59TH CONGRESS, 2d Session. } SENATE. { DOCUMENT No. 286.

AFFAIRS IN THE INDIAN TERRITORY.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

COPIES OF LETTERS WHICH HAVE PASSED BETWEEN THE PRESIDENT AND THE SECRETARY IN REFERENCE TO THE REPORT OF THE SELECT COMMITTEE OF THE SENATE ON AFFAIRS IN INDIAN TERRITORY, ETC.

FEBRUARY 5, 1907.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
SECRETARY'S OFFICE,
Washington, D. C., February 5, 1907.

SIR: I have the honor to transmit herewith, at his suggestion, copies of letters which have passed between the President and myself in reference to the report of the Select Committee of the Senate on Affairs in Indian Territory, together with a number of exhibits referred to in said letters.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
SECRETARY'S OFFICE,
Washington, D. C., January 29, 1907.

MY DEAR MR. PRESIDENT: I duly received your letter of the 17th, asking whether it would not be well for you to write a letter either to the Congress or to the chairman of the Senate committee which is dealing with these Indian lands, in which you should "state the position that the Administration has taken on the Indian lands, as well as the coal lands and the like," while your letter closes as follows:

> Some of the actions you have taken in reference to this matter were taken by my direction; some not by my direction, but with my hearty approval—

for which expression of approval I sincerely thank you.

Replying now to your suggestion that I furnish some memoranda for such communication as you may desire to make, I respectfully submit what follows, leaving you to determine what use to make of the same.

On the 16th instant the Senate select committee to investigate matters connected with affairs in Indian Territory, through its chairman, Senator Clark, submitted a report (S. 5013), a copy of which I inclose herewith, marked "Exhibit A."

This report expresses regret that the time of the committee in the Territory was necessarily limited, and further states that at the very beginning of its investigations the committee was struck by the magnitude of the interests involved, the unsatisfactory conditions prevailing, and the difficulties of arriving at just conclusions as to necessary legislation.

The committee then states what it believes to be the matters of greatest immediate concern, and which it specifies and treats of later on in the report.

The matter to which I would first call your attention in the report of the committee is as follows:

> In all its inquiry and deliberations the committee has been much embarrassed by the former legislation by Congress as to the legal status of the members of the Five Civilized Tribes. By definite and express act of Congress, March 3, 1901, each member of these tribes was made a citizen of the United States, and as such, under the Constitution, and under the terms of said law, entitled to all the rights, privileges, and immunities of every other citizen of the United States. Yet, nothwithstanding this express legislative naturalization, Congress, in its subsequent legislation, and the Department of the Interior, acting under such legislation, has apparently ignored entirely this established citizenship, and in nearly every instance has treated the questions arising within the Five Civilized Tribes as though no such acts had ever been passed and as though the Indians were still in the broadest sense the wards of the Government. In other words, it appears that since the passage of the act above referred to the Congress of the United States and the Department of the Interior have proceeded in dealing with Indian Territory affairs along the same lines as were followed before the said act was passed.

This statement, if found to be correct, practically charges that the legislation affecting the Five Civilized Tribes since March 3, 1901, is illegal and, in my judgment, requires further consideration before it is accepted as correct. I have yet to be convinced that the Committee on Indian Affairs of both the Senate and House of Representatives exceeded their authority when they recommended the enactment, since March 3, 1901, of legislation of such serious and far-reaching character as that referred to by the select committee, and which the said Committee now suggests may be illegal; especially, as the members of the select committee, with one exception, have served on the Senate Committee of Indian Affairs since 1903, or something over four years, without apparently having made the discovery which is now proclaimed.

Under such circumstances I called upon the law division of this Department for a memorandum opinion, responsive to the quoted statement of the select committee of the Senate, and beg to hand you herewith a copy of said opinion (dated January 22, 1907, and marked "Exhibit B"), which, I am pleased to note, in view of the enormous interests involved, reaches a different conclusion from that of the Senate select committee with respect to Congressional legislation since March 3, 1901, so far as such legislation relates to the Five Civilized Tribes.

This opinion, after reviewing the laws and decisions of the courts on the subject, in substance holds as follows:

That in granting political emancipation to the members of the Five Civilived Tribes, by the act of March 3, 1901, and making them citizens of the United States, Congress did not absolutely discharge them from wardship; but the national guardianship in respect to the rights of property continued the same, and Congress retained and had power to exercise the same control over the property of the Indians after the passage of the act as it had prior thereto.

"THE SEGREGATED COAL AND ASPHALT LANDS."

Under this head the select committee correctly states the action taken by the Department of the Interior under the act of Congress approved July 1, 1902, its efforts to dispose of the segregated coal land, amounting to a little over 400,000 acres, having been unsuccessful.

That success was not achieved was, in my opinion, largely owing to efforts inaugurated in Indian Territory to defeat a carefully prepared plan of the Department, and I make this statement because of the well-known attempt that certain persons made at the first session of this Congress to have the disposal of these lands placed in the hands of a commission composed of certain parties who were to be guided by legal advice upon extravagant terms, which effort, I have reason to believe, is being repeated at the present time.

The select committee states:

> Two ways have been submitted for the disposal of the lands:
> First. An outright sale under the direction of the Secretary of the Interior to the highest bidder, in such tracts as the bidder may desire.
> Second. The sale of the surface of said land, reserving the mineral right thereto, to individual settlers, in small tracts for farming purposes, and the sale of the mineral rights in such tracts and under such terms and conditions as might be approved by the Secretary of the Interior.

It is further stated, as the insistent opinion of the authorities of the Choctaw and Chickasaw nations, that the lands should be disposed of in such manner as to bring the greatest possible price and at an early date, the belief being stated that such purpose could be best accomplished by an outright sale of surface and mineral rights without separation and in one transaction.

This last expressed desire on the part of the Indian authorities is but a repetition of the attempt previously made and above referred to.

The recommendation of the select committee of the Senate is that the surface lands should be sold as early as possible, leaving the question of the disposition of the underlying minerals to be considered at some later date, and I conditionally agree with such recommendation, provided a better one can not be found.

In lieu of such suggestion, two others were made; the one by myself and the other by Commissioner Leupp, either one of which, I think, would better protect the interests of the Indians.

The first, as fully explained by me to the select committee of the Senate, was that such legislation should be had as would legally dispose of the segregated coal land in such manner as would provide for applying the income, now amounting to about $250,000 a year, to the education of the Indian children of the Five Civilized Tribes.

The other, suggested by Commissioner Leupp, was that this segregated coal land property should be legally converted into a corporation holding, in which the Indians' interest in the property should be represented by the equivalent in shares of stock of the new corporation, such dividends as might accrue on said shares of stock being payable direct to the shareholders.

Both of these suggestions were fully explained to the select committee of the Senate at one or more hearings at which I was present, to which, however, no allusion is made in the report of the select committee to the Senate.

"REMOVAL OF RESTRICTIONS."

The recommendations of the select committee do not strike me favorably, inasmuch as, if adopted, as suggested, the result would be, except as to the homesteads of citizens of Indian blood, the spoliation of the Indians' surplus and inherited allotments and the gradual pauperization of the tribes.

The records of the Department fully warrant this statement, and the prevalent feeling in the Territory is that the Indian has no rights which the white man is bound to respect.

The select committee believe that section 19 of the act of April 26, 1906, having a special reference to the removal of restrictions "was unwise, injurious to the Indians, and of no validity," and it recommends that "all restrictions be removed from the surplus lands of all citizens of the Five Civilized Tribes, except minors."

Second. "The removal of restrictions as to homesteads of members of such tribes who are not of Indian blood, which includes intermarried white citizens and freedmen," and that "the removal of restrictions on the alienation should also include the removal of restrictions as to encumbering and leasing," the result of which, if enacted into law, would, in my judgment, be most disastrous, at least so far as the Indian is concerned.

There may be Indians capable of making satisfactory sale and disposition of their surplus lands, but they are few in number as compared with the ignorant and improvident, who would stand no chance with the grafter.

The removal of restrictions as to homesteads of members of such tribes who are not of Indian blood would enable the squaw man to rob and desert his family, as the records of the Department show has been attempted within the last week, while no law could be enacted that would give the grafter greater satisfaction than that which would remove restrictions as to encumbering and leasing.

To withdraw governmental supervision over oil and gas leasing in the Indian Territory would open an unobstructed way to the concentration of that entire and wonderful oil belt in a single ownership, a result which we may reasonably suppose would be speedily realized. The valuable royalties the Indian is now receiving from month to month under existing restrictions would sooner or later be lost to the Indian altogether, to say nothing of the discouraging influence upon the investment of capital in the recently projected independent pipe lines to the Gulf, from the completion of which so much benefit is expected to result to the oil producers and Indians, for it may not be unreasonable to suppose that the business men who contemplate the construction of these lines will hesitate to invest the many millions of dollars required for that purpose when confronted with the prospect of being obliged to go at once into competition with an all-powerful rival for the purchase outright of the oil territory essential to the protection of their interests.

I submit herewith copy of a letter of Commissioner Leupp, dated November 23, 1906, and marked "Exhibit C," calling my attention to a letter of the 17th of November, 1906, from J. G. Wright, Indian inspector for Indian Territory, referring to the Indian appropriation act, approved June 21, 1906, showing the names and degree of blood of certain Cherokee Indians whose restrictions were removed by the act mentioned, and the result of his investigations with respect to these Indians.

This letter of Inspector Wright, to my mind, has an important bearing upon the subject of the removal of restrictions as proposed by the select committee, as indicating what may reasonably be expected to result from such removal.

A copy of the Commissioner's letter was forwarded to the Attorney-General for such action as he might think proper under the circumstances, as per copy of my letter dated November 27, 1906, herewith submitted, and marked "Exhibit D."

"OIL AND GAS."

It is unfortunate that the time of the Senate select committee while in the oil and gas section of the Territory was so limited as to prevent a more thorough investigation, for the reports and facts in the Department clearly show this important matter deserved more attention.

I refer more particularly to the committee's statement reading as follows:

> Under date of December 21, 1906, the Department of the Interior issued regulations governing the granting of rights of way for pump lines, pumping stations, and storage tanks, and their construction, operation, and maintenance for the transportation and storage of oil through land situated within Oklahoma and the Indian Territory. Some of these provisions, however, are of such a drastic nature that your committee is of the opinion that no competent parties would undertake the construction of pipe lines in pursuance thereof.

The answer to this statement is the fact that competent parties have made application for, and have been granted, numerous pipe lines, including two trunk lines, from the Indian Territory to the Gulf, which will prove to be the most effective way of putting a stop to the monopolistic greed and commercial tyranny which has characterized the acts of certain operators in both Oklahoma and the Indian Territory, whose conduct in deliberately violating their contracts or leases, and in shamefully disregarding the rules and regulations of the Department, has cost both the Indian lessor and the independent operator millions of dollars and rendered necessary its action, which is criticised as drastic.

Your thorough familiarity with this whole question, the measures adopted by the Department, and the necessity therefor toward protecting the Indian lessor and the independent oil operator, renders further comment under this head unnecessary.

"WITHDRAWAL OF LANDS FROM ALLOTMENT."

With reference to the suspension of allotment, or withdrawal of land from allotment, the committee, on the last page of its report, expresses the opinion that the Secretary of the Interior was not authorized by law to make the order of withdrawal.

The committee further states that—

> The agreement with the tribes, and the act of Congress approved July 1, 1902, authorized and directed the allotments to be made as soon as practicable, and that law, the committee believes, can not be set aside, impeded, or modified except by act of Congress repealing or changing the original statute.

The later law, however, passed April 26, 1906 (34 Stat. L., 137–143), must not be overlooked, for it is the legislation under which the Department has acted, and its interpretation of which has been challenged.

This law provides no time limit for completing the allotment, but does authorize the Secretary of the Interior "to sell whenever in his judgment it may be desirable, any of the unallotted (surplus) land in the Choctaw and Chickasaw nations not principally valuable for mining, agricultural, or timber purposes, in tracts of not exceeding 640 acres to any one person," etc., and the discretion thus availed of was exercised by the temporary and tentative withdrawal, or withholding from allotment by the Department of the acreage which the Secretary of Agriculture requested should be investigated with the view of ascertaining whether or not such withdrawal would prove to be in the best interest of the Indians by the preservation of its rapidly disappearing timber, the scarcity of which in the Territory rendered decisive action desirable.

The résumé of the correspondence between the two departments on this subject, as set forth in Judge Campbell's opinion of January 3, 1907, which appears on page 66 et seq. of the statement made by me before the select committee of the Senate (printed copy herewith, marked "Exhibit E"), warrants the action taken, and my report to Congress, as per copy herewith (Exhibit F), addressed to the President of the Senate and the Speaker of the House, under date of January 15, 1907, suggests such modification of existing laws as will allow the Indians to decide whether or not the withdrawal of the surplus lands for the purpose stated meets with their approval.

After a careful perusal of the report of the committee, I find no reason to change my views as expressed in my letter of the 9th instant, addressed to Hon. C. D. Clark, chairman of the select committee (copy herewith marked "Exhibit G"), and the memo-opinion of the Assistant Attorney-General for this Department, referred to therein and transmitted to the committee therewith. On the contrary, after further reflection, I am even more thoroughly convinced that the action taken by the Department was authorized by law, and, furthermore, that it was in the interest of good administration on behalf of the Five Civilized Tribes.

Yours, very truly,

E. A. HITCHCOCK,
Secretary.

The PRESIDENT.

THE WHITE HOUSE,
Washington, February 1, 1907.

MY DEAR MR. SECRETARY: In accordance with our conversation of this morning, I write you direct in response to your letter of January 29, you to make whatever use you choose of this letter.

I heartily sympathize with your view as to the great desirability of the legislation of Congress, and the action of the Department of the Interior under such legislation, ever since the act of March 3, 1901; that is, with the theory that the Indians are wards of the nation and that the granting of political emancipation to the members of the Five Civilized Tribes did not absolutely discharge them from wardship, but left undisturbed the national guardianship in respect to the rights of property. I am certain that it would be a calamity to the Indians if the theory upon which both the Congress and the Administration have consistently acted now for nearly six years was overthrown, and if it was now contended that the act of March 3, 1901, had an effect which, if foreseen, would certainly have led to the refusal to enact it. I am not competent to express an opinion upon the law of the matter, but it seems to me that the memorandum you inclose from the law division of your Department states the case correctly. In any event, to take the opposite view from that contained in this memorandum and your letter would be productive, in my judgment, of such an enormous amount of mischief to the Indians that we would not be warranted in accepting it save by the decree of the highest court in the land.

In the next place, as to the segregated coal and asphalt lands: Here, I feel that the suggestion made by Commissioner Leupp of converting this segregated coal land property into a corporation in the interest of the Indians would be the one which it would be best to adopt. I earnestly hope that this plan will be adopted. In any event, I should feel it in the gravest degree improper to insist upon outright sale under the direction of the Secretary of the Interior to the highest bidder in such tracts as the purchaser might desire, or in any other way to provide for such an alienation of the underlying minerals. I have no objection to the sale of the surface lands, and in fact I should welcome such sale; for I agree heartily in the views of the Commissioner of Indian Affairs that it is not for the advantage of the Indian to retain more land than he can himself make uses of, especially where, as in this case, by the sale of the surface, a good class of agricultural workers will be brought in, with whom it would be an advantage to him to be brought in contact; but the right to the surface lands should be sharply differentiated from the right to the underlying minerals.

As to the removal of restrictions: Here, I feel that not only should homesteads be kept inalienable to allottees of Indian blood, but that minors and incompetents should be scrupulously protected, and that the various tribes having no homesteads under existing law should also have provision made for them. What I have said above, as to the desirability of selling the surplus land, applies here, of course.

Oil and gas.—I most emphatically believe that we should not permit the lands containing oil and gas to be alienated under conditions which would in effect mean the building up of a great monoply in oil and the reversal of the programme wisely entered into recently by the Department to stimulate an increase in the competitive pipe-line service. I do not feel that we can afford to aid in the acquisition of property of this kind by private parties who, as experience has shown, may

use the power thus acquired over necessaries of consumption in a tyrannical manner. I feel that on behalf of the Indians the Government should retain the fee in trust for the Indian, or, if the land is held to belong to the Indian, that the fee should be left with the Indian and he be restricted from alienating it, but permitted to lease the rights to take the oil and gas, under restrictions prescribed by the Government—that is, by the Interior Department.

I feel that this is in the interest of the Indians themselves. I feel that it is also in the interest of all the people of the United States and particularly of the people in the neighborhood of these oil fields; and it is consistent with the policy which I so earnestly hope to see the United States Government adopt in regard to leasing, instead of departing with the fee of the coal and other minerals in the remaining public lands.

