speech was delivered. I will read it."

Mr. Hale here read in full a paper prepared by Mr. F. W. Smith in reply to the statements of the Senator from Iowa, which is on record in the report of the debate. It closed as follows:

"We hope that our efforts in behalf of reform, our fearless assertion of our rights as merchants in correspondence with heads of bureaus, and our exposure of collusion and fraud, have not stimulated an eager search for wrong on our part which has no existence in fact, and thus called down upon us an unfriendly criticism. I remain, sir, respectfully, Your obedient servant,

"FRANKLIN W. SMITH.

"HON. JOHN P. HALE,

"*Chairman of Senate Committee on Naval Affairs.*"

Mr. Hale continued:

"Mr. President, I have read this long communication to the Senate because I thought it due to a gentleman whose character was thus assailed, and, I think, as it will be published side by side with the statements of the Senator from Iowa, that the injurious imputations thrown upon the character of Mr. Smith will carry with them their own antidote. I believe there is no higher duty that a Senator or the Senate owes to the country, to the government and to itself, than to vindicate, whenever it is unjustly assailed, the character of any citizen whose conduct may be thus brought before the Senate. Neither shall I, at any time be deterred from the course which I think my duty imposes upon me in defense of individual character, or in ferreting out public wrongs wherever I may believe that they exist."

* * * * *

This preparative attack, for which the material was furnished by chiefs of bureaus, in full possession of published evidence of their falsity, was made on the 23d of May, 1864, and the military arrest followed on the 17th of June.

THE PERSECUTION BY PROSECUTION

— OF —

FRANKLIN W. SMITH.

PART FOURTH.

Extracts from "Rules and Regulations for the better Government of the Navy."

GIDEON WELLES, *Secretary.*

Reg. 1210–12. "*Explanations shall be asked of the party at the time of the arrest.*"

Reg. 1203. "*The person accused shall be furnished with a true copy of the charges, with the specification at the time he is put under arrest.*"

Reg. 1205. "*Offences shall not be allowed to accumulate in order that collectively sufficient material may thus be found for a prosecution.*"

Reg. 1212 *provides that* "*before a decision is made by the Secretary whether a trial shall take place, explanations of the party accused shall invariably accompany the statement of facts.*"

Their Ruthless Violation!

A few weeks after the warning of Senator Hale, merchants of Boston, of whom Smith Brothers had purchased merchandise for the Navy, informed them that they had been summoned before a detective inquisition in Court Square, the whole animus of which was against Franklin W. Smith, and to prove dishonesty of

the firm, in short delivery of goods sold to the department. The detectives assumed that what was known to exist as a practice elsewhere, through collusion of officials, would be also found in Boston.

The books of these merchants tallied to an *iota* with the invoices to government, and such tracks against Smith Brothers were followed in vain.

But at these inimical and despotic appliances F. W. Smith was alarmed. He wrote to Messrs. A. H. Rice and D. W. Gooch, representatives from Massachusetts, and to Senator Wilson, in terms as follows:

"BOSTON, April 6, 1864.

"Hon. A. H. RICE,

"DEAR SIR: While I was in Washington a Col. Olcott left for Boston for investigation of frauds in the Navy Department. Meanwhile he has held a private court daily, summoning witnesses before him."

* * * * *

"I beg you, in behalf of a character dearer to me than life, once again to ask of the Hon. Secretary that no step shall be taken to our injury, until I have seen the statements that may be gathered against us, and had opportunity to demonstrate their *utter, total falsity*. Is this more than the justice I should expect from the government?"

* * * * *

"To Hon. D. W. GOOCH,

"DEAR SIR: I learn this P.M. that Col. Olcott has left for Washington with his gathering of scandal, especially against ourselves. I beg you to inform the delegation of this wrong." * *

"Answer I can, triumphantly, if I have opportunity.

* * * * *

"But it is useless to answer in the dark. Is it possible that with the record I have made to date, my character is to be permitted to be outraged to gratify the malevolence of those in power? If so, pity for a free country!"

"To Hon. HENRY WILSON, U. S. SENATE, WASHINGTON,

* * * * *

"DEAR SIR: Smith Brothers invite the utmost scrutiny, fairly conducted.

"Yet they have incurred the dislike of certain bureaus. The reasons will be found in the accompanying pamphlets. * * My present purpose is to elicit a perusal of the enclosed papers, that you may read our record, and to bespeak your decided effort against any such injustice as the use of *ex-parte*, secret evidence gathered against us before we have had any opportunity for a hearing."

To the remonstrances of these gentlemen, Secretary Welles gave assurance of due fairness. But the inquisition continued. After the Secretary was informed that Mr. Smith had not been summoned, which he had claimed as a right, a notice was sent to him to appear. Thirty minutes only were allowed him in answer to general inquiries, when he was dismissed. Merchants, friends of Messrs. Smith, who testified to their integrity, were, like himself, never asked to complete or sign their testimony; while threats and false entries were employed with workmen in the Navy Yard, and others, to work up affidavits against them.*

The raid upon Smith Brothers continued, and in increased alarm, F. W. Smith went to Washington. In

* See argument of Judge Thomas in defense, with quotations of the sworn evidence of these witnesses before the Military Court; also Addenda IV.

company with Hon. A. H. Rice, he received assurance from Secretary Welles, "that *no measure should be taken against the firm until opportunity had been given for explanation.*"

Upon this pledge of the honor of the Secretary, Mr. Smith rested in confidence until its ruthless and absolute violation.

On the 17th of June, 1864, (anniversary of the battle of Bunker Hill, when the business centers were deserted), three months after the coming of the inquisition to Boston, Smith Brothers were arrested upon a military order from General Dix at New York, upon the demand of Gideon Welles, and were sent to Fort Warren.

Then a detachment of Marines took possession of their warehouse. Their safe was forced, and all books and papers seized. Soldiers invaded the home of Franklin W. Smith, broke locks, and purloined all papers, even correspondence of deceased relatives.

These proceedings aroused indignation in Boston and Washington.

From the "BOSTON JOURNAL."

(*Special Dispatch.*)

"There is intense feeling in Washington among Massachusetts men respecting the arrest of Smith Brothers, of Boston. The Congressional State delegation had a meeting on the subject. They waited upon Secretary Welles; but got few promises—none, in fact.

"We understand that the Massachusetts delegation offered to be personally responsible for the appearance of Messrs. Smith."

Editorial from the "BOSTON POST," June 18th.

"For some time past a Select Committee, appointed by authorities at Washington, have been investigating matters connected with navy contracts at this port, and as a result of their investigations, two members of the firm of Smith Brothers, dealers in hardware, at No. 102 Federal street, were arrested yesterday by military authorities, their store taken possession of, and they sent to Fort Warren.

"Mr. Franklin W. Smith, the senior member of the firm, has been in business in this city for many years, and no firm stands higher than his, in the confidence of the community. The transactions of Mr. Smith with the government commenced some three years ago, since which time his firm has been almost exclusively engaged in furnishing Naval Supplies under contracts. We are informed that the prices paid for supplies which they have furnished, as appears by official reports, have been more favorable to the government than those paid at any other yard. There would seem to be no chance, therefore, for any swindle.

"Some two years ago, Mr. Franklin W. Smith, the senior member of the firm, in a series of letters to the Navy Department, exposed the manner in which the government had been grossly swindled under Navy contracts, and recommended a change in the system of making these contracts. The reform was made by Congress, upon his suggestion. By his fearless exposure of these abuses, he gained the enmity of swindling contractors and of parties in the Bureau of the Navy Department, whose collusion with these contractors was more than suspected. The impression among the friends of Mr. Smith who know these facts is, that the proceedings against him are *purely malicious.*"

To paralyze public sympathy by indications of serious allegations against the Smiths when no charges whatever had been presented, as required by law, bail to the amount of $500,000 was demanded. Immediately it was telegraphed that $1,000,000 would be offered, and

within twenty-four hours that amount was tendered by indignant citizens of Boston. When it was seen that the ruse to carry public condemnation by storm had miscarried and recoiled, it was wired from the Navy Department that a bond of $20,000 would suffice. Upon this, Smith Brothers returned at once to Boston, after most courteous and hospitable treatment in the fort by Col. Dimock, the commandant. He said that he had no precedent for detention of merchants in a fortress, and therefore installed them in quarters adjoining his own, shared with them his table, and gave them the range of the fortification and island.

But while they were quickly released through the energy of Massachusetts Congressmen and their fellow citizens, their books and papers were sent to Philadelphia, where, as was proved, charges were manufactured therefrom to make ground for an arrest which had been made without shadow of reason, and *in utter violation of the "Rules and Regulations"* provided for military arrests, above quoted.

It was not until the 11th of August, 1864, two months later, that "charges and specifications" were addressed to F. W. Smith at the department.

These charges did not involve a loss of above $500 in the aggregate on four different specifications. Subsequently another allegation of $2,000 damage upon a sale of pig iron (on which the government made a saving of $30,000 in value before delivery), was added; but this count was at once abandoned by the court.

In the report of the Committee of the Boston Board

of Trade in review of the case occurs the following summary of these charges:

"In a word, your committee do not hesitate to express the opinion that *an importer of the different kinds of tin, a dealer in foreign and domestic iron, and an importer of hardware, acting as referees, for a trifling fee, would have heard the case in ten or twelve hours, and have made an award satisfactory to the most respectable commercial houses in the United States and in Europe.*

"The transactions of Smith Brothers & Co., with the Navy Department amounted to about a million and a quarter of dollars; and so numerous were the articles delivered that the entries of sales cover twelve hundred and five pages. We give a single instance of details. In a contract for the precise sum of $19,902.13, a *witness for the prosecution* estimated thus:

" 251 articles upon different lines.	80,000 tacks and brads.
12,564 single articles.	6 sets of carpenter's tools.
171 barrels.	600 feet of chain.
53,509 pounds of articles asst'd.	52 reams of paper.
12,000 tallies.	10 boxes of tin.
250 gross assorted.	64 iron girders.