Withdrawal of lands from allotment.—Here it is only necessary for me to say that I approve of the action you took with the object of preserving to the Indians and the country at large the rapidly disappearing timber. I feel that the Department had the right to make the withdrawal, and that it would have been a dereliction in duty for it not to have acted as it did act.

Very truly, yours,

THEODORE ROOSEVELT.

Hon. E. A. HITCHCOCK,
Secretary of the Interior.

List of Exhibits.

EXHIBIT A.

[Senate Report No. 5013, Fifty-ninth Congress, second session.]

MR. CLARK, of Wyoming, from the Select Committee to Investigate Matters Connected with Affairs in the Indian Territory, submitted the following

REPORT.

To the Senate of the United States:

The select committee appointed under the provisions of Senate resolution of June 30, 1906, to investigate all matters connected with the conditions of affairs in Indian Territory in relation to legislation included in the act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes" and kindred matters in said Territory, begs leave to submit the following partial report:

On June 30, 1906, the Senate of the United States authorized the appointment of a select committee consisting of five Senators, under a Senate resolution, as follows:

Resolved, That a select committee consisting of five Senators be appointed to fully investigate all matters connected with the condition of affairs in the Indian Territory in relation to legislation included in the act entitled 'An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes,' approved April twenty-sixth, nineteen hundred and six, and kindred matters in said territory with reference to the Five Civilized Tribes, and that said committee be authorized to employ a stenographer to report its hearings and all necessary clerical assistance; and said committee is authorized to sit in the City of Washington and in the Indian Territory or elsewhere, as circumstances may demand, with power to send for persons and papers and to administer oaths, and shall make full and complete report, together with their conclusions and recommendations, to the Senate of the United States, on the first Monday in December, anno Domini, nineteen hundred and six. The necessary expenses of said committee shall be paid out of the contingent fund of the Senate.

Under said resolution the President of the Senate appointed said committee as follows: Senator C. D. Clark, Wyoming, chairman; Senator Chester I. Long, Kansas; Senator Frank B. Brandegee, Connecticut; Senator H. M. Teller, Colorado; Senator W. A. Clark, Montana.

The committee organized at Denver, Colo., on August 10, 1906, and on November 12, 1906, met at Kansas City, Mo., and at once proceeded to Indian Territory, where public hearings were held at Vinita, Muskogee, McAlester, Ardmore, Tulsa, and Bartlesville.

These meetings were open and free, and the public was fully advised as to the dates and invited to be present and give to the committee such information as might be available and offer such suggestions as might be deemed proper by the persons appearing. Special effort, and with marked success, was made to have the Indians, both those of the full and those of the mixed bloods, fully represented. While the time of the committee in the Territory was necessarily limited, it is believed that opportunity was offered for everyone who desired to do so, to give his views upon matters of general interest. Much information was obtained by the committee as to existing conditions, and not a few valuable suggestions received as to legislation which might be beneficial.

The committee at the very beginning of its investigations was struck by the magnitude of the interests involved, the unsatisfactory conditions prevailing, and the difficulties of arriving at just conclusions as to necessary legislation.

The matters of greatest immediate concern seem to be:

(*a*) The proper disposition of the large tract of land in the Choctaw and Chickasaw nations, segregated from allotment by the Executive as coal and asphalt lands under act of Congress approved July 1, 1902, and acts amendatory thereof and supplemental thereto.

(*b*) The question of the restrictions upon the alienation of lands taken in allotment by the individuals of each of the civilized tribes.

(*c*) The rights of certain classes of people to be enrolled on the tribal rolls as citizens who had been denied such enrollment by reason of being partly of negro blood.

(*d*) The situation in regard to oil and gas upon allotted lands and the governmental procedure with relation thereto.

(*e*) Many questions of less general interest, but to which attention should be given in order to secure needed legislation.

Upon all these principal matters and upon many of less general interest, voluminous information was received, which was reduced in all cases to writing and which is returned herewith.

In all its inquiry and deliberations, the committee has been much embarrassed by the former legislation by Congress as to the legal status of the members of the Five Civilized Tribes. By definite and express act of Congress, March 3, 1901, each member of these tribes was made a citizen of the United States, and as such, under the Constitution, and under the terms of said law, entitled to all the rights, privileges, and immunities of every other citizen of the United States. Yet, notwithstanding this express legislative naturalization, Congress, in its subsequent legislation, and the Department of the Interior, acting under such legislation, has apparently ignored entirely this established citizenship, and in nearly every instance has treated the questions arising within the Five Civilized Tribes as though no such acts had ever been passed and as though the Indians were still in the broadest sense the wards of the Government. In other words, it appears that since the passage of the act above referred to the Congress of the United States and the Department of the Interior have proceeded in dealing with Indian Territory affairs along the same lines as were followed before said act was passed.

Many complaints have been submitted to the committee of private or personal interest and which do not affect any considerable number, and while the committee has, so far as possible, heard the interested parties, it has not considered it possible to take action or make report in such specific cases.

THE SEGREGATED COAL AND ASPHALT LANDS.

By act of Congress approved July 1, 1902, it was provided among other things that the Secretary of the Interior should cause to be segregated coal and asphalt lands in the Choctaw and Chickasaw nations, not to exceed in extent 500,000 acres, the same to be sold for cash, under terms and conditions as provided in said act. Proceeding under the provisions of that law, the Secretary of the Interior caused thus to be segregated from allotment 444,983 acres, and duly caused the improvements upon the surface of said lands to be appraised. Included within this segregation were lands under lease to different persons and corporations to the extent of 100280 acres, each of said leases having an unexpired term of twenty years and upward to run. Under the provisions of said act of Congress the Secretary of the Interior caused full information to be published and offered said segregated lands for sale in the year 1904. None of the bids received, however, for one or more tracts was acceptable to the Secretary of the Interior and none was accepted.

By said act of July 1, 1902, the authority to lease any of the unleased lands within said segregation was withdrawn, and under the act of April 26, 1906, it was provided that all said lands, whether leased or unleased, should be reserved from sale until the existing leases for coal and asphalt lands should have expired or until such time as might be otherwise provided by law. Under these several acts of Congress, therefore, this land stands segregated from allotment, but no authority in the Secretary of the Interior or elsewhere to make new leases or to sell the said coal land without a further act of Congress is given.

The present revenue under leases now in operation, which is used for school purposes by the Choctaw and Chickasaw nations, amounts to about $250,000 per annum upon a royalty of 8 cents per ton mine run. The committee in its investigation sought diligently, by personal observation and by soliciting information both from interested and disinterested sources, to ascertain the value of these lands. Special attention was paid this inquiry because of exaggerated views that have found expression in regard not only to the value of the land per acre but to the extent and quality of the actual producing coal lands included in said segregation. There will be found in exhibits attached to this report estimates placed upon the land from experts connected with the operation of certain portions of the land under lease; from the United States inspector of mines for Indian Territory; from the Director of the United States Geological Survey and others connected with that Bureau; from the Secretary of the Interior, himself an owner and operator of large tracts of coal lands, and from many others well informed on the subject; and from all the evidence and statements thus submitted, while the committee is unable to arrive at a definite price per acre which might be considered the fair value of all the land, it may be reasonably said that the entire value of the said segregation per acre for the mineral rights alone and the necessary surface for outside workings may be safely put, as indicated by the Director of the Geological Survey, at from $5 to $40, dependent upon the amount of coal actually in the land, varying expense of mining, and access to transportation.

The development of the oil and gas industry in territory formerly supplied with fuel from these coal fields and the incoming competition

from mines in other localities will, in the opinion of the committee, tend to restrict any great increase in the value of this property in the near future.

The best evidence obtainable shows that a considerable portion of the surface of the segregated lands is suitable for agricultural purposes and at a fair valuation worth from $10 to $15 per acre.

Two ways have been submitted for the disposal of the lands:

First. An outright sale under the direction of the Secretary of the Interior to the highest bidder, in such tracts as the bidder may desire.

Second. The sale of the surface of said land, reserving the mineral right thereto, to individual settlers in small tracts for farming purposes, and the sale of the mineral rights in such tracts and under such terms and conditions as might be approved by the Secretary of the Interior.

It is the insistent opinion of the authorities of the Choctaw and Chickasaw nations, and of the great majority of the Indians themselves having interests in common in said tract, that the lands should be disposed of in such a manner as to bring the greatest possible price, and at an early date, and the opinion of the nations themselves seems to be that this purpose could be best accomplished by sale outright of the surface and mineral rights without separation and in one transaction. The committee is not of opinion, however, that this course would result in obtaining the greatest price or would be for the ultimate best interests, either of the tribes or of the individual members thereof, or for the general public good.

In the vicinity of these lands, and in many cases upon the lands, are towns of considerable importance, and it is clearly apparent that the surface of the segregation, much of which is first-class farming land, should, as early as is possible, pass into individual ownership. The interests of the Indians, the necessities of the new State, and many other considerations, seem to demand that this be done; but as to the mineral rights the same necessity does not exist. Indeed, in the judgment of the committee, the time is not now propitious for a final decision as to the disposition of these mineral rights. A fair income is now being derived from present leasing operation, and except for the advisability of closing up as early as practicable the community affairs of the Choctaw and Chickasaw nations, no necessity exists for action in the near future as to the disposal of these lands, so far as the mineral rights are concerned.

It has been presented to the committee that there has been appointed by the constitutional convention now in session at Guthrie, Okla., a committee to examine these lands with a view to acquiring the same by the State of Oklahoma, within whose boundaries the lands will fall; and that such committee is required to report to the first legislature of the new State. Upon consideration of the whole matter the committee recommends that no immediate action be taken by Congress as to the leasing or sale of the mineral in said lands, but that immediate steps be taken to provide for the sale of the surface of said segregation for the best price obtainable, in tracts not exceeding 160 acres each to actual bona fide settlers, reserving from sale a sufficient amount of surface for the necessary outside works, buildings, and operation of mines. The committee is convinced that by dealing thus separately with the surface and the mineral, the best price can be obtained for the owners and the best results will accrue to the State and its people.

REMOVAL OF RESTRICTIONS.

By the act of March 3, 1901, all Indians in Indian Territory were made citizens of the United States. The Indian Tribes had title to these lands by patents from the United States. These lands were occupied in common by the members of the respective tribes. By the supplemental agreements made in 1902 these Indians agreed to take their lands in severalty upon condition that they could alienate their allotments within a certain period, which differed in the several tribes. We believe that Congress might shorten this period and permit alienation at an earlier date.

Congress, by the act of April 21, 1904, removed the restrictions upon the alienation of all allottees of either of the Five Civilized Tribes who were not of Indian blood, except minors, and except as to homesteads, and provided that restrictions upon the alienation of all other allottees, except minors, and except as to homesteads, might, with the approval of the Secretary of the Interior, be removed upon application to the Indian agent at the Union Agency.

Section 19 of the act of April 26, 1906, provides that no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes should have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the approval of that act, unless such restrictions, prior to the expiration of said period, shall be removed by act of Congress.

We believe that this last legislation was unwise, injurious to the Indians, and of no validity. Congress, after providing in the supplemental agreements that all the lands allotted to the citizens of the different tribes should be alienable within certain periods, could not, without the consent of the Indians, extend the time in which the lands could not be alienated and add to the restrictions imposed by the original agreements. The effect of this legislation has already clouded, and, if unrepealed, will continue to cloud the title of much land in Indian Territory, and will result in endless litigation.

It will prevent the Indians from obtaining a fair price for their lands, and has been and will continue to be a fruitful source of dishonest transactions.

It will not prevent sales being made at the expiration of the periods designated in the supplemental agreements, and has already resulted in contracts being made for such sales. This provision is generally considered to be invalid and should be repealed.

We recommend that all restrictions be removed from the surplus lands of all citizens of the Five Civilized Tribes, except minors.

We recommend the removal of restrictions as to homesteads of the members of such tribes who are not of Indian blood, which includes intermarried white citizens and freedmen.

The removal of restrictions on the alienation should also include the removal of restrictions as to encumbering and leasing.

We believe that the restrictions should remain upon the homesteads of citizens of Indian blood, which would include both full bloods and mixed bloods. This will insure each member of every family a home that can be improved from the funds derived from the sale of his surplus lands. A homestead in Indian Territory is not like a homestead on the public domain, where the head of the family only has a home-

stead. A homestead in Indian Territory consists of from 40 to 160 acres of average land for each member of the tribe, and may or may not be his place of residence. A family of six may have homesteads aggregating from 240 to 960 acres, and in the Choctaw and Chickasaw nations such a family may have from 480 to 12,000 acres, which would still be inalienable under the supplemental agreements and the legislation which we here recommend.

OIL AND GAS.

Meetings of the select committee were held to investigate the questions of oil and gas at Vinita, Tulsa, and Bartlesville, where hearings were had and statements made by the many people engaged in these industries, as well as by all others who desired to be heard.

The regulation providing a limit of area not to exceed 4,800 acres to any one individual or company governing the oil lands seemed to be generally satisfactory to all parties, except that a party interested in a 4,800-acre tract, even though only to a small extent, is prohibited from having an interest in any other lease. There was a general contention that each party should be entitled to hold in several companies, if so desired, so that he should be entitled to an aggregate holding of 4,800 acres, though said holdings might be distributed in different companies.

The royalty at one-tenth was not complained of and seemed to be generally satisfactory.

There was universal complaint as to the requirement of the Department for a deposit of $5,000 in bank as a guaranty for each lease, and it is the opinion of your committee that this regulation should be modified or dispensed with where the parties obtaining leases would make a showing of ability to carry out their contracts.

There was also a general demand that leases should be transferable without necessity of securing consent of the Secretary of the Interior, and this would seem to be a reasonable demand, provided always that in no instance should the maximum limit of 4,800 acres to a single holder be exceeded.

It was the concensus of opinion among the producers that there should be some local authority in the Territory to pass upon applications for leases, and thereby avoid the long delay which they claim usually occurs in having an application submitted to the authorities at Washington, and if a proper tribunal or agency could be established to carry out this plan it would seem to be advisable to adopt it.

At present there are only two pipe lines running into the Indian Territory, both belonging to the Prairie Oil and Gas Company, one a 6-inch line and the other an 8-inch line, and the total capacity of the two lines is only 50,000 barrels per day. From the best information obtainable, the oil district, which comprises an area of about 100 miles from north to south and about 40 miles wide, extending from the Kansas line to a point below Tulsa, and which is being enlarged from time to time by new developments, is capable of producing with the wells now completed about 200,000 barrels of oil daily. It is evident that the pipe-line facilities are wholly inadequate to supply transportation. One or two lines have been contemplated, and one or more companies have been formed to construct pipe lines from Tulsa to Port Arthur

or some other point on the Gulf of Mexico where there are ample refining facilities and harbors which would permit of shipment and distribution of the product to foreign countries. Evidently what they need is more pipe lines, as under present conditions they are not receiving a fair price for their product, the present price being about 39 cents per barrel. The oil in that region has a gravity of about 32, which, while a little inferior to the Pennsylvania product, is very much superior to the oils of California. It is very probable that all the capital necessary to build a sufficient number of lines to meet the requirements of this great oil region could easily be raised, provided the regulations prescribed by the Secretary of the Interior were sufficiently liberal to warrant capitalists to construct the same. Under date of December 21, 1906, the Department of the Interior issued regulations governing the granting of rights of way for pipe lines, pumping stations, and storage tanks and their construction, operation, and maintenance for the transportation and storage of oil through land situated within Oklahoma and the Indian Territory. Some of these provisions, however, are of such a drastic nature that your committee is of the opinion that no competent parties would undertake the construction of pipe lines in pursuance thereof.

One objectionable feature of the regulations which has been pointed out is, that it will "require individuals of companies granted rights of way for pipe lines to construct additional stations and extend their pipe lines to particular wells or pools at their own expense, and if in the exercise of this authority a question shall arise as to the fairness of such proceeding, the decision of the Secretary of the Interior therein shall be final." We believe that this gives a Secretary of the Interior, who might be inclined to act in an arbitrary manner, too much power.

There is also another provision of similar import, which reads as follows:

"Any permit granted heretofore or under these regulations shall be subject to any changes or amendments in or to these regulations hereafter made by the Secretary of the Interior."

Further provision is made, as an "express condition" of the acceptance of a permit or permission to build or operate a pipe line and appurtenances under these regulations, that if at any time the Secretary of the Interior shall be satisfied that any of the provisions of these regulations or of any amendments or changes thereof hereafter established have been or are being violated, the said Secretary of the Interior, after ten days' notice to the owner or owners of such pipe line of his intention so to do, shall have "authority summarily to suspend, cancel, or revoke" such permission under certain conditions, which are stated. It is doubtful whether any company could be financed under such uncertain conditions, which are subject entirely to the uncontrolled discretion of a Secretary of the Interior.

Your committee approves of stringent regulations to prevent monopolies, but they should be of such a character that they would not work a forfeiture of property without due process of law. We believe that Congress should provide appropriate general regulations with reference to oil and gas leases and the transportation of said commodities in the Indian Territory.

WITHDRAWAL OF LANDS FROM ALLOTMENT.

Many earnest and insistent protests have been received against the withdrawal from allotment by the Secretary of the Interior of a large body of land in the Choctaw, Chickasaw, and Cherokee nations. The original withdrawal was of about 4,000,000 acres and also suspended further action as to perfecting complete individual title to all allotments already made within the area withdrawn. This was subsequently modified by rescinding the order as to allotments already made and by cutting down the area about one-half.

The committee has carefully considered this matter and is of the opinion that the order of withdrawal was without authority of law. The agreement with the tribes and the act of Congress approved July 1, 1902, authorized and directed the allotments to be made as soon as practicable, and that law, the committee believes, can not be set aside, impeded, or modified except by act of Congress repealing or changing the original statute.

The Secretary of the Interior advised your committee that he had made this order of withdrawal upon the request of the Secretary of Agriculture, who contemplated establishing a forest reservation therein if Congress should authorize the purchase by the Government of the land from the Indians for that purpose; but the committee is of opinion that, whatever may have been the purpose or object of the Secretary of the Interior, he had no authority under the law to make the order of withdrawal.

The investigation made by the committee has satisfied it that the general situation in the Indian Territory, so far as concerns the relationship between the Government of the United States and the several Indian tribes and the individual members thereof is such as to demand as speedy action by Congress as may be consistent with the magnitude and multitude of the interests involved.

In view of this fact the committee submits this partial report, and at an early day, if permitted by the Senate, will submit to the Senate its conclusions upon other matters herein referred to, which have been subjects of its inquiries.

Respectfully submitted.

C D. CLARK.
CHESTER I. LONG.
FRANK B. BRANDEGEE.
H. M. TELLER.
W. A. CLARK.

EXHIBIT B.

Opinion of Hon. Frank L. Campbell, Assistant Attorney-General for the Interior Department.

The preceding committee report, page —, speaking of the Five Civilized Tribes in Indian Territory, states that—

> By definite and express act of Congress, March 3, 1901 (31 Stat. L., 1447), each member of these tribes was made a citizen of the United States and, as such, under the terms of the Constitution and under the terms of said law, entitled to all the rights, privileges, and immunities of every other citizen of the United States. Yet, notwithstanding this express legislative naturalization, Congress in its subsequent legislation, and the Department of the Interior acting under such legislation, has apparently ignored entirely this established citizenship, and in every instance has treated the questions arising within the Five Civilized Tribes as though no such acts had ever been passed and as though the Indians were still, in the broadest sense, the wards of the Government.

This expression seems to be founded upon a confusion of ideas in failing to distinguish between political rights of the person as a citizen and rights of property as such and its control and alienation. These classes of rights are distinct from each other, and grant or possession of the one does not by any legal or logical necessity include the other, as is clear from different degrees or classes of rights enjoyed by different classes of persons—lunatics, minors, married women, etc.—different in the several States and Territories.

The Indian starts as a member of a dependent community or State in tutelage and wardship of the United States (Cherokee Nation *v.* Georgia, 5 Pet., 1). This is followed by an unvarying line of many decisions, the last of which is United States *v.* Rickert (188 U. S., 431, 436). The question of discharge from wardship and the degree of emancipation of the ward is a political question within the sole determination of Congress and not subject to judicial review. It is the sum and substance of a great number of decisions of the Supreme Court on the question of Indian rights and the relations of the Indian to the Government of the United States that the power of Congress is "plenary" and its fiat the final definition of right, not questionable or reviewable by the judiciary.

In granting political emancipation and making the members of the Five Civilized Tribes citizens of the United States Congress did not fully discharge him from wardship as to control and alienation of his property, as is evident, not only by subsequent legislation, but by the act of March 1, 1901 (31 Stat. L., 861), ratifying an agreement with the Creek Nation, making restrictions on control and alienation of allotted lands, and by act of the same day on which the citizenship bill was approved, to wit, March 3, 1901 (31 Stat. L., 1077), requiring approval of the tribal legislative acts by the President of the United

States, depriving the tribes of control of appropriation of their tribal moneys.

The subsequent acts of Congress indicative of this reservation, control, and wardship over property interests and alienation of the Indian of his property, individual and tribal, are the following:

June 30, 1902 (32 Stat. L., 500), ratifying agreement with Creeks, supplemental to agreement ratified by act of March 1, 1901 (30 Stat. L., 861); July 1, 1902 (32 Stat. L., 716), relating to the Cherokees and ratified by vote of the nation; July 1, 1902 (32 Stat. L., 641), ratifying agreement with the Choctaws and Chickasaws; April 21, 1904 (32 Stat. L., 189), providing for removal of restrictions upon alienation and containing provisions intended to carry out provisions of former acts based upon agreements with the various tribes; March 3, 1905 (33 Stat. L., 1048), making appropriations to carry into effect provisions of former acts; April 26, 1906 (34 Stat. L., 137), containing provisions necessary to close up the affairs of these tribes upon the lines indicated in agreements ratified by former acts; June 21, 1906 (34 Stat. L., 325), making appropriations necessary to carry into effect agreements and earlier acts and containing provisions amendatory of previous acts.

An examination of these acts demonstrates that Congress has acted in accordance with the expressed wishes of the various tribes, so far as practicable and compatible with effective and consistent administration of their affairs, this work being undertaken only after demonstration of the inability of these people to administer their own affairs. (Stephens *v.* Cherokee Nation, 174 U. S., 445.) Upon this ground alone these various acts are not susceptible to successful attack upon the ground that Congress exceeded its powers.

The power of Congress in the premises and the validity of the acts in question may be sustained upon another ground, and has been so sustained by the courts in like instances.

In Kansas Indians (10 Wall., 321, 326), Kansas Indians (5 Wall., 737, 758, 759), United States *v* Rickert (188 U. S., 431, 436) it is clearly shown that the degree of emancipation of the Indian is a question determinable by Congress alone. This is conclusive that Congress in making the Indian a citizen, by the act of 1901, did not discharge him from its wardship for protection of his property against his own improvidence.

Neither Congress nor the Department has "ignored entirely this established citizenship," but has merely continued the national guardianship of the Indian's property, acting as to property, it is true, "along the same lines as were followed before said act was passed," because as to property the guardianship of the Nation has never been released by Congress.

The confusion of ideas evidenced by the court (No. 5013, Senate, 59th Cong., 2d sess.) probably arises from the decision in matter of Heff (197 U. S., 488), which related wholly to the effect of political emancipation of Indian allottees under the general allotment act of February 8, 1887 (24 Stat., 388). They became citizens by taking allotments. The court held that they thereby became discharged from police regulation of Congress and subject alone to police protection of the State as to sale of intoxicating liquors, because the police power over citizens was not severable and could not be exercised by both State and Federal authorities. But United States *v.* Rickert (188 U. S., 431) was cited and expressly approved as present law, saying (197 U. S., 509):

> We sustained the right of the Government to protect the lands thus allotted and patented from any incumbrance of State taxation. * * * Congress may enforce and protect any condition which it attaches to any of its grants. * * * But the fact that property is held subject to a condition against alienation does not affect the civil or political status of the holder of the title.

The court thus recognizes the distinction between personal wardship and property wardship as distinct from each other, and that emancipation of one may be made without releasing the other.

JANUARY 22, 1907.

EXHIBIT C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 23, 1906.

SIR: I have the honor to invite your attention to the inclosed letter of the 17th instant from J. G. Wright, Indian inspector for Indian Territory, who refers to the fact that the Indian appropriation act, approved June 21, 1906 (34 Stat. L., 325), on page 23, contains the following provision:

> That all restrictions as to the sale, incumbrance, or taxation of the lands heretofore allotted to * * * Annie Potts and Sam Spade, Famous Dew, numbered twenty-eight thousand five hundred, Alexander Procter, numbered twenty-eight thousand three hundred and thirty-two, Lizzie Sunday, numbered fifteen hundred and twenty-two, Sarah Ooyusuttah, numbered twenty thousand three hundred and ninety-nine, Betsy Galcatcher, numbered fifteen thousand two hundred and eleven, George W. Bark, numbered eighteen thousand five hundred and sixty-five, Nellie Hicks, numbered sixty-one hundred and seventy-nine, Charley Ellis, numbered twenty-nine thousand five hundred and twenty-five, Tillman England, numbered eighteen thousand and three, Taylor Soldier, numbered sixty-three hundred and fifteen, Carry Downing, numbered eighteen thousand one hundred and sixty-eight, Tyler Tilden, numbered sixty-four hundred and forty-one, Lewis Dragger, numbered twenty-seven thousand four hundred and seven, Joshua Young, numbered sixty-two hundred and ninety-one, all citizens of the Cherokee Nation, Indian Territory, and duly enrolled as such, be, and the same are hereby, removed.

Mr. Wright says that in accordance with verbal instructions from Hon. Thomas Ryan, First Assistant Secretary of the Interior, he caused an investigation to be made with reference to the degree of blood of these citizens and also the disposition made by them of their land.

He incloses a copy of a communication from the Commissioner to the Five Civilized Tribes, showing the names and degree of blood of these Cherokee citizens whose restrictions were removed by the act mentioned. He also reports that he has had an examination made of the records of the United States court showing such transfers as have occurred of the lands of these allottees and caused the lands to be appraised, and, wherever possible, the allottees interviewed with reference to the sales. He submits reports of the representative sent to make the examination, which are self-explanatory, and to his mind demonstrate the manner in which the Indians have been wronged, both in having their restrictions removed (this having been done in nearly all instances without the knowledge or consent of the allottee) and in the amount received for the land and the transactions in connection with the sale.

He suggests, if deemed proper, that these matters be referred to the Department of Justice, asking that the reports be forwarded to the United States district attorney for the northern district of Indian Territory for the purpose of having the sales set aside.

He further reports that by direction of Assistant Secretary Ryan he has informed the committee of United States Senators now investitigating affairs in the Indian Territory of these transactions, and has furnished them with copies of the papers similar to those now transmitted.

In order that the whole matter may be covered by a single report it is deemed expedient to set out at some length the facts and circumstances in connection with these cases, as shown by the reports of the representative of the Indian agent at Union Agency, who was detailed to make the investigation.

Betsy Galcatcher, when interviewed, said that the restrictions were removed from her allotment without her knowledge or authority; that Jesse E. Bristow, of Pryor Creek, Ind. T., came to her, desiring to buy her land, and offered $1,000, saying that that was all the land was worth; that he took her to Pryor Creek to get the money and make out the papers, but, pending the closing of the transaction, he gave her $25 to pay her expenses in Pryor Creek for one week while he went to see some other people whose land he desired to purchase; that while she was in Pryor Creek one Samuels asked her and Lizzie Sunday to go to a show at Vinita; that just as they were getting on the train Will Forman, her first cousin, asked where they were going and was answered "to Vinita;" that he got on the train to beg Betsy Galcatcher not to sell the land to the Pryor Creek people, as they were trying to swindle her; that Mr. Samuels endeavored to quiet Mr. Forman, and said that as soon as they reached Vinita he would go to the bank and borrow the $1,000 to pay her for the land at once, but she refused and went back to Pryor Creek; that on the Friday morning thereafter she and Will Forman took the train and started for home, this being the second time she had ever been on a railroad train, and Forman said they would have to change cars at Wagoner, but when they actually left the train they were in Fort Smith, Ark.; that the same night they took another train, and when they left it they were in Tuskahoma, Ind. T., where Guy L. Reed, of Tahlequah, met them, and told her that the Pryor Creek people had a half dozen men out hunting her to secure her signature to a deed; that they left this place on Saturday morning and went to Poteau, Ind. T., and Sunday evening took the train again and went to Shady Point, Choctaw Nation, staying there two or three days, at which time she insisted that she was going home.

The men who accompanied her said they would take her home, but when they left the train the next day they were at Mena, Ark., where they stayed one night, and the next morning went to Westville, Ind. T., where Mr. Reed reported he had found that the papers were all right and that she could sign the deed. She told her cousin, Will Forman, that she would not sell her homestead—only her surplus; that when the deed was made out they gave it to her to read and she could not understand it, but as Will Forman had told her that her homestead would not be in the deed and that he was trying to prevent her being cheated she believed that the homestead was not covered, and signed the instrument. She asserted that Mr. Reed and Mr. Forman told her at that time that her land was poor and stony and not worth more than was being paid for it; that at Mena, Ark., they told her that her name had been placed by somebody on a bill to have her restrictions removed and that there were no oil wells on her land; that after she

was paid for the land and reached home she received a check for $625 as oil royalty and then went up to see the land, which she had never seen before because she had not had the money, and when she saw it with all the oil wells on it she could have "cried my eyes out."

She is a half-blood Cherokee Indian, talks English fairly well, but can talk the Cherokee language much better, can read and write English but very poorly, and is married to a Cherokee full blood.

The public records show that the warranty deed executed by Betsy Galcatcher gives the consideration paid her for the land as $2,350. The deed transferring the land to Guy L. Reed was executed on June 22, 1906, and recorded at Nowata June 23, 1906, and a quitclaim deed from Guy L. Reed to W. L. Mays for $1 and other considerations was executed on June 22, 1906, and recorded on June 23, 1906. An employee of the Agency who examined the land reports that from an agricultural standpoint this land is valuable as pasture, and for that purpose worth $15 an acre. An oil lease covering her allotment was executed by Betsy Galcatcher on May 20, 1905, which was approved by the Department on November 28, 1905, and a bond approved January 17, 1906. Twenty-eight producing wells have been drilled on this property, 8 of which are flowing wells and 20 are being pumped. The foreman in charge of the oil operations estimated the present production at 1,750 barrels daily, and the representative of the agent estimates the royalty due the owner of the land on that basis as being $39 per day, or $14,245 a year, and he adds that the lowest estimate made by oil men in the vicinity as the fee simple value of the Galcatcher land was $25,000, and the highest estimate $50,000.

It will be seen from the contents of this report that during the time Betsy Galcatcher was being transported from place to place in the Cherokee and Choctaw nations and Arkansas the Indian appropriation bill was before the President for his examination and approval, and that the day after the President actually approved the bill the deed was executed by her in favor of Guy L. Reed, and that simultaneously, or at least on the same day, Reed retransferred the land to W. L. Mays.

Annie Potts, a full-blood Cherokee, was interviewed by the representative of the agent, and she reported to him that she had never asked or employed anyone to have her restrictions removed and that this proceeding was taken without her knowledge; that she was living at the town of Westville, and one Bill Glory, a Cherokee, of Tahlequah, came to her and asked to buy her land for Mr. Guy L. Reed; that Glory took her to Fort Smith, Ark., and kept her at the Hotel Henry in that city for a week waiting to "see if the papers were all right;" that she had to stay there because she had no money to get away with; that she told him she did not wish to sell her homestead, and he assured her she would not have to and that they would give her $550 for her surplus, which was near Bartlesville, and that she saw the deed when it was made out, but was unable to understand what the land description meant.

She is 22 years of age, reads and writes English, but not very well; had never sold any land before, and had no knowledge of what the Bartlesville land was worth. She still has some land near Bunch, Ind. T., for which she made a contract with a Mr. Cox, of the firm of Cox & Coursey, of Tahlequah, under which she is to sell it to him at $1 per acre, but has never made a deed.

The records of the recorder's office show that Annie Potts sold the N. ½ of the SW. ¼ of sec. 20, T. 24 N., R. 13 E., Cherokee Nation, containing 80 acres (which included her homestead), for $550 to Guy L. Reed, of Tahlequah, the instrument being dated June 22, 1906, and recorded at Claremore, Ind. T., on July 2, 1906, and that Guy L. Reed transferred the same land to A. D. Morton on July 6, 1906, the deed being recorded July 7, 1906, and that the same land and 110 acres additional in the same section was sold by A. D. Morton and wife to the Prairie Oil and Gas Company for $5,700, the deed being executed on July 23, 1906, and recorded on July 30, 1906. The land is described as being rolling prairie land, 1½ miles from Ramona, and is worth $25 an acre for agricultural purposes, or $2,000. In prospecting for oil, wells drilled to the north and to the south have been dry ones.

As will be seen from the dates during the time that the Indian appropriation bill was awaiting action by the President, Annie Potts was spirited out of the Cherokee Nation and was not permitted to return until after she had made a deed for the sale of her land, the deed having been made the day after the Indian appropriation act was approved.