"Of these, alleged to be of inferior quality at the trial, were, 1 mason's hammer, 1 rachet drill, 1 pair dividers, 1 spirit level, 2 pickaxes, 1 drawing knife, 1 drill stock, 1 dozen chisels, 1 sheet sand paper, 1 sickle, 1 hoe, 2 shovels, 1 axe, 1 handsaw, 1 hammer, 5 manure forks, 1 spade, 6 scythes and 6 rakes.

"In view of such facts, the charge of 'fraud,' or of fraudulent intention, is utterly frivolous. The wonder, indeed, is that, in so large a business, and in the condition of the market since the beginning of the war, the number of articles below the standard quality should be so very limited. Of the general good quality of the goods and wares sold and delivered, there can be no doubt. *No less than ninety merchants and manufacturers, who sold goods to*

Smith Brothers & Co., to the amount nearly of one million of dollars, declare, in a paper which was transmitted to the late deeply lamented President of the United States, that having furnished that firm 'with merchandise at various times within the past three years, destined for the use of the United States Navy Department, we hereby certify that we have in all cases sold and delivered to them such qualities as we believed would be entirely satisfactory to and fitted for the use of the Department, and such as we should have supplied had the order been made upon us directly by the Government.'

"Frauds, cheatings, should show great gains. But your committee are satisfied, that this large, complicated and vexatious business was transacted for a very moderate compensation. In the course of the trial, 'Mr. B. G. Smith testified that, upon as an exact approximation as he had been able to make, the net profits left to Smith Brothers & Co., on the first of February, 1864, were about *five* per cent. upon the amount of sales.'

"Few merchants of reputation, as we venture to suggest, will be anxious hereafter to become 'contractors,' for twice or thrice five per cent. profit, when, besides the notorious delays in payment, fines and Bastiles are in the prospective, for alleged default in the quality of a saw or of a hammer; or because, owing to the operation of the tariff on importations *from Europe* of articles produced *east* of the Cape of Good Hope, there is a difference of *two cents* the pound in tins of about the same purity, and of the same intrinsic value; ay, because *Banca*, not *Revely*, is 'nominated in the bond.'"

Accompanying the charges and specifications was an order to appear before a court-martial at Philadelphia. Then a delegation went to President Lincoln in remonstrance.

This delegation comprised Senator Wilson of Massachusetts, Judge Thomas, and the late Hon. Wm. B. Spooner, one of the most eminent and philanthropic citizens of Boston. When Senator Wilson opened the

case, President Lincoln replied: "I know all about it, Wilson; it is a fight between a department and a citizen, and the citizen has no fair show. I propose to quash the whole thing." "No," said the Senator, "we hope you will do no such thing. Smith Brothers wish it never to be said that this charge was fixed up through influence. They challenge the fight, but want protection against conspiracy and a court chosen by their enemies."

"You are right," said the President, "go tell the Smiths I'd as leave be tried by the *devil* on a court-martial, as anybody else, if it can be looked up afterwards. Let them run their machine, and I will take it up when they are done."

Despite the countermand, a second order was issued for the defendants to go to the court in Philadelphia. The delegation returned to the President, who sent for Secretary Welles and asked the reason. "We have no money," said he, "to pay expenses of sending the court to Boston." "I guess you can find some," said the President. "*Order the court to Boston.*" The trial subsequently cost Smith Brothers twenty thousand dollars, and much more to the government.

At length, in September, 1864, the Naval Court convened in the Navy Yard at Boston. It was composed of seven naval officers, retired for old age or incompetency on "half pay;" some of whom were noted on the Naval Register as "not recommended for promotion." These absolute judges of both law and fact were chosen by the accusers, one of whom had been heard to

say, "*We constitute courts to convict.*"* So long as their decisions suited the appointing power these superannuated officers received "full pay." If not satisfactory, they could be "relieved."

Each page of testimony recorded in mammoth penmanship paid the Judge Advocate a fee. It was piled up to an aggregate of 2,500 pages. Two judges advocate appeared before the close of the case. Four months were spent before the conclusion of the case by the court. On the 26th of January, 1865, the President ordered the record to be sent to him for examination and revision by counsel for the department, by whom all charges had been abandoned but that of $100, for a difference between Banca and Revely tin.

On the evening of March 13th, the President said to Mr. Sumner: "I have read every word of the opinion of Eames, but by his own showing, only one case was in any way made out—that of the Banca tin. I wish, Sumner, you would take Eames' opinion and let me know what you think of it."

The sequel of the case is appended from Mr. Sumner's pen.

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* This was the origin of a now common quotation.

EXTRACTS FROM THE OPINION OF

HON. CHARLES SUMNER

GIVEN AT REQUEST OF

PRESIDENT LINCOLN FOR HIS REVIEW OF THE CASE.

PART FIFTH.

This paper with explanatory notes* was prepared by Mr. Sumner for the ninth volumes of his "Works," the month before his death. He preceded it by the "Appeal of the Massachusetts Delegation in Congress to the President of the United States," written by himself. *Vide Addenda No. I.*

* * * * *

"The more I have examined this case, the more I have been surprised by the preliminary proceedings, the continued prosecution, and the findings of the court. I can well understand how they were used in the House of Representatives as an argument for the total repeal of the Act of Congress authorizing the trial of civilians by courts-martial. Such a case must make us fear that, under this Act, justice may be sacrificed. It might make honest merchants hesitate to enter into business relations with the government.

"On careful examination, it seems that the whole prosecution, so far as proof is seriously pretended, is reduced to one single specification—to wit, the sale and delivery of

*Senator Sumner presented to Mr. F. W. Smith all his manuscripts upon the case. They are valuable autographic souvenirs of that indefatigable consecration to justice, which was the noble characteristic of his life.

five thousand pounds of a tin called Revely, instead of a tin called Banca, by which, at most, the government lost one hundred dollars."

* * * * *

"Look at this carefully, and the wonder increases that these proceedings were ever instituted.

"1. The first remark to make is, that, even according to the finding of the court, the government has suffered only to the amount of one hundred dollars—being the difference in price between the two kinds of tin at the date of delivery. *The pettiness of this loss* is still more apparent when it is considered that the transactions of the respondents with the government reached the sum of more than twelve hundred thousand dollars, having such infinite details that they covered twelve hundred and five pages of sales. Surely, on every principle of reason or evidence, the insignificance of this loss, in transactions on so large a scale, and extending over three years of time, constitutes an unanswerable presumption in favor of the respondents, excluding, as it does, any adaquate motive for the perpetration of fraud. * * *If a mountain in labor ever brought forth a mouse, it is this mountainous prosecution, whose only offspring yet crawling on earth is an allegation of loss to the United States of one hundred dollars! But, if we look further at this transaction, it will be seen that it is absolutely unimpeachable.*

"It appears that, according to extensive and long continued usage, Revely is included under Banca; that, according to usage at the navy yard, it was treated as Banca; that the whole transaction and the delivery were open and without any concealment; that Revely was actually accepted by the officers of the government in performance of the contract; that the respondents never expected to supply other than Revely; and lastly, that the prices paid shows that Revely was intended. Surely this is enough. I forbear to go into the evidence of founders and plumbers, derived from experience; of assayers and chemists, derived from analysis of the two tins in question; and also of business men as to their comparative value, for all this is supurfluous. *To charge fraud against the respondents under such circumstances is cruel, irrational, preposterous. Their con-*

duct cannot be tortured or twisted into fraud. As well undertake to extract sunbeams out of cucumbers, or oil out of Massachusetts granite.

"It is difficult to imagine the origin of these unfortunate proceedings, which, beginning in unexampled harshness, threaten to end in unexampled injustice, unless arrested by the President. But there are certain facts which may shed light upon some of the hidden springs."

* * * * *

"It appears that Franklin W. Smith, one of the respondents, published a pamphlet, in which he exposed abuses in the contract system in the Navy Department, and it is understood that sundry officials felt aggrieved by these disclosures. The spirit of these officials appears sufficiently in the following extract from a letter of one of the witnesses of the government, holding an important position in the Navy Department, addressed to another witness, himself an official also:

"'I have been summoned before the Select Committee of the Senate for investigating frauds in naval supplies, and IF THE WOOL DON'T FLY IT WON'T BE MY FAULT. Norton, the Navy Agent, has complained that I have interfered with his business; he and his friend Smith are DEAD COCKS IN THE PIT. WE HAVE GOT A SURE THING ON THEM IN THE TIN BUSINESS. They that dance must pay the fiddler.'

"The writer of this letter, after appearing before the Senate Committee at a later day, came on from Washington to appear before the court-martial at Charlestown as a witness against the respondent, where he underwent a cross-examination on which I forbear to comment. If the prosecution did not originate in the spirit which fills his letter, it is evident that this spirit entered into it. 'IF THE WOOL DON'T FLY IT WON'T BE MY FAULT.' 'DEAD COCKS IN THE PIT.' 'A SURE THING IN THE TIN BUSINESS.' Such are the countersigns adopted by the agent of this dark proceeding, showing clearly two things: first, the foregone conclusion that these respondents were to be sacrificed; and, secondly, that the case turned on the 'tin business.'

"It is hard that citizens enjoying a good name, who had the misfortune to come into business relations with the government, should be exposed to such a spirit;

* * * * *

that they should be obliged to undergo a protracted trial by court-martial, damaging their good name, destroying their peace, breaking up their business, and subjecting them to untold expense, *when at the slightest touch the whole case vanishes into thin air, leaving behind nothing but the incomprehensible spirit in which it had its origin.*

"Of course the finding and sentence of the court ought, without delay, to be set aside. But this is only the beginning of justice. Some positive reparation should be made to citizens who have been so deeply injured.