Sam Spade, a full-blood Cherokee, was a minor at the time of the passage of the Indian appropriation bill. John Spade, the father of Sam Spade, informed the representative of the agent, through an interpreter, that his son's restrictions were removed without his knowledge or consent. Samuel Manus was appointed guardian of Sam Spade and has died since the execution of the deed. His wife, who is a Cherokee full blood, said that some men came from Ramona and represented that they could get the restrictions of Sam Spade removed, and they could also get an order from the court to sell the land at a good price; that Mr. Manus was willing, and that after the restrictions were removed he sold the land belonging to Sam Spade for $1,330.52.

The records of the United States court show that the entire allotment of Sam Spade, located in sec. 20, T. 24 N., R. 13 E., Cherokee Nation, 80 acres, was deeded by Samuel Manus, as guardian of Sam Spade, a minor, by order of the United States court, to A. D. Morton, of Ramona, the deed having been executed July 19, 1906, and recorded July 30, 1906.

The examiner reports that this land and 110 acres more in the same section was sold by A. D. Morton to the Prairie Oil and Gas Company for $5,700, the deed being executed July 23, 1906, and recorded July 30, 1906, at Bartlesville; that the land is rolling prairie land, 1¼ miles from the town of Ramona, and is worth $25 per acre for agricultural purposes,

Wells drilled for oil to the north and south of this tract have proven to be dry.

Sarah Coyusuttah, a full-blood Cherokee, living on Saline Creek, 9 miles northwest of Oakes, talked with the representative of the agent, through an interpreter, and said that she knew nothing concerning the removal of her restrictions, and had never asked that such action be taken; that a man came from Vinita and bought her property, giving her only $20; that she signed and acknowledged the deed in her cabin before a young white man who came with the man who bought her land.

The examiner found her living in a one-room log house with no windows, the only furniture being five chairs, a rough board table, and a small canvas trunk worth two or three dollars. He found her sick and lying on a bundle of old bedding on the floor. She said she had never sold any land before, and that there was no person in the room when the transaction was made except the two white men and the interpreter, David Fields, of Oakes. She has four grown and two minor children.

Mr. N. W. Ayers, a dealer in general merchandise at Oakes, said he had offered Sarah Coyusuttah $3,000 for the land, having made the offer on behalf of John Rial, one of the lessees of her land, but she refused to accept it, and he afterwards heard that at the solicitation of "old man" Wyckliffe she had sold the land to Johnson Falling, of Vinita, and that Falling paid her the whole amount in twenty gold pieces.

Ayers further said that she spent $102 of this money at one time for groceries with which she fed the Cherokees of her neighborhood for two weeks. She also purchased two horses at Siloam Springs, Ark., a wagon, two saddles, harness, a fiddle, and hardware, her son-in-law and daughter-in-law being at Siloam Springs with her; that she gave Rome Cochran for a piece of land which he was squatting on, but to which he had no legal title, $500, and it was also reported that she gave $500 more for a piece of land on the edge of Elm Prairie to a Cherokee full blood. She answered the questions asked by the representative of the agent very reluctantly, the interpreter and the examiner being entire strangers to her, and she appeared afraid of them.

The records of the recorder's office show that the allottee executed a deed in favor of Johnson Falling on August 6, 1906, covering his allotment in sec. 13, T. 26 N., R. 16 E., Cherokee Nation, 50 acres, for a consideration of $1,500, the instrument being dated August 6, 1906, and recorded at Nowata on August 8, 1906. Johnson Falling and wife transferred part of their interests in the land as follows: One-fourth to John S. Thompson for $375; one-fourth interest to T. M. Buffington for the same sum, and one-fourth interest to L. W. Buffington for the same amount. The deeds to these parties were executed on August 7, 1906, and recorded on August 8, 1906. There are eight flowing wells on the allotment, having been drilled under an approved lease in favor of Mary L. Painter, the wells producing 200 barrels per day. The royalties are computed as amounting to $2,847 per year. The foreman in charge of the oil operations estimated the fee simple title to be worth $10,000. It is also valuable for agricultural purposes, the land being good rich bottom land and having on it flowing water all the year.

Johnson Procter, a full-blood Cherokee, had an allotment in the Cherokee Nation, part of it being capable of cultivation. He had executed a lease for it in favor of the Eclipse Oil Company, and there are seven producing wells on the tract. The land is worth $20 per acre for agricultural purposes. The oil wells produce 1,000 barrels of oil per week and the fee simple title to the land is estimated to be worth $8,000.

Procter sold the land covered by the lease to W. L. Mays, of Pryor Creek, and Guy L. Reed for $1,000, the deed being executed on June 22, 1906, and recorded on June 25, 1906. The representative of the agent was unable to see Mr. Procter.

Famous Dew, a full-blood Cherokee, being interviewed at the house of Dave Rogers, southwest of Oakes, where he lives, said he had never asked anyone to have his restrictions removed, and knew nothing about such action having been taken until Guy L. Reed came to him and offered him $1,000 for the land, and Dew said he knew it was near the oil region, but had been told that it was only worth $1,000. He is 23 years of age and does not speak English. Sam Forman, of Tahlequah, acted as Reed's interpreter.

Dew sold the SW. ¼ of the SE. ¼, and the SE. ¼ of the NW. ¼ of the SE. ¼ of sec. 13, T. 25 N., R. 16 E., Cherokee Nation, comprising 50 acres, to Guy L. Reed, for $1,000, the instrument being executed June 22, 1906, and recorded June 23, 1906. On the same day, Guy L. Reed, by quitclaim deed, transferred the land for $1 and other valuable considerations to W. L. Mays of Pryor Creek.

The examiner for the agent reports that from an agricultural point of view this land is worth $20 per acre and had been leased by Dew to the Chelsea Oil Company, the lease having been approved by the Department. The tract is in the proven oil territory, and there are now 12 producing wells on the Defenbaugh & Lane tract, lying just west of the land. Griffin & Co., lessees of the Defenbaugh & Lane tract gave $50 per acre as bonus and one-eighth royalty for the lease. The Chelsea Oil Company commenced on November 5, 1906, drilling three wells to offset the wells that had been drilled by Griffin & Co. The agent's representative placed the actual value of the Dew tract at $8,000.

He also reports that Famous Dew sold, "as sole surviving heir of Rachel ———, of Oaks, Cherokee Nation, Ind. T.," for $750 a tract of land to Samuel Forman, of Tahlequah, and W. L. Mays, of Pryor Creek, and says that this land is also in the proven oil territory and worth anywhere from three to five thousand dollars as an oil prospect.

Lizzie Sunday, a full-blood Cherokee, who does not speak English, was interviewed and said she knew nothing about the removal of her restrictions and had never asked that anybody have them removed; that Jesse E. Bristow, of Pryor Creek, came to her and asked to buy her land, informing her that her restrictions had been removed, and said that the land east of Bartlesville was not fit for a goat ranch, but might be worth $450.

John Leach acted as interpreter.

She sold the land to Jesse E. Bristow for $450 and executed a deed on June 22, 1906, which was recorded on July 11, 1906. She had previously executed an oil lease in favor of Arthur W. Lewis, and there was some money due her as advanced royalty which Bristow promised to send her, but it was never received. The land is appraised to be worth $20 per acre.

Tyler Tilden, a full-blood Cherokee, was interviewed, and asserted that he never asked or employed anyone to have his restrictions removed, but that a man named Whitaker demanded $70 from him for having his restrictions removed, but that he had never employed Whitaker or anyone else for that purpose. He sold his allotment, the S. ½ of the NW. ¼ in sec. 28, T. 26 N., R. 13 E., Cherokee Nation, 80 acres, to Philip W. Samuel, of Pryor Creek, for $900. Deed was executed on July 11, 1906, and recorded on July 13, 1906.

He had previously executed a lease in favor of the Bell Oil Company. While no developments had taken place on his land there is a gas well

one-half mile north and oil wells 1 mile west, indicating that it might disclose the existence of oil or gas, being so near producing wells. The examiner for the agent appraised the land as being worth $20 per acre for agricultural purposes, and expressed the belief that it is worth three times the $900 which was paid for it.

George W. Bark, a full-blood Cherokee, was interviewed on November 8, 1906, and said that he sold his land to W. A. Graham, of Pryor Creek, for $20 per acre; that he got no money at the time of the sale, but was furnished a team of horses, an old wagon, and harness, for which he was charged $276, and a saddle for $38. At that time he owed W. T. Whitaker, a merchant, $200, and on October 23, 1905, signed a contract with Whitaker under which Whitaker was to assist him in selling his land, Whitaker having solicited him to make this contract. Whitaker charged $50 for having the restrictions removed, and three weeks after the execution of the deed he received $25 in cash, and was subsequently paid $69.50 in cash. The remainder he took out in trade at Whitaker's store; but at the time he signed the deed he supposed he was only selling the surplus for $753.40, or at the rate of $20 per acre. While he is able to read and write, he claims he was refused permission to read the deed; but he signed it, and afterwards found that it covered his homestead. At the time of the execution of the instrument he was told that the deed was for his surplus land only. Discovering the true situation, he called on Whitaker and asked for an explanation, and was told that Whitaker could not help him now as he had the deed. He has contracted to sell his remaining 40 acres of surplus land in sec. 33, T. 20 N., R. 22 E., to Ed Crawford, having received $25, and is to receive the balance when he makes a deed.

George W. Bark and wife, Lillie, executed a power of attorney to W. T. Whitaker, of Pryor Creek, appointing him as their attorney in fact, with full power to sell or lease their land. This instrument was executed on January 1, 1906. On June 21, 1906, there was filed in the United States court a warranty deed, executed by W. T. Whitaker, as attorney in fact, of George W. Bark and wife, Lillie, conveying to W. A. Graham, for a consideration of $750, 75.34 acres of land. On June 22, 1906, a second deed was executed by George W. Bark and wife, Lillie, conveying to W. A. Graham the same land for the same consideration.

The representative of the agent says that this is a piece of fine agricultural land located 5 miles north of Choteau and worth $2,000.

On September 3, 1906, George W. Bark and wife, Lillie, executed, in favor of J. C. Hogan, of Pryor Creek, a deed conveying 40 acres of land in sec. 33, T. 20 N., R. 22 E., for $60. This is described as being upland, containing timber, rocky, and only suitable for pasture land, of a value of $200.

Tillman England, a full-blood Cherokee, was not interviewed by the representative of the agent, but he reported that England and his wife Mary executed a warranty deed on June 28, 1906, in favor of W. A. Graham, of Pryor Creek, conveying 30 acres of land in section 8, and 20 acres in sec. 17, T. 21 N., R. 19 E., for a consideration of $600. He reports that this land is located from one-fourth to one-half a mile east of the town limits of Pryor Creek; that the 30 acres in section 8 is worth $50 per acre, or $1,500, and the 20 acres in section 17 is worth $75 per acre, or $1,500 for town site purposes, or a total of $3,000 for the two tracts. England has 40 acres in sec. 12, T. 19 N., R. 20 E., but the records do not show that this land has been sold.

Charles Ellis, a full-blood Cherokee, was interviewed by the representative of the agent, who found that he can not speak, read, nor write the English language and was very much surprised when informed that the deed which he gave to W. A. Graham shows that he sold 140 acres of land. According to his understanding he sold 40 acres of his surplus to W. A. Graham, for which he was paid $450, receiving $200 in cash and about $250 in trade—$100 worth from Graham's store and $100 from Whitaker's store. Whitaker charged him $50 for having his restrictions removed, although he had never asked Whitaker to have this done and never knew until he was informed by the representatives of the agent that he had sold more than 40 acres of land.

The public records show that on June 21, 1906, Charley Ellis executed a warranty deed in favor of W. A. Graham, of Pryor Creek, conveying 140 acres of land in sec. 28, T. 21 N., R. 17 E., for a consideration of $640. The land is described as being upland prairie, rolling, containing some rocky land in the southwest part, located 5 miles southeast of Claremore and worth $2,100, or $15 per acre. The lessee has 10 acres of surplus land which are not shown by the records to have been sold.

Taylor Soldier, a full-blood Cherokee, was interviewed by the representative of the agent, and said that he had sold 10 acres near Pryor Creek and 40 acres elsewhere to W. A. Graham for $500; that he got $120 in cash and the balance in trade out of the store; that he also sold 10 acres in sec. 14, T. 19 N., R. 21 E., for $1 per acre, to Watt Mays, and that Mr. Whitaker induced him to have his restrictions removed.

The public records show that on September 8, 1904, Taylor Soldier and wife, Nancy, sold to W. T. Whitaker 10 acres in sec. 17, T. 21 N., R. 19 E., for $100, the land being upland prairie, located one-third of a mile east of Pryor Creek and worth $650. The records further show that on September 12, 1905, Soldier executed a warranty deed in favor of W. T. Whitaker, of Pryor Creek, conveying 40 acres in sec. 22, T. 22 N., R. 19 E., for $400, and that on June 22, 1906, he and his wife, Nancy, executed in favor of W. A. Graham, of Pryor Creek, a warranty deed conveying 10 acres in sec. 17, T. 21 N., R. 19 E., and 40 acres in sec. 22, T. 22 N., R. 19 E., for a consideration of $500. The representative of the agent gives the value of the 40 acres in section 22 as $800.

Lewis Dragger, a full-blood Cherokee, postmaster at Dragger, Ind. T., was interviewed and said that he sold all his land, 90 acres, to W. T. Whitaker for $800; that he received $100 in cash and took the remainder out in trade in Whitaker's store; that Whitaker induced him to have his restrictions removed, he being indebted to Whitaker at that time to the extent of $150 for groceries, and Whitaker also got an agreement from him to sell his land when the restrictions were removed, this agreement having been executed about a year before he sold the land, and that Whitaker coerced him into selling the land at the price Whitaker placed on it.

The public records at Claremore show that on June 21, 1906, W. T. Whitaker, as attorney in fact for Lewis Dragger and wife, Nellie, for a consideration of $700, executed a warranty deed in favor of W. A. Graham, conveying 80 acres in sec. 20, T. 21 N., R. 17 E., located

about 6 miles east of Claremore. This includes 50 acres of surplus and 30 acres of homestead. The land is described as being upland prairie, 40 acres in cultivation, some parts having thin soil and being rocky, value $1,400. Dragger still has 10 acres in sec. 2, T. 14 N., R. 23 E., which is located in the mountain district, and is not very valuable.

Joshua Young, a full-blood Cherokee, was not interviewed by the representative of the agent. On February 14, 1906, he executed a power of attorney, granting W. T. Whitaker full power to act in his behalf. Under this power of attorney, on February 14, 1906, Whitaker executed a warranty deed in favor of W. A. Graham for the 80-acre allotment of Young in sec. 17, T. 21 N., R. 17 E., for a consideration of $395, the allotment consisting of 50 acres of surplus and 30 acres of homestead. On July 11, 1906, Joshua Young, single, executed a quitclaim deed in favor of W. A. Graham, of Pryor Creek, covering the land above mentioned for a consideration of $1. The allotment is upland prairie and worth for agricultural purposes $1,000.

Carry Downing, a full-blood Cherokee, on being interviewed by the representative of the agent, said that she sold 70 acres of land to W. T. Whitaker for $495; that he paid her $300 in cash and the remainder she traded out in the store; that Whitaker helped her to get her restrictions removed, and she paid him $50 for this service. He represented to her that he would pay her $20 per acre for her land. She was 19 years old last July and can not speak, read, or write the English language.

On June 21, 1906, W. T. Whitaker, as attorney in fact for Carry Downing, executed a warranty deed conveying 70 acres of land allotted to her to W. A. Graham for a consideration of $620, and on June 23, 1906, she executed a deed in favor of Graham covering the same land for the same consideration. The land is described as upland prairie containing some rocky land in the northern part and worth $1,150, or $15 per acre. The records at Pryor Creek do not show that the allottee has transferred any more of her land. She still owns 20 acres in sec. 34, T. 21 N., R. 20 E., which is rocky timber land valued at $100, and 10 acres in sec. 19, T. 20 N., R. 21 E., which is fair timber land worth $75.

Alexander Proctor, a full-blood Cherokee, was not found by the representative of the agent, but the public records show that on May 1, 1906, he and his wife conveyed to the Pryor Creek Real Estate Company and Ella Crawford, of Pryor Creek, 40 acres in sec. 17, T. 23 N., R. 19 E., for $400, and that on July 23, 1906, Proctor and wife conveyed by warranty deed to S. H. Mays and J. C. Hogan, two 10-acre tracts in secs. 7 and 8, T. 22 N., R. 17 E., for a consideration of $100. The examiner did not inspect the land conveyed by the first deed, and describes the 20 acres as being upland containing timber worth $240.