"CHARLES SUMNER.

"WASHINGTON, March 16, 1865.

"*To the President of the United States.*"

Interesting Incidents of PRESIDENT LINCOLN'S Action Appended to the Opinion by MR. SUMNER for his Works.

"The President promptly overruled the judgment and sentence. The result was received with manifestations of joy. The defendants, whose cruel prosecution had been protracted for six months, had an ovation in the congratulation of their friends and fellow-citizens.* Strangers at a distance, feeling that public liberty had suffered through them, sent their sympathy. The press gave expression to the prevailing sentiment. Nor was Mr Sumner forgotten. The defendants made haste by telegraph to say: 'Accept the lasting gratitude of Smith Brothers, their families, and their many friends.' Others wrote in the same spirit—as, for instance, J. C. Hoadley, of New Bedford, who, though not knowing the sufferers, said: 'I thank you, in the name of all fair dealing, for your opinion upon the case of Franklin W. Smith.' From these expressions it appears

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*V. Addenda VIII.

Reduced Photographic from
Manuscript of Senator Sumner

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Some positive reparation should be made to citizens who have been so deeply injured.

Charles Sumner

Washington
16th March '65

To the President
of the United States.

that the effort of Mr. Sumner was regarded as not only a defense of the individual citizen, but a contribution to good government.

"Independent of its character, this case has an incidental interest. It was one of the last, if not the last, having a personal relation, that ever occupied the mind of President Lincoln. His indorsement, overruling the judgment and sentence, bears date March 18th. This was Saturday. Meanwhile the Rebellion was about to fall, and the President left Washington, by boat, Thursday, March 23d, for City Point, the headquarters of the Army of Virginia, where he remained till after the surrender of Richmond, returning to Washington Sunday evening, April 9th, and being assassinated Friday evening, April 14th.

"Some circumstances associated with this case help exhibit the character of the President. They will be stated briefly. As soon as Mr. Sumner had prepared his Opinion, he hurried to the President. It was late in the afternoon, and the latter was about entering his carriage for a drive, when Mr. Sumner arrived with the papers in his hand. He at once mentioned the result he had reached, and added that it was a case for instant action. The President proposed that he should return the next day, when he would consider it with him. Mr. Sumner rejoined, that, in his opinion, the President ought not to sleep on the case—that he should interfere promptly for the relief of innocent fellow citizens—and urged that, if Abraham Lincoln had suffered unjust imprisonment, an immense bill of expense, a trial by court-martial, and an unjust condemnation, he would cry out against any postponement of justice for a single day. The President, apparently impressed by Mr. Sumner's earnestness and his personal appeal, appointed eleven o'clock that evening, when he would go over the case, and hear Mr. Summer's Opinion.

"Accordingly, at eleven o'clock that evening, in the midst of a thunder-storm, filling the streets with water, and threatening chimneys, Mr. Sumner made his way to the Presidential mansion. At the very hour named he was received, and at the request of the President proceeded to read his Opinion. The latter listened attentively, with

occasional comments, and at the close showed his sympathy with the respondents. It was now twenty minutes after midnight, when the President said that he would write his conclusion at once, and that Mr. Sumner must come and hear it the next morning—"when I open shop," said he. "And when do you open shop?" Mr. Sumner inquired. "At nine o'clock," was the reply. At that hour Mr. Sumner was in the office he had left after midnight, when the President came running in, and read at once the indorsement in his own handwriting, as follows :

THE VINDICATION BY PRESIDENT LINCOLN.

"I am unwilling for the sentence to stand and be executed, to any extent, in this case. In the absence of a more adequate motive than the evidence discloses, I am wholly unable to believe in the existence of criminal or fraudulent intent on the part of one of such well-established good character as is the accused. If the evidence went as far toward establishing a guilty profit of one or two hundred thousand dollars, as it does of one or two hundred dollars, the case would, on the question of guilt, bear a far different aspect, That on this contract, involving from one million to twelve hundred thousand dollars, the contractors should attempt a fraud which at the most could profit them only one or two hundred, or even one thousand dollars, is to my mind beyond the power of rational belief. That they did not, in such a case, strike for greater gains proves that they did not, with guilty or fraudulent intent, strike at all. The judgment and sentence are disapproved and declared null, and the accused ordered to be discharged.

"A. LINCOLN.

"March 18, 1865."

Reduced Photograph of the Endorsement of President Lincoln

I am unwilling for the sentence to stand
and be executed, to any extent in this case when
the absence of a more adequate motive than the
evidence discloses, I am wholly unable to believe
in the existence of criminal or fraudulent intent
on the part of one of such well established honest
character, as is this accused. If the evidence went
as far toward establishing a guilty profit of one
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does not, in such a case, strike for greater gain
proves that he does not, at all, guilty or fraudulent
intent, strike at all. The judgment and sentence
are therefore disapproved, and declared null
and the accused ordered to be discharged.

A. Lincoln

March 18. 1865

EXTRACTS FROM
PUBLIC DOCUMENTS AND THE PRESS
1864-1865.

From the Speech of HON. JOHN P. HALE in the United States Senate, February, 1865.

"There was a committee appointed by the Senate at the last session to investigate matters connected with naval supplies. The committee attended to that duty very laboriously; and they laid some results before the Senate and before the country which, I think, were most conclusive as to the existence of gross fraud. Well, sir, do you know what the result of that was? One of the material witnesses in that case—one of the most respectable men of Boston, who testified, and testified very fully, before that committee—pretty soon after he went home, was seized, his store seized, his papers seized, his wife's papers seized; and he was sent to a military fort, and ordered not to be released under a bail of $500,000, and was ordered to Philadelphia for trial. That was a little too strong even for the city of Boston, considering that, to render the thing more notorious, the arrest was made on the 17th of June."

* * * * * *

In reply to the question of Senator Davis, who asked: "If the offense for which that gentleman was seized and imprisoned was merely that of giving in his testimony and his exposure of those frauds." Mr. Hale declared:

"That is my opinion; but it was not the assigned cause. They ordered him, as I have said, to be confined in Fort Warren, and not to be released under $500,000 bail; and he was ordered to Philadelphia for trial. This was a little too much for the loyal city of Boston; and it created such indignation there that a delegation of citizens of Massachu-

setts—I think the honorable Senator on my left (Mr. Sumner), was one of them—represented this thing to the President; and the President countermanded the order for carrying a citizen of Massachusetts from Boston to Philadelphia for trial."

* * * * *

Speaking of courts-martial, Mr. Hale said, in the Senate: "And in that connection, I have a remarkable statement to make in regard to these tribunals. The man who ordered this outrageous arrest—the man who perpetrated this outrage in Boston—compared to which the proceedings of Turkey are civilized, and the Inquisition is a tender mercy—being remonstrated with, on another occasion, against sending these cases to naval and military courts-martial, and being asked why he did not take the ordinary courts, made this remarkable avowal: '*Your civil courts are organized to acquit; we organize courts to convict!*' If there was some friend of the individual referred to here to deny it, without stirring out of my tracks, I would prove, by evidence that would flash conviction on every mind that heard it, that it is true as Holy Writ that this declaration was made, and not only made, but acted upon."

Speech of HON. H. L. DAWES, March 14, 1865.

"I understand from high authority in the Navy Department, that courts-martial are not organized, like courts of law, to guard the rights of the accused and secure justice, but are organized to convict."

* * * * *

Still again, and referring to this very case: "I have in the last fortnight had the painful duty devolved upon me to read the proceedings of a court-martial under the law which I reported to the House some two years ago. It is one which, I venture to say, has hardly a parallel for the bitter malignity which seems to run through the whole proceedings, and for wider departure from old and established

rules of law, of which the accused were the victims, and by which they were hunted, since the days of Jeffreys. It is the case of Smith Brothers of Boston. If every charge alleged before the court-martial were taken to be true, just as alleged, they would only have been in default, in transactions covering a business of more than twelve hundred thousand dollars, and the furnishing of thousands of different articles, barely twenty-two hundred dollars, and without anything which deserves the name of evidence that this paltry default was intentional."

Editorial from the "BOSTON JOURNAL," February 14, 1865.

"The case of the Smith Brothers, which has been on trial before a court-martial for several months past, is one which will now demand the attention and examination of the public, and probably of the President and Congress. We doubt whether in the course of the war, individuals—citizens whose loyalty is unimpeached—have been more harshly dealt with, or more persistently and cruelly persecuted. All the constitutional and legal safe-guards which, under our Republican government, have been thrown around individual liberty, have in their case been broken down, and under no despotic government have those who have fallen under the ban of the ruling powers been more summarily dealt with, or held in a grasp of more relentless severity."

* * * * *

"The public will naturally inquire how and in what quarter this persecution originated? Two years ago Franklin W. Smith exposed and broke up an existing contract system which opened a wide door for frauds. In his illustrations of the working of the system it was shown that some of those employed in the bureaus of the Navy Department must have been in collusion with swindling contractors. From that time the persecution commenced. Investigation, which this case will certainly receive, will develop its source and extent."

Editorial from "BOSTON DAILY ADVERTISER," March 21, 1865.

"The result of the great case of the Smith Brothers, naval contractors, charged with fraud, is at last before the public. After preliminary proceedings, which had seemed to point to disclosures of astounding magnitude, and after a thorough investigation of the business of the defendants, whose books and private papers were searched by experts for the materials for a prosecution, the charges brought against them finally settled down to an amount not much exceeding $2,000, while the charges relied upon against them scarcely reached the sum of $500." * * "The President has reviewed the case and has annulled the judgment, thus setting his condemnation not only upon this extraordinary sentence, but upon the judgment itself, by which, after their case had so shrunk from its original supposed dimensions, the accused were convicted at all. The upshot of the matter is, that after all the immense parade and excitement with which this case began, *it turns out that there is nothing in it.* The accused stand to-day not only free from all charges, but with evidence that after a searching examination of their course of business, no sound basis for charges could be found. They had, at the beginning, the confidence of the mercantile community in which their lives have been passed; they now have its indignant sympathy also."

* * * * *

"The arrest of the Smith Brothers was made in June, 1864. It was marked by every circumstance that could suggest the blackest criminality on their part. Had they been guilty of treason, the proceeding would have been deemed severe; it would have been thought unreasonable and even outrageous, had the charge been murder." * * "And all this, as now only too certainly appears, was done upon a venture. Those instigating and responsible for the proceedings, may have thought it likely that something of importance might thus be discovered, but they plainly had nothing of consequence to base their action upon. Every constitutional safeguard of personal rights—freedom from unreasonable searches and seizures and from excessive bail

—was disregarded, not from any necessity, but to see what might come of it, and what disclosures *might* result from a blow thus struck at random. The whole unlimited authority with which the people have temporarily intrusted their government to meet the terrible exigencies of civil war was put forth, and all, not only without necessity, but as it appears upon grounds which would not justify detention over night.

"Upon these proceedings followed a tedious and costly trial, the amount involved in which would not pay for the printing necessarily done by the accused; ten times the amount would not reimburse either government or accused for their expenses. And now upon a review of the case by a senator, whose pains-taking and love of justice displayed in this case do him the highest honor, and by the President, who will see the rebellion crushed but not innocent citizens, the case has been upset, and the accused have escaped from the tremendous blow which was aimed at them. With less individual tenacity of purpose, less ample means at command and fewer friends, they could not have escaped, the whole power and authority of the United States being used against them—and what would then have been the record? Two citizens *destroyed*, in fame and property, and —as the President has now decided—without just cause!

"We will now seek to probe the motives of these proceedings. Their history runs back, we suspect, for a considerable distance among controversies as to Bureau management—respecting which we had occasion to give an opinion favorable to the Messrs. Smith in June of last year, shortly before their arrest, when they were already laboring under accusations, which, upon examination we pronounced to be unfounded. All this history, there is reason to believe, will engage the attention of Congress and will be thoroughly explored." * * "Unhappily we cannot wipe out the shameful record of a transaction like this, in which, at last, the government is found to become the chief offender from whom reparation is due. But the President can, and if he heeds the unanimous voice of public opinion, he will see to it that his subordinates are made to understand that their powers are not to be used wantonly, and that the civil rights and reputations of citizens are not to be struck down heedlessly and upon mere suspicion."

Editorial from the "BOSTON JOURNAL," March 22, 1865.

SENATOR SUMNER'S REVIEW OF THE CASE OF THE SMITH BROTHERS.

"We publish in the Supplement of this morning the able review, by Senator Sumner, of the case of Franklin W. Smith, which should be read by all who are interested in this extraordinary case. It will be seen by this paper that the case, when it left the Navy Department and was submitted to the President, had little left but the tin charge. The Court swept away some of the charges, and the Solicitor of the Navy Department, Mr. Eames, conceded that there was little or no basis for the others, except the tin charge. On that the prosecution fell back, and intrenched itself.

"This tin charge—this enormous crime for which two honorable merchants were summarily arrested, without any of the forms of civil law, their business broken up, and a large portion of their property swept away—involves the petty sum of $100! But even this charge is completely riddled by Mr. Sumner in his review, as it was effectually answered on the trial even by the testimony for the Government, a part of which Mr. Sumner quotes. As Mr. Sumner pointedly remarks: 'At the slightest touch the whole case vanished into thin air, leaving nothing behind but the incomprehensible spirit in which it had its origin.'"

Editorial, "NEW YORK COMMERCIAL ADVERTISER."

"Franklin W. Smith & Brother, a well-known Boston firm, became some years since, contractors for the supply of numerous classes of articles at the Charlestown Navy Yard, and had delivered merchandise to the amount of upwards of *one million two hundred and fifty thousand dollars*, when Col. Olcott stopped all transactions in the most summary manner. A detective inquisition was established that called before it more than one hundred parties to be probed and catechised." * * "And yet, after this

large amount of business had been inspected, analyzed and dissected with hostile intent as never before was a like business scrutinized, the only *frauds* which could be in any way proved, did not amount to two thousand dollars, less than one-sixteenth of one per cent. upon the amount of the business."

* * * * *

"President Lincoln has set aside the findings and sentence of the Court, and it is to be hoped that Congress, at its next session, will make a more positive reparation to Mr. Franklin W. Smith."

* * * * *

"Fortunately for Mr. Smith, he had influential friends who have stood by him manfully. Messrs. Sumner, Gooch, Hooper, and other members of the Massachusetts delegation in Congress; Mr. Dix, the editor of the Boston *Journal;* Messrs. Benjamin F. Thomas, C. R. Train and George P. Sanger, the able counsel for the defense, with scores of the 'solid men of Boston,' have stood between Mr. Smith and his persecutors, and they have seen him safely through."

Extracts from the Exhaustive and Unanimous Report of the Special Committee of the BOSTON BOARD OF TRADE, May 16, 1865.

"In order to 'judge' of the guilt or innocence of Franklin W. Smith as a 'Boston merchant,' and to recommend his retention or expulsion as a member of the Government of this Board, your Committee deemed the reading, the *thorough* reading, of the record of the proceedings of the Court-martial, unconditionally indispensable. And these nineteen hundred and thirteen pages have been perused with care, indeed more; for we have in our possession upwards of eight hundred printed pages, which relate more or less directly to this remarkable trial, which have not only been *read*, but the material facts or state-

ments *studied* and mused upon, with single reference to forming a righteous 'judgment' in the premises. Mention of the titles of this mass of printed matter is necessary to show how thorough and searching has been the investigation.

"Thus, then, notes of every thing deemed important have been made from the following, namely:

"Correspondence with E. L. Norton, Navy Agent, Boston.

"Analysis of certain contracts with the Bureau of Construction, and with the Bureau of Steam Engineering.

"Bids rejected for fictitious prices.

"Correspondence with the Secretary of the Navy, and with the Commissioner of Naval Code.

"Decisions upon the acceptance or rejection of bids.

"Rejoinder to the explanations of Naval Bureaus concerning the awards of certain bids.

"Correspondence with the Bureau of Steam Engineering.

"Opinions of the Press in the case.

"Reply of Smith Brothers & Co. to the Hon. Mr. Grimes, Senator in Congress from Iowa.

"Correspondence with the Hon. John P. Hale, Chairman of the Senate Committee on Naval Supplies.

"Letters of Smith Brothers & Co. to several Members of Congress.

"Memorial of the Senators and of the Representatives in Congress from Massachusetts, to the President of the United States.

"Testimony of ninety merchants and manufacturers as to the quality of merchandise purchased by Smith Brothers & Co. for the Government.

"Correspondence with the Chief of the Bureau of Ordnance, with the Chief of the Bureau of Yards and Docks, and with the Chief of the Bureau of Construction.

"Evidence before the Select Committee of the Senate on Naval Supplies, with the Report thereon.

"Correspondence with the Chairman of the House Committee on Naval Affairs.

"Debate in the House of Representatives, March 2, 1865.

"Speeches of Hon. John P. Hale, in the Senate, January, February, and May, 1865.

"Arguments of Hon. B. F. Thomas, and of the Judge Advocate, in the case.

"Review of the Argument of the latter, by Franklin W. Smith. And, finally:

"Opinion on the case to the President of the United States, by Hon. Charles Sumner, March 16, 1865.

"These are all the papers known to us, which connect the Respondent with the Navy Department, from the auspicious beginning down to the Court-martial, and to the present hour.

"Your Committee, as the result of their labors, now express the opinion, without condition or qualification, that the 'Charges and Specification of Charges preferred by the Secretary of the Navy against Franklin W. Smith,' for 'fraud,' and for 'wilful neglect of duty,' are not sustained by the written and printed matter which have been mentioned in this Report."

* * * * *

"Whoever reflects upon the record of the proceedings of the court-martial in the case before us—which, as we have once said, fill one-thousand nine hundred and thirteen (1,913), manuscript pages—may wonder, possibly, that our Associate did not lose his understanding and his life, ere the weary, wearing, agonizing sixty-eight days were at an end. Forty-five other days elapsed before the Judge-Advocate concluded his argument — days of continued agony.

"And all this in the name of Justice! The noble man who bore 'his faculties so meek;' who was 'so clear in his great office;' on whom 'Treason has done his worst;' and who, 'after life's fitful fever, sleeps well'—he for whom these rooms are draped in 'suits of solemn black;' he, the Chief Magistrate of the nation, interposed, and the convicted but innocent merchant became free—free!

* * * * *

The report concludes as follows:

"And now we append the 'Memorial of Senators and Representatives in Congress from Massachusetts to the

President of the United States, August, 1864,' and the 'Testimonial of mercantile and manufacturing houses, July, 1864,' which, as will be seen by the dates, were written *previous* to the trial, but *after* the arrest; and the 'Opinion of the Hon. Charles Sumner,' prepared by request of the President of the United States, which, on reflection, we deem necessary, as warranting our own conclusions in several important particulars, and, among them, our unconditional condemnation of the sixteenth section of the act of Congress of July 17, 1862, as applicable to civilians in the loyal States of the Union.

"IN CONCLUDING THE TASK ASSIGNED, WE DECLARE THAT, IN OUR 'JUDGMENT,' FRANKLIN W. SMITH IS AN HONEST MERCHANT, AND SHOULD STAND ACQUITTED OF ALL 'FRAUD' AND ALL INTENTION OF 'FRAUD,' AND THAT, CAREFUL AND INDUSTRIOUS IN BUSINESS, HE SHOULD BE ACQUITTED ALSO OF ALL WILFUL NEGLECT OF DUTY."