Nellie Hicks, a full-blood Cherokee, who was not interviewed by the representative of the agent, conveyed by warranty deed on March 26, 1906, to the Pryor Creek Real Estate Company, of Pryor Creek, 20 acres in sec. 15, T. 21 N., R. 17 E., for $137. On May 4, 1906, she conveyed the same land to J. S. Calfee, of St. Louis, Mo., for a consideration of $300. On July 7, 1906, Nellie Hicks gave a warranty deed to J. S. Calfee covering the remaining 70 acres of her allotment

in sec. 15, T. 21 N., R. 17 E., for the consideration of $1. The examiner describes the land as upland prairie containing no improvements and worth for agricultural purposes $1,350.

The Indian appropriation bill, as it was reported from the committee to the Senate, contained an amendment, beginning at line 22, page 54, and ending at line 4, page 55, removing the restrictions from certain-named citizens of the Cherokee Nation, including the names of Annie Potts and Sam Spade. The office, in its report dated April 16, 1906, covering the amendment inserted by the Senate, said:

> It is hardly probable that this request for the removal of restrictions originated with the persons whose names are mentioned in the amendment. It is likely that the idea originated in the mind of some enterprising sharper, who hopes to obtain title to the lands allotted to these people for less than their reasonable value, and in this way deprive children of the property they should inherit from their parents. * * * The provision is wrong. It would establish an iniquitous precedent in the Indian Territory and should be stricken out.

On April 23, 1906, the office reported on H. R. 15219, entitled "A bill removing restrictions on the disposition of lands from Laura J. Scoville and Ben J. Scoville," reiterating its views as expressed in its report of April 16.

The names as they appear in the approved act following that of Sam Spade, beginning with Famous Dew and ending with Joshua Young, were inserted by the conference committee having in charge the Indian appropriation bill, as is shown by the Congressional Record of June 12, 1906, page 8347, and the office was never asked to report on the propriety of removing the restrictions from these people.

The papers submitted show that the belief of the Office, as expressed in its report of April 16, 1906, that the action sought at the hands of Congress grew out of a wish on the part of white men to secure the lands of the Indians, and not from any desire on the part of the allottees themselves, was well founded. Its suspicion, as expressed then, that the parties hoped to secure the lands of the Indians for less than their true value has been fully realized. But with these grounds of objection the Office did not touch the most important justification for such an attitude, because in most of these cases the allottees had not been consulted and did not know that such action was contemplated. They are all shown to be ignorant people, without business experience or capacity, and to have been easy prey for the scamps who planned and executed this rascally scheme.

In one case, that of Sam Spade, he was a minor at the time of the removal of his restrictions, and it is apparent that his guardian, through whom the sale was made, was an ignorant Indian, who lacked qualifications for the trust and who sacrificed the interests of his ward.

The entire scheme seems to have been planned and executed by men in Pryor Creek, the moving spirit being W. T. Whitaker, the head of the "Whitaker Indian Orphans' Home," located at Pryor Creek. They succeeded in all their plans except in the cases of Betsy Galcatcher and Annie Potts. In these cases they were outwitted by Guy L. Reed, of Tahlequah, who took the women away and kept them at Fort Smith, Ark., and other places, out of the reach of the Pryor Creek parties until the appropriation act became a law, when he caused his victims to execute deeds in his favor and then permitted them to return to their homes.

EXHIBIT E.

Statement of Hon. Ethan Allen Hitchcock, Secretary of the Interior.

(Before select committee on affairs in Indian Territory, United States Senate, December 14 and 19, 1906, and January 9, 1907.)

Present: Senators Clark, of Wyoming (chairman); Long, Brandegee, Teller, and Clark, of Montana.

The CHAIRMAN. Mr. Secretary, the committee which was appointed by the Senate to look into matters connected with the Five Civilized Tribes have invited you to be present with them this afternoon to get the benefit of your views upon matters of importance relating to those tribes and their condition, with the possibility of looking toward future legislation to remedy defects or to help mold legislation of a general character. In our trip through the Indian Territory we found three or four subjects that appeared to be of prime importance. One of them was the question of dealing with the lands of the Indians; in other words, the question of restrictions or the removal of restrictions—a question which seemed to be of very general interest all over the Indian Territory. Another important question was the matter of segregated lands in the southern part of the Territory, and still another was the question of the oil and gas wells and leases and the methods of securing the best results.

The committee would be glad, I am sure, to have your views upon these matters and any suggestions that you may see fit to make. It is suggested by Senator Long that inasmuch as Mr. Wal ott nd other officers of the Geological Survey are here, we should like first to have your views in regard to the coal-land question—first, as to value or probable value of the land, if you have formed any estimate of it, and the best method to be pursued in dealing with it.

The SECRETARY OF THE INTERIOR. I shall be very glad, Mr. Senator, to give you any information I possess. I am laboring under somewhat of a disadvantage, because I do not exactly know what evidence the committee may have gathered in going through the Territory—in other words, whether there is anything later than we accumulated some time ago.

The CHAIRMAN. I think that the evidence we took went, perhaps, along most the same lines that your hearings here did. We had before us there the United States inspector, Mr. Cameron, a number of the coal operators, and a number of men who were not interested directly or indirectly in the coal lands; and our inquiries were directed, first, as to the value of the lands, if they were to be sold; second, as to the method of their disposition. We found the value of the lands, as evidenced by those who came before us there, very different from the value of the lands as gathered from statements

that had been made here in Washington, and we have not arrived, so far as I am concerned at least, at any satisfactory frame of mind as to what the lands are really worth.

The SECRETARY OF THE INTERIOR. That difficulty still exists. The difficulty is to ascertain first the quantity and then the value. There is quite a difference of opinion as to the quantity, owing to the extent and varying character of the deposits. You can see by the map that they extend over a large area. There is quite a difference of opinion, for instance, between a man who has been there thirty-five or forty years, and the Geological Bureau, who have arrived at an opinion by testing, so that it is difficult to arrive at any exact conclusion. It is not as if it were iron ore. The difference between iron ore and coal is that iron ore is in a fixed deposit, while coal varies. It may be in large veins or it may not. Take your own State of Wyoming, for instance. You can get at the depth, thickness, and extent of the veins, but in the case of the Indian Territory I think it reasonable to expect that there should be a variation in the estimates as to the deposits, no matter how carefully or by whom the quantity is estimated. I do not think we can get anything more than an approximate idea of the quantity.

Senator LONG. Speaking of approximate quantity, I notice that in this compilation prepared in your Department, called "Coal lands in the Indian Territory," on pages 10 and 11, there is a letter from Director Walcott of the Geological Survey, who makes an estimate that approximately there are in these lands 2,954,138,000 tons of coal. On page 32 of the same pamphlet there is an estimate made by Mr. William Cameron, United States mine inspector for the Indian Territory, and he states the number of tons in the same deposits at 1,252,916,000. There is a difference between those two estimates of 1,701,222,000 tons. Now, as both those officials are connected with the Department of the Interior and under your direction, I will ask you whether you have formed any opinion from your investigation of the subject, as to which of those estimates is correct—or what would you say on that subject?

The SECRETARY OF THE INTERIOR. That only illustrates what I said awhile ago—the difficulty of arriving at any proper estimate of the quantity. I think, practically, with all due respect to our own Bureau, that the Geological Bureau made an excessive estimate.

Senator LONG. What do you think of the estimate made by the United States mine inspector on page 32 of this document?

The SECRETARY OF THE INTERIOR. I think it is much nearer and I say that without any reason, of course, to criticise the Bureau estimate. I think that Mr. Cameron's long experience there on the ground and in the mines, places him in a better position to judge of the facts. One takes it from the practical, the other from the scientific standpoint.

Senator LONG. I notice on page 10 of this document, in your letter dated April 2, 1906, in which you quote some statements made in the Senate, that you do not agree with the basis of estimating the value of those lands by taking the amount of coal in the deposit and multiplying that by the value of the coal per ton at the mouth of the mine.

The SECRETARY OF THE INTERIOR. No; I do not agree with it.

Senator LONG. You do not think that is a fair way of estimating the value of those deposits?

The SECRETARY OF THE INTERIOR. No, I do not think that is altogether correct.

Senator LONG. According to that estimate, and on that theory, these lands would be worth $4,377,000,000, as indicated on page 10 of the document I have named?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. You quote that statement, and you submit a question to the Director of the Geological Survey, who, in a letter printed on pages 10 and 11 of the same document, states that taking $2 as the price per ton at the mouth of the mine, and taking the number of tons which he estimates to be in the deposit, that would equal $5,918,276,000, but the Director closes his letter by saying, "No one is supposed to assume that the number represents the present market value of the land."

The SECRETARY OF THE INTERIOR. Certainly.

Senator LONG. What we would like to know, as near as we can get at it, is what is the value, estimated value, of course, of this coal segregation?

The SECRETARY OF THE INTERIOR. I can not answer that.

Senator LONG. This estimate or method of estimating is rejected by you, I understand.

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. What do you say as to the method of estimating shown on page 32 of this document—taking the total number of tons and multiplying by 8 cents per ton, the royalty received, it would aggregate $100,233,280? Now, do you consider that that would show a fair value for these lands?

The SECRETARY OF THE INTERIOR. I could not say a fair value; I would say a nearer value.

Senator LONG. What do you say of that method of estimating?

The SECRETARY OF THE INTERIOR. I think it is fairer than the other.

Senator LONG. You have had considerable experience in your lifetime in operating coal lands?

The SECRETARY OF THE INTERIOR. I was president of a coal company for twenty years and have had some familiarity with coal, both underground and above ground.

Senator LONG. What do you consider the best method of determining the value of coal lands or deposits?

The SECRETARY OF THE INTERIOR. It depends altogether on the location of the mine, its nearness to market, and the facilities for getting the produce there; also whether it is without competition or subject to competition.

Senator LONG. How much light is thrown on the question of determining the fair value of coal lands by ascertaining in this way the amount of coal in the lands?

The SECRETARY OF THE INTERIOR. I should think the amount of royalty you can get for a ton of coal; that is a fair basis.

The CHAIRMAN. Would that be a fair basis in making your initial expenditure for the whole tract? For instance, these leases, as I understand, are made for thirty years. That is on the assumption, I suppose, that it will require perhaps thirty years to work them out.

Now, on the last acre of that land you are paying a royalty of 8 cents a ton as on the first, but would it be fair to make that payment on it now when you do not get the return from it?

The SECRETARY OF THE INTERIOR. That would be a consideration for a person who enters on it as a speculation or for working. It is for those persons to determine.

Senator LONG. If this amount of also 1,252,916,000 tons were in this deposit, capable of being extracted in thirty years, or whatever this is proposed, and worth to the Indians $100,233,280, in determining the present value of that deposit or segregation is there not some method——

The SECRETARY OF THE INTERIOR. We tried a method several times of selling that property and could not get a bid for it. I would not sell the property at any price which you would now name unless it was away out of sight.

Senator LONG. You say "away out of sight." You mean a proposition of $100,000,000, as contained in this estimate on page 32, or the estimate of $4,000,000,000?

The SECRETARY OF THE INTERIOR. I would not sell at either estimate at present, for the reason that I think it is a better proposition for the Indians to leave it as it is at present.

Senator LONG. There is quite a difference between the estimates.

The SECRETARY OF THE INTERIOR. We made different efforts to sell it and could not get a bid.

The CHAIRMAN. What bids were received?

The SECRETARY OF THE INTERIOR. I could not tell you now. We fixed different dates for the different districts. The result was almost ridiculous.

Senator CLARK, of Montana. None of the bids were accepted, as I understand?

The SECRETARY OF THE INTERIOR. None were accepted.

Senator TELLER. You have records of them?

The SECRETARY OF THE INTERIOR. Yes.

Senator TELLER. You can furnish that information?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. Are you not able to furnish an estimate for the information of the committee as to the value of these lands in bulk, in total? We are informed this morning that there is a possibility of a proposition coming to Congress for authority to grant permission to the Indians to sell this segregation, all of it, to the new State of Oklahoma. Now, if the proposition were made to us, we ought to know something of the value of those lands before determining whether to allow the Indians to sell.

The SECRETARY OF THE INTERIOR. I could not tell you until I knew what the proposition was.

Senator LONG. Can you not give us an idea of the value of this deposit?

The SECRETARY OF THE INTERIOR. No; except this, I think the lowest would be Mr. Cameron's estimate of value. There may be some who would be willing to give more. There might be others besides the State of Oklahoma who might come into competition. There are all sorts of stories going around as to what people are going to do, but I am not willing to commit myself to an estimate on what anybody may say.

The SECRETARY OF THE INTERIOR. That is a matter of detail, as to how it is to be done.

Senator LONG. You have not worked that out?

The SECRETARY OF THE INTERIOR. No; but I do not see any objection to having this money applied to the education of their own children.

Senator TELLER. But there are already ten, twelve, or fifteen white people there for the one Indian that is there, and it would not be fair to take that property and put it into the general fund.

The SECRETARY OF THE INTERIOR. Well, why not make a separate fund—segregate it?

Senator TELLER. How are you going to divide it?

The SECRETARY OF THE INTERIOR. I would appropriate the income from this money for the support of the Indian schools.

Senator TELLER. They are not going to have any Indian schools there, but State schools.

The SECRETARY OF THE INTERIOR. Well, let the State control it, if you like.

Senator TELLER. Under a State system the Indian ought to go to a State school, and I think it is impracticable to talk of devoting any portion of this money to school purposes unless the State buys the property of the Indian.

The SECRETARY OF THE INTERIOR. That comes back to the proposition of what it is worth and what the State ought to pay for it.

Senator LONG. That is what I am trying to get at.

The SECRETARY OF THE INTERIOR. I can not answer that proposition.

Senator LONG. If you or the Geological Survey can offer any light on that we would like to have it.

The SECRETARY OF THE INTERIOR. Property is worth whatever it will bring. We have not been able to get any offer.

Senator LONG. What is your idea of the method of offering? Should this property be sold all together, to one bidder?

The SECRETARY OF THE INTERIOR. I would not put it in the hands of a syndicate.

Senator LONG. You would not put it in the hands of a syndicate?

The SECRETARY OF THE INTERIOR. No. If you are going to have a sale of it at all, the sealed bid is the method, not a public auction. There would be a conspiracy to knock that property down to one-quarter of what it is worth.

Senator LONG. We ought to have some way of arriving at what it is worth.

The SECRETARY OF THE INTERIOR. I can not tell you that way. The committee has been down there later than any information I have.

Senator CLARK, of Montana. We have had many suggestions about that—one suggestion that a commission be appointed by the Government to get at some idea of the value.

Senator BRANDEGEE. Is it possible, Mr. Secretary, for Congress or the Department to even name a minimum price below which they would not consider an offer for that property, except by spending enough money to thoroughly test and prove it?

The SECRETARY OF THE INTERIOR. I just said a moment ago, Mr. Senator, that the minimum price should be Mr. Cameron's estimate.

I also said that the other figure given, which I do not believe would ever be realized——

Senator LONG. Cameron's estimate of $100,000,000?

The SECRETARY OF THE INTERIOR. Yes.

Senator TELLER. Do you believe that if put up to be sold it would bring $100,000,000?

The SECRETARY OF THE INTERIOR. The last time we tried it we did not get any such offer.

Senator TELLER. I do not believe it would bring $5,000,000.

The SECRETARY OF THE INTERIOR. I do not like to differ with you, but——

Senator TELLER. If I were a capitalist I would not be willing to buy any of that land for more than $100 an acre, unless it was those open mines, where I knew what I was getting.

The SECRETARY OF THE INTERIOR. I was basing what I said on what people are paying now in the way of royalty. I think there are many people who would be willing to offer more than $5,000,000 for that property.

Senator CLARK, of Montana. In what tracts did you offer the property?

The SECRETARY OF THE INTERIOR. I forget now. I think it was in small tracts.

Senator TELLER. I think you made it 960 acres.

The SECRETARY OF THE INTERIOR. I think so. There was an understanding also that there was no objection to their bidding on other 960-acre tracts, so long as it would not be a monopoly or combination.

Senator TELLER. You think, if offered as a whole tract, they would make a combination and bid it in at a figure that would not be just to the Indian?

The SECRETARY OF THE INTERIOR. I certainly do.

Senator TELLER. I am inclined to think so myself. I think the opportunity at least would be presented.

Senator LONG. There seems to be quite a general sentiment among people down there, as ascertained by the committee, in favor of an immediate sale both of the surface and mineral rights together. You, I believe, state that you think it would not be best to sell the mineral rights now?

The SECRETARY OF THE INTERIOR. No.

Senator LONG. What do you say with relation to the surface rights?

The SECRETARY OF THE INTERIOR. I favor that; reserving a little area around each plant that is being operated.