"Respectfully and unanimously submitted.

"W. B. SPOONER,
"CHARLES G. NAZRO,
"CHARLES O. WHITMORE,
"OTIS NORCROSS,
"JAMES C. CONVERSE,
"JOSEPH M. WIGHTMAN,
"LORENZO SABINE.

"Rooms of the Board of Trade,
"BOSTON, May 16, 1865."

This Report, sixty-one pages octavo, was unanimously adopted by the Board, and Mr. Smith was re-elected a Director without a dissenting vote. It was published with the Annual Report of the Board for 1865.

"NEW YORK TRIBUNE," January 13, 1866.

"The celebrated case of Franklin W. Smith & Brother was one of those which most largely helped to bring military tribunals into public contempt. Those two gentlemen were arrested and kept in confinement, their papers seized, their business destroyed, their reputation damaged, and a naval court-martial, 'organized to convict,' pursued them unrelentingly till a wiser and juster hand arrested the malice of their persecutors. It is known that President Lincoln, after full investigation of the case, annulled the whole proceedings, but it is remarkable that until this week the actual record of his decision could never be obtained from the Navy Department. An exact copy is still withheld, but the following was presented on Wednesday to the Boston Board of Trade as being very nearly the words of the late President:

"'*Whereas*, Franklin W. Smith had transactions with the Navy Department to the amount of one million and a quarter of a million of dollars; and, whereas, he had the chance to steal a quarter of a million, and was only charged with stealing twenty-two hundred dollars—and the question now is about his stealing a hundred—I don't believe he stole anything at all. Therefore, the record and findings are disapproved—declared null and void, and the defendants are fully discharged.'*

"It would be difficult to sum up the rights and wrongs of the business more briefly than that, or to find a paragraph more characteristically and unmistakably Mr. Lincoln's. The effect of the President's decision was not to *pardon* the Messrs. Smith—it was to make the proceedings against them void *ab initio*, to censure the Court, to annul its findings, to repair, so far as any remedy could repair, the atrocious injustice of the prosecution, and to restore the innocent defendants to the full enjoyment of that honorable repute of which an interested malignity had attempted to deprive them."

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*The illegal and spiteful suppression of the literal decision of President Lincoln, despite the protest of Senator Sumner, by the Secretary of the Navy during his second term under President Johnson, is detailed under Addenda No. VII.

ADDENDA.

I.

MEMORIAL

— OF —

SENATORS AND REPRESENTATIVES

FROM MASSACHUSETTS

— TO THE —

PRESIDENT OF THE UNITED STATES

CONCERNING SMITH BROTHERS & CO.

PREPARED BY HON. CHAS. SUMNER.

TO THE PRESIDENT OF UNITED STATES:

The undersigned, Senators and Representatives in Congress from Massachusetts, ask leave to call your serious attention to the proceedings initiated by the Navy Department against Benjamin G. Smith and Franklin W. Smith, of Boston, of the firm of Smith Brothers & Co., a much respected firm, which has hitherto enjoyed the confidence, personal and mercantile, of the community where they reside.

Among their neighbors and friends, these pro-

ceedings have already attracted much attention, and awakened corresponding feeling.

These proceedings have seemed to be harsh, vindictive, and unnecessary.

(1.) In the character of the arrest of Messrs. Smith, which was attended by circumstances of severity utterly unjustifiable.

(2.) In requiring bonds to so large an amount as half a million of dollars. The fact that the parties in question easily obtained bonds for a much larger amount does not render this exaction of "excessive bail" less obnoxious to the requirements of the Constitution and of justice, or less indicative of the spirit in which these proceedings have been conducted.

(3.) In the seizure of their books and papers, which are still detained, although regarded by their eminent counsel as important to their defense.

(4.) In turning into a military offense what is more proper for a civil tribunal, and dragging these defendants before a court-martial.

(5.) In transferring the proceedings from Boston, where the parties reside, and the transactions in question occurred, to Philadelphia; thus increasing greatly the difficulties and the expense of the defense. This will be appreciated when it is understood that the witnesses are very numerous, and chiefly engaged in mercantile business, so that they cannot leave Boston without the neglect of their private interests.

The undersigned, on reviewing these circumstances, which are so inconsistent with the administration of justice in its ordinary forms, have been at a loss to account for the spirit which has been manifested in the prosecution. If they look at the trivial character of most of the specifications against the defendants, they are still more at a loss. It is difficult to account for such elaborate and persistent harshness, without yielding to the prevailing belief that other motives than the vindication of justice have entered into this case.

The undersigned are not strangers to the fact, that one of these defendants, in the discharge of what he believed to be his duty as a good citizen, has, by correspondence and

testimony before committees of Congress, been brought into collision with officers of the Navy Department ; and there is too much reason to believe, that some of these officers have allowed themselves to be governed by personal feelings throughout these strange proceedings.

Under these circumstances, the undersigned most respectfully ask your assistance in securing justice to these defendants, according to the common course of proceedings at law. They are acquainted with the statute which provides court-martial for contractors in certain cases, and they are unwilling to make any suggestion which shall interfere with its efficiency ; but they have no hesitation in saying, that such a statute, which was intended for extreme cases, should not be applied to a case like the present, where, with a single exception, the questions are simply whether the defendants complied with their *contract*, and therefore, from their nature, can be better considered by the ordinary tribunals, accustomed to such questions, than by a naval tribunal composed of officers who have no familiarity with them.

If the pending proceedings against the Messrs. Smith should be continued, there are two courses with regard to them which may be recommended :

First, That they should be transferred at once to the United States Court in Massachusetts, and be placed under the direction of the learned Attorney of the United States for that district.

Secondly, If the foregoing order is not deemed expedient, on the existing evidence, then a commission or commissioner might be appointed by the President to inquire into the circumstances attending the arrest of the defendants, and also into the nature of the charges against them, in order to ascertain and report if there is any sufficient reason for the singular harshness to which they have been already subjected, and also for the exceptional proceedings which have been instituted against them.

But for the sake of justice, and to relieve the Government from all suspicion of undue harshness, the undersigned protest against the spirit in which these proceedings have been conducted, and appeal to you for such remedy as

shall seem best ; to the end that the public interests may be adequately protected without any sacrifice of the rights of the citizens, and without needless interference with the order of business. (Signed)

CHARLES SUMNER,
HENRY WILSON,
THOS. D. ELIOT,
HENRY L. DAWES,
S. HOOPER,
JOHN B. ALLEY,
by C. Sumner, as by letter.
D. W. GOOCH,
WILLIAM B. WASHBURN,
JOHN D. BALDWIN,
GEORGE S. BOUTWELL,

August, 1864.

Extract from a Letter of HON. A. H. RICE.

BANGOR, ME., August 15, 1864.

To the President:

* * * * *

I have no hesitation in saying, that the community in which Smith Brothers reside is quite unanimous in believing that they have committed no offence of a criminal or fraudulent character ; and that the proceedings which have been instituted against them are not only needlessly severe, but they are especially objectionable, on the ground that they inflict upon them irreparable injury, before they have been found guilty of any crime. Measures so extraordinary and severe naturally give the impression that the Government esteems them guilty of extraordinary crimes ; or else that the Government is using its authority and power, not for the protection, but for the destruction of private, individual immunities.

* * * * *

II.

TESTIMONIAL OF MERCANTILE AND MANUFACTURING HOUSES

AS TO THE

QUALITY OF MERCHANDISE PURCHASED

— BY —

SMITH BROTHERS FOR GOVERNMENT.*

We, the undersigned, having furnished Smith Brothers & Co. with merchandise at various times within the past three years, destined for the use of the United States Navy Department, hereby certify that we have, in all cases, sold and delivered to them such qualities as we believed would be entirely satisfactory to and fitted for the use of the Department, and such as we should have supplied had the order been made upon us directly by the Government.

BOSTON, July 20, 1864.

Revere Copper Co., by S. T. Snow, Agent,
Sheet and Bolt Copper and Sheathing Metal, Ingot Copper, Tin, Comp. Nails.
Richards & Co . . . . . Metals, Wire, &c.
J. H. Chadwick & Co., Agents Boston Lead Co. . . . . Lead
Fuller & Dana . . . . . Iron
Banker & Carpenter . . . . . Paints, Drugs, Oils, &c.
Southard, Herbert & Co. . . . . Sperm and Whale Oils
Tuckerman & Cate . . . . . Iron
Holmes, Booth & Hayden, by B. F. Adams, Agent,
Sheet Brass, Brass and Copper Wire
E. P. Cutler . . . . . Pig Iron
James L. Mills & Son . . . . . Dealers in Cooperage Stock
Bush & Mills . . . . . Dealers in Stoves and Iron
Davis & Chaddock . . . . . Fire Brick, &c.

* The value of the merchandise thus purchased by Smith Bros. for the Navy Department has been not less than $1,000,000.

Foster & Roby . . . . . Composition Lights, Buttons, &c.
F. W. Lincoln, jun., & Co . . . . . Patent Logs, Glasses
Gay, Manson & Co. . . . . Iron and Steel
David Barnes & Co. . . . . Anchors, Chains and Ship Chandlery
Henry W. Burr . . . . . Packing and Hose
Francis McLoughlin . . . . . Brushes
Flint & Hall . . . . . Lumber
Sanborn, Richardson & Co. . . . . Iron Pipes
Fairbanks, Brown & Co . . . . . Scales
Lewis Audenried & Co., per H. W. Morse, Att'y, Cumberland Coal
Dodge, Gilbert & Co . . . . . Hardware
Shelton & Cheever . . . . . Leather, Leading and Suction Hose
John C. Haynes & Co. . . . . Drums
A. N. Clarke & Co . . . . . Leather Belting
Underhill Edge-Tool Co. . . . . Navy Hatchets
Nathaniel R. Leman, jun . . . . . Wool Skins
Bullard, Abbott & Co. . . . . Steel
T. Quincy Browne . . . . . Ingot Copper
American Net Company, by Wm. Howe, P. Attorney,
Nets, Seines, Lines and Twines
Dalton & Ingersoll . . . . . Plumber Stock
B. Y. Pippey & Co . . . . . Cotton Waste
Vincent Laforme . . . . . Boatswains' Calls
H. H. Morse, Supt. A. S. G. Co . . . . . Steam Guages
Boston Belting Co., John G. Tappan, Treas. . India-Rubber Goods
E. R. Morse . . . . . Iron Works
Thos. Flint & Co. . . . . Hardware
Herman Strater & Son . . . . . Copper Utensils
J. S. F. Huddleston . . . . . Meteorological Instruments
Howe & French . . . . . Drugs and Paints
Linden & Meyer . . . . . Quicksilver
Samuel Hill . . . . . Chains
George L. Stearns & Co. . . . . Lead
Chas. V. Poor & Co. . . . . Drugs and Paints
Boston & Sandwich Glass Co., per Sewall H. Fessenden, Ag't,
Port Lights
Geo. W. Robinson & Co. . . . . Ship Lights, Hinges, &c.
J. Kittridge & Co . . . . . Naval Stores
Daniel Cummings & Co . . . . . Wooden Ware
Old-Colony Iron Co. . . . . Nails
Day, Wilcox & Co. . . . . Leather

P. Waldemeyer & Co. . . . . Leather
Henry H. Packer . . . . . Ratchet Drills
Deans & Bagnall . . . . . Metals

List of Parties, not in Boston, who have Signed the above Paper:

Townsend & Co., New York . . . . . Pig Iron
Samuel Mulliken & Co., New York . . . . . Steele
Kemble & Warner, New York . . . . . Boiler Iron
American Screw Co., Providence . . . . . Screws
Crocker Bros. & Co., Taunton . . . . . Nails and Rivits
Phœnix Manufacturing Co., Taunton . . . . . Crucibles
Plymouth Mills . . . . . Rivets
Thos. Prosser & Son, N. J. . . . . Boiler Tubes, &c.
Providence Tool Co., Providence . . . . . Bolts and Hardware
Knowles & Sibley, Warren, Mass . . . . . Steam Pumps
Theophilus N. Breed, Lynn . . . . . Grindstones
C. Drew & Co., Kingston . . . . . Augers
J. Roberts & Co., Waltham, Mass . . . . . Tarred Paper
Plymouth Tack and Rivet Co . . . . . Nails, Tacks, &c.
R. Dudgeon, N. J. . . . . Hydraulic Jacks
Munsell & Thompson, N. J . . . . . Forges
Trenton Iron Co. . . . . Bar Iron
L. & A. G. Coes, Worcester . . . . . Wrenches
New Bedford Copper Co . . . . . Copper Goods
Buck Brothers, Worcester. . . . . Chisels
Lesley & Co., Philadelphia . . . . . Handirons
Lenox Iron Works, Lenox, Mass. . . . . Pig Iron
Novelty Iron Works, N. J. . . . . Apparatus
William Porter & Son, New York . . . . . Lanterns
American Butt Co. . . . . Butts
Cheney & Lerow. . . . . Hammers
J. L. Hommedieu . . . . . Augers
M. J. Ryerson . . . . . Hammered Iron
C. E. Peenock & Co. . . . . Boiler Iron
Westbrook Forge Co. . . . . Hammered Iron
Bemis & Call, H. W. & T. Co. . . . . Hardware
Charles Alden . . . . . Emery Cloth and Facings
Roys, Wilcox & Co . . . . . Turners' Tools
Eagle Lock Co. . . . . Locks
Kinsley Iron Manufacturing Co. . . . . Bar Iron

III.

FARTHER EVIDENCE OF THE

"ORIGIN OF THESE UNFORTUNATE PROCEEDINGS"

—IN THE—

MORTIFICATION AND REVENGE

OF THE CHIEF OF THE BUREAU OF ORDNANCE OF THE U. S. NAVY DEPARTMENT.

The hostility of this official had already been indicated, resulting from the overruling of his decision by the umpire in a matter of boiler iron. That settlement was effected on the 6th of February, 1864.

On the 25th of February, F. W. Smith was informed that this chief of bureau had asserted in his office in Washington that Smith Brothers had delivered Revely tin for Banca, and had offered to refund money; a charge which the firm immediately denied. The chief replied, reiterating the charge and inclosing a voucher for 504¾ pounds Banca tin at 56 cents, alleging that it was Revely, and demanding a refund of money.

Smith Brothers replied:

"We claim this was Banca, as described. You offer no "proof, but merely assume to the contrary. Any further "claim for restitution by us must be accompanied *by proof* "that the articles were not as described.

* * "We called upon you to comply courteously with "your request for a copy of our paper upon 'purchases of "naval supplies.' Conversation ensued, initiated spiritedly

"by yourself, concerning the delivery of Revely tin for "Banca, though you disclaimed any insinuation upon "Smith Brothers.

"Yet a scandalous perversion of this conversation "quickly followed us upon our return. This experience "will forbid further communication in future with the "bureau, except by writing.

"It is appropriate to remark, under these circumstances, "that the important relations of government officers should "keep them free from defamatory gossip; especially when "it is known that it has been traced from thence directly "to the public press.

"We remain your obedient servants,

"SMITH BROTHERS & Co."

Despite the offer of proof to the contrary, the chief maintained his charge as to the tin, and wrote Hon. John P. Hale, Chairman of the Senate Committee, to that effect on the 21st of May, 1864.

On the same date he attempted to "*make the wool fly*" by testimony as follows:

Question. "In your answer to the twelfth interrogatory you state that there was $100,000 worth of tin called Straits tin furnished for Banca tin and charged as Banca tin. Do you know of your knowledge whether Smith Brothers & Company ever delivered any tin for Banca that was not?"

Answer. "I have every reason to believe that they never delivered one single pound of Banca tin, although in one bill they charged Banca tin and delivered Straits tin."

Subsequently the witness was asked:

Question. "Were these interrogatories submitted to you some time ago by the Navy Department?"

Answer. "They were not submitted to me by the Navy Department."

Question. "You have seen them?"
Answer. "Yes, sir."
Question. "Where did you see them?"
Answer. "I prepared them myself, because I was told by the Navy Department that I should be sworn."
Question. "Did you prepare your answer to them in writing before you came here?"
Answer. "Yes, after having full knowledge of the facts, and after going over the whole business."

The falsity of this testimony was finally established by the testimony of the naval officer, Inspector of Ordnance at the Navy Yard, and the personal friend of the chief, as admitted in evidenee, by testimony as follows, from the record:

"In my examination to-day I have found a requisition "that was supplied by Smith Brothers, of Banca tin, May "16, 1863. Banca tin was furnished by Smith Brothers "on that occasion. I know it to be Banca tin. There "were 504¾ pounds at 56 cents, Banca tin."

This swift witness was the author of the "dead-cock-in-the-pit" letter, of whom Senator Sumner wrote:

"The writer of this letter, after appearing before the "Senate Committee at a later day, came on from Washing-"ton to appear as a witness against the respondents at "Charlestown, where he underwent a cross-examination—"on which I forbear to comment."

IV.

A SPECIMEN OF THE METHODS OF THE DETECTIVE INQUISITION.

TERRORISM OF WITNESSES.

FALSE ENTRIES UPON AFFIDAVITS.

Extracts from the Sworn Testimony of a Witness before the Detective Inquisition.

Interrogatory 26. To the question whether he had sworn to the statement cited, the witness answered: "It might be something similar to that. After this man read what was written, another man wrote on a piece of paper."

Interrogatory 27. "Did he not read it over to you afterward?"

Answer. "He did, sir."

Interrogatory 28. "And did you not sign it?"

Answer. "Yes, sir; *I told him there were a great many things in that paper that were not right*, and he said it was not anything very particular. I wanted to get it right. He wanted me to go down stairs and sign it, and I told a man down there I did not want to sign it."

* * * * *

Answer. "I did not think it was right—anywhere near. He did not ask me any questions. I did not think that was right at the time."

Interrogatory 38. "Wherein was it not right?"

Answer. "Because he sat down and read it over, and

wrote what he had a mind to, and I told him about a great many things, and he said it did not amount to anything. There were things there stated that there was nothing of truth in."

* * * * *

Answer. "The objections that I made to signing that paper were, that he sat down there, and took and read off all his stuff, and if I said anything about it, he said that would not make any difference, and he read off what he wanted. He called another man to write, and I told him it was not right."

Cross-Interrogatory 15 "Then this was it: one man dictated to another man what to write; told him what to write; the other man wrote down what the other directed to write; and thereupon you were required to sign it. Is that so?"

Answer. "That was so."

Interrogatory. "Did you receive a message from this man, that if you did not produce your books they would come and take them by force?"

Answer. "No; but he said so with his own mouth, with his own lips. When I was up there he said it."

The witness added to his answer to the last question: "And he said that he would make me go to Washington."

Comment on the above in Argument of HON. B. F. THOMAS, Counsel for F. W. Smith.

"Let this record stand without a line or word erased. "It is confused, indistinct, stupid, if you will, but rays of "truth stream through it as sunlight through the clouds. "It is not an artificial story. * * The affidavit was "carelessly, recklessly taken, without any regard of the "rights of the witness, or of the party whom it was the "design of the party taking it to implicate.

"If the witness did not exhibit all the courage and inde- "pendence becoming an American citizen, some allowance "must be made for the times.

"The merchants with whom he had been dealing had "been sent to a fortress without any complaint filed "against them; and without any just cause of complaint, "what should save him from Fort Warren or Washington?