Senator LONG. And then the reservation of the mineral lands?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. And the payment of the royalty to the Indians?

The SECRETARY OF THE INTERIOR. It has not been suggested yet, but I wish to say that Commissioner Leupp, of the Bureau of Indian Affairs, for whom I have the highest respect and admiration on account of the manner in which he handles his Bureau, has a different idea about this whole thing. I would prefer to have him explain it himself.

Senator LONG. He favors an incorporation of the tract?

The SECRETARY OF THE INTERIOR. Yes; and gives very good reasons for it.

Senator TELLER. How is that? I do not think I understand it.

The SECRETARY OF THE INTERIOR. As I said, I would rather he would explain it himself.

Senator BRANDEGEE. Is he here?

The SECRETARY OF THE INTERIOR. He is in the city.

Senator BRANDEGEE. He is not present here, now?

The SECRETARY OF THE INTERIOR. No. You will find the matter presented in his annual report. In a communication to me he says:

This quotation from my annual report is preliminary to expressing a notion I have in mind in relation to the handling of the segregated coal and asphalt lands belonging to the Choctaw and Chickasaw nations.

I have given the subject of the disposition of these lands much thought and have reached the conclusion that the Government should control the output of coal and asphalt taken from the lands and administer all of the royalty accruing therefrom. With this in view, why not let the title to the lands and deposits pass to an incorporated company, for the use and benefit of the persons whose names shall appear on the rolls of citizenship of said nations finally approved by the Secretary of the Interior?

I believe that Congress should be requested to enact legislation authorizing the incorporation of a company such as I have mentioned, for a period of twenty-five years, subject to continuation by Congress on the expiration of the original period, with power to take title to the property and manage it, including the sale of the surface of the land in tracts of not more than 160 acres to any one purchaser, and on such terms as the directors shall consider proper; to lease any unleased deposits for not exceeding the authorized life of the corporation, and to pay all expenses incident to and connected with the business of the corporation. I think the permanent officers of the company should be: The President of the United States, ex officio president; the Secretary of the Interior, ex officio treasurer and transfer agent; the Commissioner of Indian Affairs, ex officio secretary; and these officers, together with the Secretary of the Treasury, the Secretary of Commerce and Labor, and one member of each tribe elected by the stockholders should always constitute the board of directors thereof. Provision should be made that if any of the above-named Government officials can not, for any reason, attend the directors' meetings or perform any of the duties required of them respectively by law or the articles of incorporation, the official who usually acts in his stead shall perform such duties. The terms of the offices of the members of the board of directors elected by the stockholders should be four years and until their successors qualify, and the ex officio members should serve without pay.

The stock of the corporation should be issued per capita to enrolled members of the Choctaw and Chickasaw tribes, with provision that it can be transferred, sold, assigned, or encumbered only by the consent of the Secretary of the Interior as the transfer agent of the corporation.

Under the provisions of section 19 of the act of Congress approved on April 26, 1906 (34 Stat. L., 137), all lands allotted to members of the Five Civilized Tribes "upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee."

It will be some years before the lands, the title to which remains in the original allottees, will bear their just proportion of taxation for the maintenance of a free school system in the new State. The Indian children should have the privilege of attending the free schools; and I believe that the stock of the proposed corporation, if such corporation is created, should be subject to taxation for school purposes only, and that the rate of taxation should be the same as on personal property of citizens of the county or counties in which the lands and deposits are situated.

After paying expenses and reserving a prudent percentage for working capital and surplus account, the royalties and other income should be distributed in the form of dividends, thus completing the change of the whole business from a tribal communal basis, alien to our national institutions and our common social order, to the basis of private ownership, on which substantially all great industrial enterprises of our day are conducted.

This would put the matter upon such a footing that throughout the twenty-five years' life of the corporation the Government would have control of the key to the whole output of the mid-continent coal field. At the end of the period, if the advisability for such control were still plainly recognized, a fresh lease of life could be given to the company; or if, in this long interval, any such change in the situation occurs as would in the judgment of the generation then at the front of the stage make further control undesirable, the affairs of the company could be wound up.

Meanwhile, through deaths of original stockholders and the diversion of the estates among their heirs, transfers by fully competent tribal members recognized as such by the transfer agent, etc., the holdings of the company would have become somewhat widely distributed, and the last remnant of the tribes as separate racial entities, and bodies dependent on or otherwise maintaining an anomalous relation to the Government, would have disintegrated automatically.

You will see that Mr. Leupp maintains your idea that the school fund should be controlled by the State. He wishes that those Indians should be taken out of the tribal condition and introduced to all the privileges and responsibilities of citizenship. I think there is a great deal of merit in his proposition, but, as I told him, I have not fairly digested it.

Senator LONG. Each member of the tribe becomes a member of the corporation?

The SECRETARY OF THE INTERIOR. Each regular enrolled member of the Choctaw or Chickasaw tribe becomes a shareholder to the extent of his interest in that property. That gives him an inspiring desire to become a citizen and to enjoy the privileges of citizenship.

Senator LONG. He can sell his stock only with the approval of the Secretary of the Interior?

The SECRETARY OF THE INTERIOR. That was put in there to prevent the Indian being defrauded of his stock, requiring the approval of the head of the Department here, whoever he might be.

Senator CLARK, of Montana. What does he propose as to a board of directors?

The SECRETARY OF THE INTERIOR. The President would be ex officio president of the board of directors.

Senator CLARK, of Montana. That would be a mammoth business. Are there a sufficient number of those people capable of conducting such a business?

The SECRETARY OF THE INTERIOR. The main part of it would be done here.

Senator CLARK, of Montana. But you would have to delegate somebody to do the work?

The SECRETARY OF THE INTERIOR. They claim that many of these Indians are very capable.

Senator LONG. It does not put the Government into the coal business?

The SECRETARY OF THE INTERIOR. No.

Senator LONG. But it puts the officials of the Government into it?

The SECRETARY OF THE INTERIOR. Simply as a check to keep the people from swindling the shareholders.

Senator TELLER. Do you see any trouble arising out of the fact that these people you are now talking about and calling "Indians" are citizens of the United States?

The SECRETARY OF THE INTERIOR. Do I see any difficulty?

Senator TELLER. Yes; because of that fact? For instance, Mr. Leupp says: "The Indian children should have the privilege of attending free schools." Why, the State will have no power to exclude an Indian. He is a citizen of the United States.

The SECRETARY OF THE INTERIOR. That meets the objection that I understood you had a little while ago; putting the matter in the hands of the State.

Senator TELLER. They must extend to every citizen the same privilege, under the law.

Senator CLARK, of Montana. The $5,000,000 given by Congress to the State of Oklahoma was given for school purposes, not for any particular class of people.

Senator. TELLER. Yes.

Senator CLARK, of Montana. So that all the citizens will have access to it.

The CHAIRMAN. It is supposed to be the Indian Territory's contribution to the school fund, they having no land.

Senator TELLER. It takes the place of the land that we appropriated to other States.

The SECRETARY OF THE INTERIOR. However, we might sell that property now; I do not believe we could get a fair value for it, and I do not therefore believe in selling it now.

Senator TELLER. I agree with that, that you could not get a fair value for it now.

The SECRETARY OF THE INTERIOR. Mr. Leupp and I have not had an opportunity to discuss this course suggested by him. It has come up rather lately, but it is well worth consideration.

The CHAIRMAN. Do you remember the amount of royalty received from the mines the last year?

Senator LONG. The total amount?

The SECRETARY OF THE INTERIOR. Yes; I have it here.

The CHAIRMAN. I think it was in the neighborhood of $240,000 or $250,000.

The SECRETARY OF THE INTERIOR. Yes; I have the figures here. At the rate of 8 cents royalty per ton, mine run, in 1902, which was the year, I think, that the 8-cent royalty went into effect, the number of tons of coal mined was 2,735,365 and the royalty collected was $245,848.01. Then in successive years the royalty was in 1903, $259,686.58; in 1904, $276,311.54; in 1905, $245,858.56, and in 1906, $249,690.52. In the last two years there was a little falling off, owing to some local conditions. I think there was a strike there, and, also, I think the use of oil on trains was resorted to.

The CHAIRMAN. The operators down there were saying that the market was becoming restricted because of the use of oil, and because of the fact that Illinois coal had come into competition with them.

The Secretary of the Interior handed in the following memorandum:

COAL MINED IN THE CHOCTAW AND CHICKASAW NATIONS AND THE ROYALTY THEREON JANUARY 1, 1899, TO JUNE 10, 1906.

It was provided in the act of June 28, 1898, that the royalty on coal "shall be 15 cents per ton of 2,000 pounds on all coal mined," and "provided that the Secretary of the Interior may reduce or advance royalties on coal or asphalt when he deems it for the best interests of the Choctaw and Chickasaw to do so." Under the above provisions the Secretary of the Interior changed the royalty on coal to 10 cents per ton, screened coal, to take effect January 1, 1899, and subsequently changed to take effect March 1, 1900, to the present rate of 8 cents per ton, mine run.

The mining trustees' report shows that between January 1, 1899, and March 1, 1900, there were mined 812,024.3 tons. At the rate of 10 cents per ton the royalty thereon amounted to $81,202.43.

It was further shown in said report that from March 1, 1900, to June 30, 1901, at 8 cents per ton royalty, there were mined 1,334,901.09 tons, the royalty payable thereon being $106,792.08.

The following statement shows the coal mined and the royalty collected by the United States Indian agent, Union Agency, Ind. T., at the rate of 8 cents per ton mine run, during the years named:

Fiscal year.	Coal mined (tons).	Royalty collected.
1902	2,735,365	$245,848.01
1903	3,187,035	259,686.58
1904	3,198,862	276,311.54
1905	2,859,516	245,858.56
1906	2,722,200	249,690.52

From March 1, 1900, to June 30, 1906, at 8 cents royalty per ton mine run, there were mined 16,047,879.09 tons.

The royalty collected during the same period amounted to $1,384,187.29 and included certain back royalty.

Senator LONG. There is no law at present permitting you to make any additional leases?

The SECRETARY OF THE INTERIOR. No; it is prohibited by law.

Senator LONG. Do you think that provision should be made by law for leasing lands in the future?

The SECRETARY OF THE INTERIOR. I see no objection to leaving it to the discretion of the Secretary of the Interior.

Senator TELLER. We cut that off last winter.

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN. No; it was cut off in 1902; it was cut off when they gave directions to sell the lands.

Senator TELLER. Oh, yes; so it was.

Senator LONG. And it was prohibited again in the Five Civilized Tribes bill.

The CHAIRMAN. No; it was not changed; only we prohibited the sale.

The SECRETARY OF THE INTERIOR. They are getting a big income and until you decide upon a definite plan of disposing of this property it will continue, and the increase, of development will make increase of competition.

Senator LONG. At present this income of $250,000 is devoted to the maintenance of schools in those two nations?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. The Government makes an appropriation of $150,000 a year?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. As a Government contribution for education and common schools?

The SECRETARY OF THE INTERIOR. Yes. I think the bill coming over to you was increased to $300,000, if I am not mistaken, on the ground that the other sum was not at all adequate.

Senator TELLER. Did you estimate for a greater amount this year?

The SECRETARY OF THE INTERIOR. I think we did.

Senator LONG. When the new State comes in and takes charge of the schools, it will not of course be necessary for the United States Government to any longer continue that appropriation, will it?

The SECRETARY OF THE INTERIOR. No.

Senator LONG. And do you expect that the $250,000 that you still get from these leased lands will be turned over to the new State?

The SECRETARY OF THE INTERIOR. No; there would have to be legislation about that.

Statement concerning sale of allotted lands in Creek Nation under regulations of July 10, 1903, to and including November 23, 1906.

Number of deeds approved	850
Number of acres embraced in approved deeds	74, 277. 82
Total appraised valuation of lands included in approved deeds	$871, 576. 00
Total amount received from sales of above lands	$1, 152, 595. 26
Average appraised value per acre of the lands embraced in above sales	$11. 73
Average selling price per acre of the lands embraced in above sales	$15. 51
Highest price per acre received in any particular sale (1.564 acres appraised at $300 sold for $1,250)	$799. 24
Lowest price per acre received (80.32 acres appraised at $400 sold for $405)	$5. 05

Senator CLARK, of Montana. Your comparison was of sealed bids as against private operators simply, but not as against public auction.

The SECRETARY OF THE INTERIOR. We had experience in the Northwest from which we concluded that the sealed bids was the only plan in the Southwest. There was a tract of nearly four or five hundred thousand acres as to which a bill was up in Congress to sell the whole for $1.25 an acre. We got a bill passed limiting the minimum price to $5, and if we do not get $10 I shall be very much mistaken.

(Memoradum: The sale by sealed bids has since been completed and averages over $10 per acre.)

Senator CLARK, of Montana. There is a great difference between sealed bids and public auction.

The SECRETARY OF THE INTERIOR. I had a report from the committee last week that was sent out to open the bids. The committee wrote that the rivers had overflowed their banks and the trains could not even deliver the mail and there might not be a handful of people there.

The CHAIRMAN. In that event could you not postpone the sale?

The SECRETARY OF THE INTERIOR. Yes; we did do that.

Senator LONG. Have the bids been opened?

The SECRETARY OF THE INTERIOR. They are not all yet opened.

Senator LONG. Where the Department has been given the option you have abandoned the plan of drawing for public lands, or public auction, and have adopted the sealed bids?

The SECRETARY OF THE INTERIOR. In Oklahoma we adopted what is called the lottery system. We had 160,000 bids, and 150,000 bidders went away very much disappointed, but entirely satisfied with the course pursued.

Senator TELLER. You had ten or twelve thousand homesteads and you got how many bids?

The SECRETARY OF THE INTERIOR. One hundred and sixty thousand odd.

The CHAIRMAN. That was on the occasion of the opening of the reservation?

The SECRETARY OF THE INTERIOR. Yes; they were all registered. A description of the applicant was given and registered so that there could be no duplication. Each man drew his card, and when he came back he drew according to the number of his card, and the last man had the same chance as the first man in all that 160,000. There was no contest at all, so far as I know.

The CHAIRMAN. I am curious to know what might be the result if that method was ever properly legally questioned.

The SECRETARY OF THE INTERIOR. Why should it be, when Congress said "According to rules and regulations prescribed by the Department of the Interior."

Senator TELLER. It never has been questioned, has it?

The SECRETARY OF THE INTERIOR. No.

The CHAIRMAN. It is on this point; they are all homesteads.

The SECRETARY OF THE INTERIOR. But the law gave permission to the Department to do it that way.

The CHAIRMAN. Virtually Congress threw them open to homesteads entry at the additional price of so much an acre under such rules and regulations as the Secretary might prescribe.

Senator TELLER. The act modified the general law.

The CHAIRMAN. Only so far as the price is concerned.

The SECRETARY OF THE INTERIOR. If anybody wants to contest it he had better come up very soon, as the statute of limitations will soon run against him. I want to say further that under the supervision of Mr. Richards it cost a fraction of only 2 or 3 per cent to do that whole business. We collected over $800,000, and I think the whole cost of it was $37,000.

The CHAIRMAN. It was certainly very satisfactory.

The SECRETARY OF THE INTERIOR. It was marvelous.

The CHAIRMAN. I wish to say something as to another segregation called to my attention to-day. I know nothing about it, but it is said that there has been a very large segregation made in the southeastern part of the Territory.

Senator LONG. Do you mean a segregation?

Senator TELLER. It must be a withdrawal.

The SECRETARY OF THE INTERIOR. A withdrawal, perhaps.

The CHAIRMAN. How much of that was there?

The SECRETARY OF THE INTERIOR. I could not tell you exactly now. There was a correspondence between the Department of Agriculture and our Department about it. It rose out of a proposition of Mr. Jack Gordon, of Texas. I think he has a proposition for a park of 200,000 acres—a park or shooting club—and the question was raised whether there were any minerals in it. I do not think we would consent to the park proposition.

Senator LONG. His proposition, as I understand it, is a reservation, or proposed reservation, by the Agricultural Department, of a forest reserve in which the lands are to be withdrawn from settlement, and Congress is to be asked to buy these lands from the Indians.

The SECRETARY OF THE INTERIOR. I do not so understand that.

Senator TELLER. They have no authority to make a forest reserve down there any more than they have to make one on my farm.

Senator LONG. As I understand it, you have given instructions to withdraw that allotment.

The SECRETARY OF THE INTERIOR. At the request of the Department of Agriculture, until we know exactly what they propose.

Senator LONG. But before the Department of Agriculture can do anything the United States would have to purchase the lands from the Indians.

Senator TELLER. Do they want it for a shooting park?

Senator LONG. No; as I understand, for a reservation.

The SECRETARY OF THE INTERIOR. They are two separate things. Mr. Gordon's proposition is, I think, for 200,000 acres. The Secre-

tary is not going to exercise any power he may have for a scheme of that kind.

Senator LONG. Congress did not give you that power with the idea that you would let Mr. Gordon have that 200,000 acres, and you didn't do it?

The SECRETARY OF THE INTERIOR. I did not do it, and do not propose to do it.

The CHAIRMAN. But this section I spoke of has been reserved temporarily from allotment.

The SECRETARY OF THE INTERIOR. Yes; and I have now a letter on hand from both chiefs recommending the withdrawal.

The CHAIRMAN. But whatever allotments have been made there, whatever has been done, nothing will now be done until this temporary disposition has been removed.

The SECRETARY OF THE INTERIOR. It is hardly correct to talk of a thing as done until it is completed.

Senator TELLER. I do not believe they will want to buy any such property as that for a park. If they have land that they can not make any use of they want to unload it on the Government.

Mr. MELVEN CORNISH. I have been directed by the governors of the Choctaw and Chickasaw nations to get some information on this particular subject.

The CHAIRMAN. Do they not know about it?

Mr. CORNISH. No.

The CHAIRMAN. Then this proposal does not come from them?

Mr. CORNISH. The proposition to create a forest reserve?

The CHAIRMAN. Yes.

Mr. CORNISH. That could not possibly be true. There must be some misunderstanding in the Secretary's mind on that proposition. As I understand, some order was issued within a few days withdrawing an area half as large as the State of Arkansas, near McAlester, and dotted all around that area are properties of citizens of the Choctaw and Chickasaw nations.

The CHAIRMAN. What I was trying to get at is some information as to the purpose of this withdrawal. Does the order of withdrawal state the purpose?

Mr. CORNISH. I have only telegraphic advices from the governors asking that I get definite information as to what the Government proposes to do.

The CHAIRMAN. You have not got that information?

Mr. CORNISH. I hope to get it.

Senator LONG. That the Department of Agriculture contemplated making a forest reserve there under the general law?

Mr. CORNISH. We have that information. Of course that could not be done without legislative authority.

The SECRETARY OF THE INTERIOR. The matter is now under consideration of the two Departments. I am not prepared now to say what the Department will recommend, and I am under the impression that one of the governors has been in favor of it.

Senator TELLER. Do I understand that you withdrew this at the request of the Department of Agriculture?

The SECRETARY OF THE INTERIOR. Yes.

Senator CLARK, of Montana. The Indians are opposed, as I understand, to selling the surplus of these coal lands unless they can sell them together.

The SECRETARY OF THE INTERIOR. I do not know.

Senator CLARK, of Montana. They expressed themselves to that effect, did they not?

Senator LONG. And to the highest bidder, and an immediate sale, and an immediate distribution of the proceeds. That seemed to be an important point.

The SECRETARY OF THE INTERIOR. I never yet heard of an Indian who did not want money.

The CHAIRMAN. Their idea seemed to be, according to the committee that came before us, that they wanted to dispose of the land for the highest possible price, and that they were not concerned in any question of public policy as to whether it ought to be bought by one man or divided up.

Senator TELLER. That is not unnatural. That is the way with people who have things to sell.

Senator LONG. And opposed to the sale of the surface lands, on the ground that if we sell the surface lands we would reserve the mineral lands for some time to come, and they are opposed to that.

The SECRETARY OF THE INTERIOR. May I ask who are those Indians—their names and occupations?

Senator LONG. The governors of the tribes.

Senator TELLER. They had a committee before us.

The CHAIRMAN. The governors themselves were on the committee.

Senator TELLER. Mr. Cornish is here, and he is their attorney.

The CHAIRMAN. There were five or six persons from each tribe—I do not remember their names, except Governor Johnson and Governor McCurtain.

The SECRETARY OF THE INTERIOR. Was there not a proposition up at the last session of Congress to that effect?

The CHAIRMAN. I do not remember, but I know there was a proposition for some days before the Indian Committee as to how to deal with them.

Senator TELLER. I do not remember anything of that character.

The CHAIRMAN. If there is nothing else with reference to this point I would like to get from the Secretary his views on the question of restrictions.

Senator CLARK, of Montana. And the oil proposition. We found a very large extent of country productive of oil, extending from the Kansas line down to below Tulsa, and they are going on exploring and they will find oil still farther south undoubtedly, probably a considerable distance. We found that there was very little competition there in the way of a market, because they have only one pipe line. I believe there are two pipe lines in there, but they belong to the same company, do they not, Mr. Chairman?

The CHAIRMAN. Yes. The company doubled their capacity, that is all.

Senator CLARK, of Montana. And still they are only able to handle 50,000 barrels a day with all that, whereas the best-posted men there stated that they could produce 200,000 a day, and that a comparatively large number of wells are idle. It is a high quality of oil, probably not as high as the Pennsylvania oil, but runs up to probably

35 or 40 test, and they seem to be getting along there very well and without friction, or only very little friction, so far as the Indians are concerned. Everything is working very well, only that there is no chance to get an adequate market unless some one goes in there and puts down a pipe line. They estimate that an 8-inch pipe would cost about $5,000,000, but whether that would give them any relief or not they do not know. It would only give them about 25,000 barrels a day additional to what they already have, and the situation there is rather unfortunate for lack of a market. Everything seems to be prosperous otherwise. They get the oil at about 900 feet to 1,200 feet, or 1,300 feet, or 1,500 feet. I would like to ask you how the thing seems to be working from your end of the line—the Secretary's.

The SECRETARY OF THE INTERIOR. I will be very glad to explain it, Senator. I will go back a little to what may seem ancient history. About ten years ago, a little over, Mr. Hoke Smith, the Secretary of the Interior, gave to one firm a million and a half acres—the whole Territory of the Osages.

Senator CLARK, of Montana. A Pittsburg firm, was it not?

The SECRETARY OF THE INTERIOR. No; I think the party came from the East. I think the name was Foster. The lease had ten years to run. I regarded that from the very first as an iniquitous monopoly, but we had no opportunity to defeat it. When the time came I did all that I could to prevent the renewal of that lease—with this exception: I recognized the fact that the sublessees had put down holes, etc., and had vested rights which we had no right to disturb. The upshot of it was that Congress cut it down from 1,500,000 to 680,000 and coupled with that the right, to the Secretary of the Interior, to approve or disapprove of any further leases or subleases, the purpose being to prevent speculation. People would get out no oil, but would speculate. Those two things were accomplished—cutting it down to 680,000 acres, and requiring the approval of the Department.

The other details that came out made us determined to start right in the Indian Territory. I may frankly say that the Standard Oil practically had control of the Osage territory and have it to-day—through the Prairie Oil and Gas Company, which has one pipe line—and they do not hesitate to say that they own it, and they have an application in now for another one.

We established rules and regulations and formulated a contract by which we limited the amount of acreage that any individual or corporation could hold to 4,800 acres, which we thought was certainly enough. We required, also, that the applicants should show that they had capital enough to operate it as a business proposition and not as a speculation. We have issued about 9,000 of those leases. Anybody who makes that showing and agrees to abide by the rules and regulations, and the contract, can get not exceeding 4,800 acres, with the privilege that if, upon boring any of it, he finds it to be barren, he can make up to the 4,800 acres, but not more. There has been a great fight between the Standard Oil and the independent operators. They had the same fight here in the East. In the Indian Territory the price was at one time 85 cents a barrel. To-day it is 34 cents, at the test you speak of.

The CHAIRMAN. Thirty-two cents.

Senator CLARK, of Montana. Or 39 cents.

Senator TELLER. Thirty-two cents.

The CHAIRMAN. Thirty-two. One operator told me that he could not get one-fifth of his output into the pipe line, and that is the case all over the country.

The SECRETARY OF THE INTERIOR. That is the general complaint there now. In order to remedy that, they went to work in the East and got enough money to build a pipe line from West Virginia to the seaboard, and the price went up again. I told them that the same thing would occur in the Indian Territory. They should be perfectly independent. So long as they were dependent on the Standard Oil Company the price would be still lower and they would be shut out of business.

The line you spoke of would be about 450 miles, and 8-inch pipe line, and would go to Fort Arthur, where they have a refinery. The expectation is that there would be two other lines, and in the meantime, a number of short lines would be built. The Standard Oil will not do it.

The CHAIRMAN. Is the Standard Oil Company, acting through the Prairie Oil and Gas Company, operating any wells there?

The SECRETARY OF THE INTERIOR. No; I think they buy, chiefly. They may have some wells. The people who are identified with them and are operating them do not appear. They are not known.

The CHAIRMAN. I understood you to say that many can not get access to their pipe lines because the pipe line took only the oil of the wells in which they were interested.

The SECRETARY OF THE INTERIOR. That was the charge. By getting a pipe line to connect with the Iron Mountain railroad they encourage the building of these independent pipe lines, because so long as the Standard Oil Company goes ahead and puts the price down to suit itself, and takes only that which it is willing to take, there is no relief except in independent pipe lines.

The CHAIRMAN. With regard to the point of your regulations requiring parties to show that they are able and willing to go ahead and that they have the necessary financial responsibility, we found there great complaint about that feature of the regulations, and quite a little misunderstanding also of the regulations, but we found that the rules and regulations prevented a poor man from getting in and operating in the field. They put it in this way to us several times: That there might be three or four young men who are practical oil drillers; they may have one or two strings of tools, and there may be enough of them to operate, and it may be that that is their business, yet the complaint is that under the rules and regulations as established by the Interior Department these men are barred out from becoming anything but ordinary oil drillers. In other words, they could not become oil operators themselves. There were a number who complained of that feature of the regulations.

The SECRETARY OF THE INTERIOR. Well, Mr. Chairman, we had to meet that situation. Complaints were being made to us also. We found that people were going out there and acting purely on speculation. There are people who, to comply with the regulations, would utilize clerks and put notes in banks and swear to us that they had, say, $20,000 in bank, and when the transaction was complete they would turn around and take the money out of the bank.

The CHAIRMAN. One of the features of the complaint was that an

honest man who did not have this financial backing had no chance, while a dishonest man could evade the regulations by having a fictitious deposit in bank.

Senator CLARK, of Montana. Some of them claimed that they had the equipment to drill wells, but had no collateral.

The SECRETARY OF THE INTERIOR. They could be employed by those who had leases and get money enough to become operators themselves. We had to guard against that sort of speculation. I will tell you what that led to. It led to what they called "drilling contracts." They would get access to over 4,800 acres of land and make drilling contracts. I sent a telegram to-day to the inspector there to stop it. The law says that they shall have the approval of the Department. I will tell you what they do. They go to work, get a contract, and make an arrangement with these "drillers," as they call them, and give them 85 per cent of the product in direct violation of the terms of the lease.

Senator LONG. It really amounts to a sale of the lands?

The SECRETARY OF THE INTERIOR. Without the consent of the Department.

Senator LONG. Do you find that any one person or corporation had drilling contracts to any large extent?

The SECRETARY OF THE INTERIOR. We are investigating that now.

Senator LONG. I believe that some document was issued by which that appeared.

The CHAIRMAN. Yes; showing some 11,000 acres involved.

Senator LONG. That one man, Mr. Barnsdall, had over 10,000 acres.

The CHAIRMAN. Yes; 11,000 acres.

Senator CLARK, of Montana. Gas drains the Territory more rapidly and they would like to have that increased, but I do not see how they could increase that without interfering with the oil.

The SECRETARY OF THE INTERIOR. A gentleman named Snyder, who was recently killed in an automobile accident in Kansas City, was a great operator in gas plants. He came to me——

Senator LONG. They have there the Kansas Natural Gas Company?

The SECRETARY OF THE INTERIOR. Yes; Mr. Snyder was president of the pipe line and Mr. Barnsdall was president of the gas company. They wanted to carry gas into St. Louis. I told them that I lived in St. Louis and would be glad to accommodate them in every way I could. We got to talking about terms and they said that they could give the citizens of St. Louis natural gas instead of the other gas. I told them it was not fair to pay an Indian only $150 a year for a well spouting 20,000,000 feet a day. I said to them that the right was reserved to the Secretary to have a fair price for that property and that a fair price would be 2½ per cent on the gross amount that the well produced. They would not listen to that at all. I said that 2½ per cent amounted to just 0.74 of 1 cent a foot of gas in St. Louis, and I considered the people of St. Louis would be glad to have the enterprise established. I said, "You can hook onto as many wells as you please, a dozen or a hundred if you wish, but the Indian should have a fair price." It would not be fair to pay the same price for a well yielding 1,000,000 feet as one yielding only 40,000 feet.

The CHAIRMAN. The question of gas came up when we were in the Territory and the question of the rental of the wells, one rental being $50 and another $150 per annum. The impression there was that in the case of the $150 rental per annum they could do as they pleased with the gas. I told them that my impression was that that $150 payment gave them the privilege of using gas, but not selling it outside for commercial purposes.

The SECRETARY OF THE INTERIOR. Our idea is that they can use the gas for operating their oil plant.

The CHAIRMAN. But not selling it outside?

The SECRETARY OF THE INTERIOR. Exactly. I submit that it is not fair that the Indians should be required to sell that property at any such price. The only reason those gentlemen gave me was that the farmers in Indiana, Illinois, and Ohio would be glad to sell the gas at the price named.

Senator BRANDEGEE. They stated everywhere we went, in the oil fields down there, that the requirement in the lease for the oil well was that they should have at least $5,000 in cash on deposit in a bank, and unanimously they stated the effect of that provision to be this: That a man who had "a string of tools" as they called it, and knew the business, was barred out, if he was honest, from getting a lease, whereas anybody who would go and borrow from one bank $5,000 and put it in another bank and get a certificate that he had it there, could get a lease. In other words they all said that the provision requiring $5,000 deposit in a bank put a premium on dishonesty, because it did not require it to be kept there. There was nothing to prevent a man's drawing it right out the next day. On the other hand, the Indian agent said that the cash requirement of $5,000 was no longer insisted upon by the Secretary or by the Department, but that any man who had a string of tools and was known to the agent to be competent to develop the field, irrespective of his financial resources, could secure a lease.

The SECRETARY OF THE INTERIOR. We are trying to do exactly what a bank would do when a man comes to ask for a loan, and when we find that they are doubling up on us we cancel the lease. That was done by a man in Pittsburg, who used his clerk for that purpose. In that case we canceled the lease.

Senator BRANDEGEE. What I am trying to ascertain is which is correct, the statement that they no longer require the deposit or the statement that the Department here still insists upon it.

The SECRETARY OF THE INTERIOR. I will let you know that later.

Senator BRANDEGEE. There was confusion in the minds of people everywhere we went. They said they could not tell what was to be required. They said they would make their application according to the terms of the lease; that it would be held here and be held for months and finally come back refused, and that they would have to make other arrangements.

The SECRETARY OF THE INTERIOR. The country down there is full of people that are ready to take every possible advantage of the Department.

The CHAIRMAN. The operators there said that the $5,000 requirement as a fixed deposit was unreasonable and ought not to be demanded, and the representatives of the Interior Department insisted that the $5,000 was not demanded, that all that was required was a showing from a man as to what his financial ability was.

The SECRETARY OF THE INTERIOR. That is it exactly.

The CHAIRMAN. Mr. Kelsey, I know, stated that one application which he had granted stated that the man had only $200 or $300.

Senator BRANDEGEE. And some stated that men of real estate property and good financial standing had sent on their applications, but because they had not cash in bank the lease had been disapproved.

The SECRETARY OF THE INTERIOR. I will take it upon myself to say that that is not so.

Senator BRANDEGEE. It seemed very remarkable to us.

The SECRETARY OF THE INTERIOR. No. Men do not like to be asked whether they are going to operate these wells or to speculate in them. It has been speculation very largely. That is the class of people we are looking out for.

Senator BRANDEGEE. They stated also in the gas country that they did not want the gas taken out to St. Louis or Kansas City; that they wanted it kept there for the use of their cities and themselves.

The SECRETARY OF THE INTERIOR. Yes.

Senator BRANDEGEE. I mention that in view of your statement as to what those gentlemen told you—that it would be a good thing to take it to St. Louis and other places.

The SECRETARY OF THE INTERIOR. Yes; they told me that it would be a good thing to get it to St. Louis.

The CHAIRMAN. I have not had an opportunity yet to read the report of the Secretary of the Interior, but I would like to ask you, Mr. Secretary, if in that report you deal definitely with the question of removal of restrictions from the Indians as to the alienation of their lands?

The SECRETARY OF THE INTERIOR. No; we do not, Mr. Chairman, We discussed that at the office, and we thought it would not be exactly courteous to you gentlemen. We thought you were down there making an investigation and it would look as if we were trying to forestall your investigation.