"This record may stand as a sample of the method in "which this prosecution has been got up against the ac- "cused before it passed into the hands of the judges-advo- "cate and of the unseen powers and instruments with which "he has had to contend; the poisoned arrows coming out "of the darkness."

Is not this the record of a Star Chamber, in the American Republic, midway of the nineteenth century?

V.

FALSIFICATIONS AND PERVERSIONS OF TESTIMONY

BY JUDGES-ADVOCATE.

From a Review of the Argument of the Judge-Advocate, by F. W. Smith.

The Prefatory Note was as follows:

The errors and perversions of testimony in the argument of the judge-advocate, were so many and so gross, that it was thought expedient to notice a few of them. They might mislead those who had no opportunity to consult the record of the evidence.

The engagements of my counsel being such that they could not give to the matter early attention, I have, at their solicitation, attempted the task myself.

* * * * *

I submit the result of this further effort to inform the public of the facts in the case, to the candid judgment of those who may be interested to examine it.

F. W. S.

Sixty-eight citations from the argument of the judge-advocate were compared with the stenographic record of the court, to illustrate the reckless falsification and perversion of the testimony. This review was mailed to all members of Congress and to the revising counsel of the Navy Department; after its receipt he abandoned all charges save the one hundred dollers on tin.

The introduction to the document (144 pages octavo), is as follows:

On the 11th day of January, 1865, the *one hundred and thirteenth day* from the commencement of the hearing, Judge-Advocate Smith concluded his reply to the argument of counsel for the defense. The most sacred interests of the respondent were now to be adjudicated, not by the unanimous decision of twelve of his fellow-citizens, but by the vote of four among seven naval officers, from distant sections of the country, *appointed by the accusing party*, and sworn to secrecy as to their respective judgments; the judges-advocate remaining with the court.

This is a feature of courts-martial peculiarly abhorrent to our sense of justice, that when they have had *the last word in argument, however unjust in spirit or untrue in statement* the judges-advocate are present at the private deliberations of those acting as judge and jury, deciding upon both law and fact.

* * * * *

From among more than *five thousand* business and private letters and copies of letters, forcibly seized from Smith Brothers & Co., and subject to the scrutiny of detectives for months, there were but TWO which could be perverted to their apparent injury, except that, upon the misinterpretation of which, the specification as to Sterling iron was based.

It is, therefore, necessary to refute these insinuations; and to show that said letters, like every writing or act

of Smith Brothers & Co. upon the record of the hearing, so far from tarnishing, do vindicate their reputation for integrity.

The final recapitulation of arguments in defense from the REVIEW was prefaced as follows:

The defendant asks for an impartial judgment upon the record of his defense; the record being viewed in the light of all surrounding circumstances.

A BUSINESS OF **$1,250,000**, covering an almost infinite variety of detail, prosecuted at a period of unprecedented excitement in the business world; of scarcity of merchandise, of financial panic and uncertainty; a business involving inevitably the "work of other men's hands," and reliance upon other men's faithfulness—this business hunted, pried into, from March until September, by a secret detective inquisition that called before it more than one hundred different parties to be probed and catechised; an inquisition that in June, under military authority, seized all the business and private books, papers and correspondence of the firm from warehouse and dwellings, that had then all original letters, invoices, and entries under its hand, by which it could trace every transaction from its inception to its conclusion, its profit, its payment; that called to its aid accountant experts to fathom the ledgers and cash books; THIS BUSINESS, THUS DISSECTED AND ANALYZED WITH HOSTILE INTENT, AS NEVER BEFORE WAS A LIKE BUSINESS SCRUTINIZED IN NEW ENGLAND, REVEALED FIVE SUCH CHARGES OF FRAUD, AS HAVE BEEN ANSWERED AND DEFENDED BY THE RESPONDENT:

Five charges which, if proved, would not amount to two thousand dollars—less than one-sixth of one per cent. upon the amount of the business. Such were the developments of an inquisition upon, as the judge-advocate asserts, "an extensive system of frauds." Such, the charges, upon which, in addition to the severities and indignities above mentioned, the respondent was prosecuted, bail demanded of five hundred thousand dollars, and he was subjected to a military trial of four months' duration, nearly ruinous to his health, destructive to his business, and costing him in legal and other expenses attending the trial, more than $20,000, and in losses resulting to his business of an equal amount.

The terse, incisive verdict of President Lincoln upon this history, it has been seen, was based upon the self-evident absurdity of the allegations.

VI.

COST OF NAVAL SUPPLIES

AFTER THE

SUPPRESSION OF THE BUSINESS OF SMITH BROTHERS

PROFITS OF THEIR SUCCESSORS.

PRICES INCREASED 33 1-3 PER CENT.

The military seizure of the warehouse of Smith Brothers & Co. was at the precise period of advertisement for annual supplies. Although the inquisition had been in session three months in Boston, no charges were preferred until a month after the pillage of their premises and the paralysis of their business, at a great loss. Many papers have never been recovered.

Thus, when it had been found that official opposition and annoyance would not drive them from the field, the war power was invoked, their business wrested from them, and all their resources of mental endurance and pecuniary strength demanded in defense from utter ruin. Then, upon the award of new contracts, men who had solicited them to participate in bribery, and had been repelled, succeeded to government patronage.

So great was the shock to the business community by the violence toward Smith Brothers (as had been pre-

dicted by the delegation from Massachusetts, in their paper to the President), that respectable mercantile houses dared not enter the competition.

Therefore, while Franklin W. Smith was being hounded on a pretense of one hundred dollars difference in value between Banca and Revely tin (where no difference was proven to exist), the government entered into contract to such astounding damage as the following contracts reveal.

These were the "spoils" to private parties from the government treasury, following the "raid" of the Navy Department on Smith Brothers for an alleged wrong of $100; a raid that cost the government not less than $40,000 for expenses of inquisition and prosecution:

Contracts Published in Report of the Secretary of the Navy, 1864-1865.

Charlestown Class No. 81—Zink, Tin and Solder.

				Market Value or Cost.	
20,000 lbs. Sheet zinc,	@	40c.	$8,000 00	23c.	$4,600 00
30,000 lbs. Pig zinc,	@	28c.	8,400 00	16c.	4,800 00
50,000 lbs. Straits tin,	@	$1 00	50,000 00	62c.	31,000 00
(*i. e.* Revely. Parenthesis of F. W. S.)					
200 lbs. Brazier's solder,	@	70c.	140 00	40c.	80 00
50 boxes Tin plate, XD,	@	$42 00	2,100 00	$28 00	1,400 00
50 boxes Tin plate, 1X, SD,	@	75 00	3,750 00	40 00	2,000 00
50 boxes Tin plate, 14x20, 1X,	@	55 00	2,750 00	30 00	1,500 00
10 boxes Tin plate, 13x12 1X,	@	50 00	500 00	25 00	250 00
300 lbs. Pewter solder,	@	55c.	165 00	30c.	90 00
Cost to Government			$75,805 00		$45,720 00
Market value			45,720 00		
Profit			$30,085 00—Or 40 per cent. on metals usually sold at a mere commission.		

Charlestown, Class No. 28—Iron Nails.

30,000 lbs. Wrought iron nails, 6d. to 30d.,	@	27 cts.	$810 00	13 cts.	$390 00
1,000 lbs. Wrought iron boat nails, 1½ to 3½,	@	30 cts.	300 00	13 cts.	130 00
1,500 lbs. Wrought iron clout nails, ½ to 1½,	@	25 cts.	375 00	17 cts.	255 00
10,000 lbs. Iron cut nails, 4d. to 60d.,	@	15 cts.	1,500 00	10 cts.	1,000 00
1,000 lbs. Iron cut sheathing nails, 3 in.,	@	15 cts.	150 00	10 cts.	100 00
2,000 lbs. Finishing nails, 1 in. to 2 in.,	@	27 cts.	540 00	16 cts.	320 00
600 lbs. Cut broad-head nails, 4d. to 10d.,	@	15 cts.	90 00	10 cts.	60 00
Cost to Government			$3,765 00		$2,255 00
Market value			2,255 00		
			$1,510 00—Or 60 per cent. profit.		

Senator Sumner, in his seventh argument in defense of the tin transaction of Smith Brothers, says:

"The price of tin was	.52
"Add store expense and interest and 5 per cent .	.0260
	.5460
"Com. @ 5 per cent.	.0273
"On but 504 pounds the price charged was but 57 cents	.5733

"In the contract of their successors, tin at a cost of 62 cents was sold for $1 in a quantity of 50,000 pounds."

Exhibit of the Profits of Smith Brothers & Co. on Government Business.

During the cross-examination of Mr. B. G. Smith, the judge-advocate produced from the papers of Smith Brothers & Co. an elaborate exhibit of the profit and loss upon all their government business, from its commencement in 1861 to February 1, 1862.

Mr. Smith testified that it was a private paper, prepared by his brother for his own satisfaction, and that it was among those forcibly abstracted from his brother's dwelling-house. It was the only statement of the kind which had been made, and was most opportune evidence in support of his account of the profits from the business of the firm.

Mr. B. G. Smith further stated that he had never before seen the paper, except at the time it was prepared and that he then observed only the results, not spending over ten minutes in its examination.

THIS EXHIBIT, ACCIDENTALLY PRODUCED BY THE PROSECUTORS, DEMONSTRATED THAT THE AVERAGE NET PROFITS TO SMITH BROTHERS & CO., UPON GOVERNMENT BUSINESS, HAD BEEN ONLY ABOUT FIVE PER CENT.

VII.

SUPPRESSION OF THE DECISION OF PRESIDENT LINCOLN

BY SECRETARY WELLES, FOR FOUR YEARS, DURING THE ADMINISTRATION OF PRESIDENT JOHNSON.

REVISION OF THE VERDICT OF THE COURT BY COUNSEL OF THE NAVY DEPARTMENT.

Upon the annulment of the case by President Lincoln, there was great public interest to know the precise terms of his decision. His assassination followed immediately; and it was supposed that the promulgation of his disapproval was simply overlooked in the direful excitement of that tragedy. Meanwhile, it was reported that the endorsement of the President was remarkably quaint and characteristic; and a humorous version of it was published throughout the country. (V. Ex. *N. Y. Tribune.*)

At length Senator Sumner, in behalf of Mr. Smith, called upon the Secretary of the Navy for an official copy of the record. To his astonishment and indignation it was refused by the Secretary, on the ground that it was his duty to shield the court from further reprehension. A lengthy correspondence ensued, Mr. Sumner claiming that the record was not only of right the property of Mr. Smith, but also of the public. Tired of conflict, the respondent in the case decided to await Secretary Welles' retirement from office.

Not until 1869 did he have access to the record of the court, in the archives of the Navy Department. It may be seen on their shelves, in *ten massive volumes folio;* by far the most voluminous and, consequently, most expensive record of a court-martial since the foundation of the government.

Extraordinary details are revealed in that record, that will have yet a more full compilation. This summary relates more to a personal vindication than to the great public importance of the case; which was impressively set forth by Judge Parker in his last lecture as Professor of the Harvard Law School.*

Following the record of the court is the opinion of the reviser of the department. It labors to sustain the warrant for the case, but as President Lincoln said of it to Senator Sumner, he is compelled to abandon all allegations for this intensely fought prosecution, except the "*sure thing on the tin,*" involving less than $100. He decided as follows:

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* "Smith Brothers & Co., of Boston, were contractors for supplies for the use of the Navy Department."

"Their real offense seems to have been that they refused to become participators in frauds upon the government."

* * * * * *

"The trial was of great length, but the charges were all triumphantly met and refuted."

* * * * * *

"The President committed the case to a Senator for a report, who justly and properly exonerated Messrs. Smith from all blame, and the President disapproved of the proceedings, perhaps in terms not very complimentary to the court, or others who were active in promoting the prosecution."—*Lectures on the three dangers of the Republic, delivered in the Law School of Harvard College in 1867 by Joel Parker.*

First. The finding of the court on tin was "justified."

Second. The finding of the court on emery cloth, less clearly made out, and less important.

Third. "The same observation is, in my judgment, "applicable to the third specification under both charges. "The delivery of inferior articles is very small in compari- "son with the whole quantity delivered under the contract, "and may well have happened through inadvertence."

Secretary Welles had good need to protect his court not only from further "public reprehension," but ridicule, in view of the record to which the seven old naval officers attached their verdict of

"'*Proven*,' as to 24 single articles of hardware in a contract for 12,564 single articles; and '*not proven*' as to the others."

At this point the verdict of the Boston Board of Trade is apposite:

"In view of such facts, the charge of 'fraud' or of "fraudulent intention is utterly frivolous. The wonder "indeed is, that in so large a business, and in the condi- "tion of the market since the beginning of the war, the "number of articles below the standard quality should be "so very limited. Of the general good quality of the "goods and wares sold and delivered, there can be no "doubt."—*Report of Special Committee.*

Fourth. "'*Not proven*'—obviously correct and proper."

Fifth and Sixth. "Stricken out by the court."

Seventh. "The exclusion of testimony offered by the defense was an error in law and in derogation of his right."

These were the conclusions by the counsel of the conspirators, from 2,500 pages of testimony, gathered after a year of inquisition and court-martial; at a cost to the government of at least $40,000; to the respondents, in legal expenses, printing, etc., of $20,000; and of damages in aggregate that $100,000 would not compensate.

This will be accepted as within the fact, when it is realized that the defendant's business, established in Boston and New York, after twenty years of enterprise, was utterly destroyed by the onslaught; all books and papers being held for the period of nine months from their seizure, and the utmost powers of mental and physical endurance being demanded in defense of all that could make life desirable. Not only were all business facilities collapsed by the blow, but the defendant could only recover mental poise and strength to re-enter upon the activities of life by absolute retirement to the quiet of rural pursuits.

The sense of outrage at the above revision of the counsel of the Navy Department, sent by President Lincoln to Senator Sumner for his review, prompted his emphatic indignation:

"If a mountain in labor ever brought forth a mouse, it "is this mountainous prosecution, whose only offspring yet "crawling on earth is an allegation of loss to the United "States of one hundred dollars! But if we look further at "this transaction, it will be seen that it is absolutely "unimpeachable."

VIII.

THE GAIN TO GOVERNMENT

— UPON —

CONTRACTS WITH SMITH BROTHERS.

Extract from Report of the Boston Board of Trade.

"Bandaged eyes and even scales are the emblems of justice. Before a civil tribunal, State or Federal, our Associate would have been tried on a suit of *contract* by a judge of high legal attainments, who would have *confined the evidence to the case; and who would have decided to admit or reject testimony after arguments of counsel, and in the presence of both parties to the issue.* And non-performance proved, the jury would have returned a verdict of damages in dollars and cents; and (no appeal), here the matter would have terminated. Justice is even-handed between individuals, and should be so between governments and citizens. For the first time, and upon this point, we quote from Mr. Smith's 'Review of the argument of the Judge Advocate,' thus:

"The loss of interests to Smith Brothers & Co. has not been less than two per cent. upon their sales, through the delinquency of government payment; or $25,000 on $1,250,000; although the early contracts stipulated that payments '*will be paid by the Navy Agent within thirty days* after bills, duly authenticated, shall have been presented to him.'"

Again:

"It required energy and caution to prevent these contracts from being disastrous. Many were abandoned by other parties on account of losses involved, and relief bills were passed by Congress for contractors; but Smith

Brothers & Co. strove to fulfil their contracts with the government (as with all men), up to the time of the violent proceedings against them—*contracts on which the advance realized to the government was certainly not less than $200,000.*"

"The 'advance' was for the benefit of the country; but, on the other hand, the country should, as 'between man and wife,' make good the 'loss,' whether much or little; because the country is not entitled (in popular phrase), to 'both sides of the bargain.' The result, then, on this branch of our inquiry is, that on a question of *contract*, FRANKLIN W. SMITH, AND NOT THE GOVERNMENT, IS THE PARTY ENTITLED TO A VERDICT FOR DAMAGES.

Smith Brothers contracted for 3,000 tons of pig-iron, for shot and shell, at an average of about twenty-five dollars per ton. Before the delivery was completed the value advanced to forty-two dollars per ton; making a gain to the Government of more than forty thousand dollars; but fully this sum was revengefully wasted upon their persecution.

Merchants will realize the excessive labor, perplexity and responsibility involved in outfit of ships of war, upon peremptory orders for a multiplicity of articles, at brief notice of a fixed hour of sailing, in a time of great dearth of merchandise.

IX.

"THE DEFENDANTS HAD AN OVATION IN THE CONGRATULATION OF THEIR FRIENDS AND FELLOW CITIZENS."—HON. CHARLES SUMNER.

In evidence of the eagerness of the citizens of Boston to express their satisfaction with the action of the President, the following extracts, in record of the martyrdom of Mr. Lincoln, may be allowable:

From the "BOSTON ADVERTISER," April 15, 1865.

"The terrible tidings which were flashed over the wires yesterday morning of the assassination of President Lincoln, caused the deepest sadness and the most intense excitement among our citizens. The great joy and gladness which have filled the hearts of all loyal people were changed to sorrow and anguish by the reading of this terrible news.

"The thousands of flags which have been for the past two weeks flying in honor of our Nation's happiness at the prospect of the near approach of honorable peace, were yesterday placed at half-mast and draped in mourning."

Public Meeting in Tremont Temple.

"Upon the reception of the sad news of the death of our beloved President, a meeting was called in Tremont Temple, which was attended by an immense congregation. The

front of the platform was draped in mourning, and the American flag, also draped, was thrown over the pulpit. A fine portrait of President Lincoln was also placed in front of the pulpit. Franklin W. Smith, Esq., was called to preside. * * A fervent and heart-felt prayer was offere by Rev. S. F. Smith, D. D., the author of the National hymn 'America.'"

From the "BOSTON HERALD."

"Yesterday forenoon an impromptu meeting of merchants was held at the Merchants' Exchange, and it was decided to have a public demonstration on the common in the afternoon, as a fitting close to the solemnities of the day. The meeting was called to order by Geo. P. Denny, Esq.; Charles G. Nazro was chosen to preside.

"Remarks were made by Messrs. Franklin W. Smith, Edward S. Tobey, E. N. Farnsworth and others.

"By three o'clock the people began to assemble on the Common. A procession marched through Tremont, Boylston, Arlington, Beacon and Park streets, to the Park street gate, through it, and thence along the Beacon street Mall, to solemn dirges by the band, to the parade ground, where two stands had been erected for speakers. In addition to the procession a vast crowd of ladies and gentlemen assembled and there were probably from fifteen to twenty thousand persons present."

* * * * *

"On stand No. 1, the Navy Yard Band commenced the exercises by performing a dirge. E. S. Tobey, who presided, introduced the Rev. Rollin H. Neale, D. D., who offered prayer. Appropriate speeches were made by the Chairman, Hon. Josiah Quincy, Hon. Judge Russell, Hon. Samuel H. Walley, Rev. William Hague, D.D. and Rev. E. N. Kirk, D.D.

"At stand No. 2, Charles G. Nazro, Esq., presided. Gilmore's Band played 'Rest, Spirit, Rest,' Rev. M. Mallalieu offered prayer. The speakers were the Chairman, Hon. Alexander H. Rice, Rev. E. B. Webb, D.D., Franklin W. Smith, Esq., and Hon. Charles A. Phelps."

* * * * *

Thus the tragedy which closed upon the life of Abraham Lincoln, immediately upon his deliverance of the defendant in the above history, was mournfully associated with congratulations and cordial greetings from the people of his native city.