The CHAIRMAN. I did not know whether you had discussed that subject or not. The committee, of course, are seeking light upon it, and as one member of the committee I know that I should like to get your views on the general question as to the two kinds of citizens, the mixed bloods and the full bloods and their two kinds of property, both as to their homesteads and surplus lands.

The SECRETARY OF THE INTERIOR. To begin with, I believe in not letting them sell their homesteads. We had a case last week—since you got back. A case of a little village where 260 acres had been set apart for a town site, of which 130 acres had been sold in lots. Now came a man and wife wanting their restrictions removed so that they could sell their homestead. We found that the 130 acres in lots would bring them $250 apiece. The wife wanted us to remove the restrictions so that they could sell that 160 additional acres at $125 an acre. It was three-fourths of a mile or more out, but adjoining the town site, which was not wholly occupied. That is under consideration now. I do not believe that cases of that kind should be allowed.

The CHAIRMAN. Then your idea, for both the full bloods and the mixed bloods, would be to leave the homesteads absolutely intact?

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN. Now, would you have a provision for disposing of the homesteads of either, in individual cases, upon application made to the Secretary of the Interior?

The SECRETARY OF THE INTERIOR. I think something of that kind might be done. We should have the supervisory restrictive power upon people who come up to us with fairy tales. You gentlemen, in my judgment, could not go down there and in the short time allowed you, investigate such cases as come up to us.

The CHAIRMAN. You would not provide that the homestead should be disposed of under any circumstances, and on the other hand, you would not think that any law would be wise that would remove the restrictions by legislative enactment?

Senator LONG. As to the homestead?

The CHAIRMAN. As to the homestead. But as to the homestead you would say that perhaps it would be wise to allow restrictions to be removed in individual cases upon proper showing to the Secretary of the Interior or some other proper tribunal?

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN. Would you apply that to the homestead of the full bloods as well?

The SECRETARY OF THE INTERIOR. No, sir.

The CHAIRMAN. We found that to be the prevailing opinion down there, I think, that the homestead of the full bloods should in no case be alienated.

The SECRETARY OF THE INTERIOR. That is right. There was down there a case of 16 persons whose property was sold without their having asked in any way for the removal of their restrictions.

The CHAIRMAN. Yes; Mr. Wright furnished us with that.

The SECRETARY OF THE INTERIOR. That shows to my mind how those Indians are imposed upon. One woman sold her property for about $2,400, and the testimony was that the minimum estimate was $25,000 and the maximum $50,000. I do not say that the difference is so great in all cases, by any means, but there is a very strong argument in taking unusual care in removing restrictions.

The CHAIRMAN. Those are the cases in which we arranged last winter for removing restrictions.

The SECRETARY OF THE INTERIOR. Yes; some of them say that they never asked for the removal. There are people down there who would swindle the Indians out of everything they have. In one case, before anything was said about removing restrictions a certain man had taken leases, and the moment that any action was taken here he was ready to claim the property.

Senator CLARK, of Montana. We found a lot of those fellows, called "grafters."

The SECRETARY OF THE INTERIOR. Yes. The statement made by Wright showed, as to the cases I mentioned, that the Indians had never asked for the removal of their restrictions and knew nothing of it.

Senator LONG. You have suspended all proceedings for the removal of restrictions on the oil and gas business?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. Do you think that is wise?

The SECRETARY OF THE INTERIOR. Yes; until we get more information than we now have. We are seeking more information.

Senator LONG. There is great complaint in the Territory as to the length of time it takes in the Department to get the business done. What do you think of the plan of having some person, some court, or agent of the Department, in the Territory—either the Indian agent or the inspector—whose decision shall be final, and not go through the

delay of sending these papers up to the Department for final action here in Washington?

The SECRETARY OF THE INTERIOR. I do not approve of that at all.

Senator LONG. Why not?

The SECRETARY OF THE INTERIOR. Because we find all sorts of mistakes and blunders made there.

Senator LONG. Do you not think it possible to have some official in the Territory with wisdom enough to do that work properly?

The SECRETARY OF THE INTERIOR. That is a question that I do not think it fair for you to ask, because it would look like reflecting on some of our people, and I do not intend to reflect on them at all. There are persons who like to have this business done "right off." It does take time, with 9,000 leases pending, to have them properly examined and to check up everything properly.

The CHAIRMAN. Here is the effect that the statements of the people there made upon my mind: That after a matter had been favorably considered in the Indian office down there, and passed with a favorable recommendation, then, in the vast majority of cases where they were sent up, the action of the Department here was purely formal in approving.

The SECRETARY OF THE INTERIOR. People who give that impression are very much mistaken.

The CHAIRMAN. Did not you gentlemen get that impression?

Senator CLARK, of Montana. In several cases.

The CHAIRMAN. I am not speaking now of Mr. Kelsey specially.

The SECRETARY OF THE INTERIOR. Well, of him or anybody else; he ought not to make a statement of that kind anywhere.

The CHAIRMAN. It was not in criticism of the Department, but of the system that delayed action.

The SECRETARY OF THE INTERIOR. No action is taken up here that ought to be diminished, because you can not imagine how important it is that all these leases, fraught as they are with fraud, some of them, should be doubly checked.

Senator LONG. So your idea is that no commission, or officer, or tribunal, can be created by authority of law in the Indian Territory that can finally pass on these matters?

The SECRETARY OF THE INTERIOR. No; I make no such statement.

Senator LONG. Well, I want to know whether you do not think it possible for Congress to lodge in some court, tribunal, or officer in the Territory, either existing now or to be created, that will pass finally upon the matter as to whether the Indian is competent to dispose of his lands without having the delay of reporting it up here?

The SECRETARY OF THE INTERIOR. Then why have the supervisory authority existing here? Why not shut it off here at once?

Senator LONG. I am asking you if you think it is possible or advisable?

The SECRETARY OF THE INTERIOR. I do not think it impossible, but I do think it inadvisable. I do think that the supervisory duties of the Department are very important and should be continued.

Senator LONG. And the competency of the Indian to dispose of his real estate should be finally passed on here and not down there?

The SECRETARY OF THE INTERIOR. Are you speaking of full bloods or any other?

Senator LONG. Of any kind?

The SECRETARY OF THE INTERIOR. If you mean full bloods, I speak absolutely.

Senator LONG. Under the act of April 26, 1906, the full-blood Indian can not have his restrictions removed at all, either on his surplus or homestead.

The SECRETARY OF THE INTERIOR. That is so.

Senator LONG. Now, as to mixed bloods. What suggestion have you to make in regard to a change in the law regarding them?

The SECRETARY OF THE INTERIOR. I should leave it just as it is—that is my personal opinion—for the reason I have given, as shown by the cases quoted here a little while ago, and the fear I have that those Indians, a majority of them, are not as competent as they claim to be to attend to their own business.

Senator LONG. Do you take into consideration the fact that there are many Indians in the Indian Territory who are land poor—who have land as high as several hundred and some several thousand acres?

The SECRETARY OF THE INTERIOR. They can come here and give their evidence and then the removal of the restrictions can be effected.

Senator LONG. Unless they happen to be full bloods?

The SECRETARY OF THE INTERIOR. Yes; unless they happen to be full bloods.

Senator LONG. If the act of April 26 is valid.

The SECRETARY OF THE INTERIOR. Except by changing the law, or except as to homesteads. I have no objection to any Indian applying up here and on a proper showing have his restrictions removed, except on homesteads.

Senator LONG. You think that Congress by general law should not remove restrictions on the sale of the surplus lands of the mixed bloods?

The SECRETARY OF THE INTERIOR. I think it should not.

Senator LONG. You are aware that these lands are being sold or contracts for the sale of them are being made constantly down there, are you not?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. On the supposition that the act of April 26, 1906, is void?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. And that after July and August, 1907, the lands of the Cherokees and of the Creeks, under the agreement made with those tribes, could be sold after five years; that sales are being made or will be made at that time—that contracts for sale are being made on the theory that the modification or restriction can not be enlarged by Congress——

The SECRETARY OF THE INTERIOR. I do not know what opinion is held down there.

Senator LONG. The committee was advised that under the advice of lawyers there are men engaged now in the business of making these contracts for sale on the theory that Congress exhausted its power in passing the act of April 26, 1906, as to restrictions.

Senator CLARK, of Montana. We found one syndicate with a capitalization of $110,000.

The SECRETARY OF THE INTERIOR. All sorts of statements are made there.

Senator CLARK, of Montana. Mr. Bradley was introduced to us as "the king of grafters." He was at the head of the syndicate. He came before us and gloried in the fact.

The CHAIRMAN. I will say here that I have a personal letter from Mr. Bradley asking to have that title taken away.

Senator LONG. Their operations are based on the theory or contention that Congress, having once entered into a contract with the Indian, he is a citizen of the United States, and on the theory that he can transact business about his lands after five years and Congress can not restrict him as to terms for twenty-five years. Lawyers advise that he can give a good title notwithstanding that act.

The SECRETARY OF THE INTERIOR. There are people down there that will give them that opinion, no doubt.

Senator LONG. The sales are being made right along notwithstanding the restrictions, but the effect was that the Indian was not getting as much for his land as he would if his restrictions were removed and if he had a free and open market.

The SECRETARY OF THE INTERIOR. That was probably the purpose of the originator of the plan.

The CHAIRMAN. In considering this matter of restrictions I assume that you look at it solely from the standpoint of benefit to the Indian?

The SECRETARY OF THE INTERIOR. Absolutely.

The CHAIRMAN. And do not consider the question of public policy as respects the removal of restrictions?

The SECRETARY OF THE INTERIOR. I think it will wear itself out.

The CHAIRMAN. This condition exists there. Here are large areas of that country which will soon be counties in the new State, in which counties there will not be a bridge, a road, or one acre in a hundred that can be taxed for the support of the county government, and where the courts are the most expensive of any on the face of the earth. Now, what is going to happen to that new country unless these lands can be put, at least in part, in private ownership? Where can they be taxed? Of course I do not suppose you have given that question consideration, inasmuch as you have been looking after the interests of the Indians.

The SECRETARY OF THE INTERIOR. It is a serious matter both from the Indians' standpoint and from the standpoint of the State—the matter of local government and improvements. But I do not see why every citizen that assumes the responsibilities of citizenship should not pay for the protection which the State gives him.

The CHAIRMAN. In the first place we release him from that responsibility, and in the next place his land will not pay for it. He can not sell his land.

The SECRETARY OF THE INTERIOR. He can sell a portion of his surplus lands, can he not? There is no objection to removing the restrictions from at least a portion of his surplus land, and if he can work and will not work he must starve. Mr. Leupp has a plan for making the Indian work or having him take his medicine. He is now employing them, and going out and getting labor for these Indians—up in the Northwest, building railroads, etc.

The CHAIRMAN. They work very well with us, as freighters, etc.; but every Indian in the Indian Territory has a homestead. If there is a family of man, wife, and three children, they have at least 200 acres of the highest valued land. In addition, they have all the way from 40 to 320 acres of like land as surplus, which is not called a homestead. Now, it has occurred to me that if they can all, without reference to quantum of blood, be able to dispose of their surplus lands——

The SECRETARY OF THE INTERIOR. Do you mean full bloods, as well?

The CHAIRMAN. Yes.

The SECRETARY OF THE INTERIOR. I would not go so far without making it subject to investigation here by the Department. I stated before the case of 16 Indians who were deprived of their property by fraud, and if it is true of 16, there is no reason why it might not be true of 1,600.

The CHAIRMAN. How would this plan meet your views? How would it do to remove the restrictions absolutely on all the surplus land of the mixed bloods; remove the restrictions on the homesteads of the mixed bloods under supervision, as it is now, of the Secretary of the Interior; remove the restrictions on the surplus of the full bloods under supervision of the Secretary of the Interior, and continue the homestead of the full bloods intact and all the restrictions to be removed under no condition whatever?

The SECRETARY OF THE INTERIOR. Will you kindly give me a memorandum of that, and I will think that over?

The CHAIRMAN. I will. It is very plain. It provides that the homesteads of the full bloods thall never be sold.

The SECRETARY OF THE INTERIOR. That is right.

The CHAIRMAN. And that the surplus land of the full bloods may be sold, upon examination, in individual cases, and on approval, by the Department of the Interior.

The SECRETARY OF THE INTERIOR. That is right.

The CHAIRMAN. It provides that the surplus land of the mixed bloods can be sold without any supervising power and it provides that the homesteads of the mixed bloods may be sold in the same way that the surplus of the full bloods may be sold, to wit, on application in individual cases and approval by the Secretary of the Interior. I shall be very glad to furnish you that question in detail. I do not know how it will strike the other members of the committee. I have not consulted them at all; but I would like your views on it.

Senator LONG. You are of the opinion that the present method, I take it, of the removal of restrictions, by application to the Indian agent here, with the concurrence of the Secretary of the Interior, each case being taken up individually, is a satisfactory one?

The SECRETARY OF THE INTERIOR. Yes; I think so. What did you gentlemen think of the case I stated a while ago? There was a white man who was married to an Indian woman almost white. He wants to put in her homestead to have it added to a town of 360 acres, of which only 130 acres have been sold, but sold at $250 a lot, and the rest is awaiting sale. Why add a homestead of 160 acres to that town until the other is disposed of? The price offered for the wife's land was $125 an acre, whereas the other part was disposed of as a town site, at $250 a lot. What do you think of that?

Senator LONG. That is deplorable and can not be approved. But the committee has shown many cases in which, under your method, the grafter made a secret contract or agreement with the Indian by which he was to purchase lands when the restrictions were

removed; that he charged the Indian so much for securing the removal of restrictions; the restrictions were removed; he got information from Washington as to the time at which it was to be done, and before anybody knew that the Indian could dispose of his lands the man who made this secret agreement had become the purchaser of the land.

The SECRETARY OF THE INTERIOR. I can not admit until I know more in detail that our present methods produced the grafter.

Senator LONG. I am speaking of instance after instance that was presented to the committee of the operation of your present method.

Senator BRANDEGEE. Before they adopted the regulation that the sale should not take place until sixty days after the restrictions had been removed.

The SECRETARY OF THE INTERIOR. That was before? Oh, yes.

Senator BRANDEGEE. I think those cases occurred before the operation of that rule.

The SECRETARY OF THE INTERIOR. Oh, yes; the rule was put in force just for that reason. You can not stop grafting. You can not always find the grafters.

The CHAIRMAN. You can find them there.

The SECRETARY OF THE INTERIOR. They resort to every conceivable method of swindling the Indian.

Senator BRANDEGEE. Of course you have not seen the mass of testimony and argument presented to us there. It will be printed and will make a long record. They say down there, everywhere, that the operations of the arrangement about restrictions is this: That the homeseeker who comes in there and wants to buy a piece of land at present can not go to the Indian back on the hill. He does not know where his allotment is. The homeseeker, however, goes to the grafter, as they call him, and he gets that grafter to go to the Indian and apply for the removal of his restrictions, and the grafter gets the money made in the transaction—that is, if the homeseeker can wait at all—but in many cases he goes through the Indian Territory and goes down to Arkansas or Texas, where he can buy land at once, without having to wait the length of time required to send the necessary papers to Washington and get a hearing as to the capability of the Indian to make the sale.

The SECRETARY OF THE INTERIOR. In other words, a man wants the opportunities of the grafter expedited as much as possible.

Senator BRANDEGEE. No; they say that if the man who wants the property could meet the Indian himself, matters would greatly improve.

The CHAIRMAN. That is, if the property were on the open market?

Senator BRANDEGEE. Yes; if it was on the open market.

The SECRETARY OF THE INTERIOR. Do you not think that if it was on the open market, and the grafter were there, he would be the first man to get hold of the Indian?

Senator BRANDEGEE. As it is now, the grafter is the only man who is willing to take the kind of title that the Indian can at present give, and you will see by the testimony, which is voluminous, if you look it over when printed in detail, the statements of fact and opinion that were given to us by reliable parties.

The SECRETARY OF THE INTERIOR. The upshot of it all is that the grafter wants to get rid of every barrier laid down before him by which he could swindle the Indians.

Senator BRANDEGEE. Of course the grafter does.

The SECRETARY OF THE INTERIOR. I guess he had more to say about it than other people.

Senator BRANDEGEE. Well, there were very respectable people who said that the mixed bloods ought to have their restrictions removed from their surplus lands.

Senator LONG. We found very few persons opposed to the removal of restrictions of the mixed bloods, but very many opposed to the method by which it is done, all taking the positoin that it resulted to the detriment of the Indian and of the country generally; that it was not bringing in a class of citizens who were dealing directly with the Indians, because the intending settler did not have time to stay there and deal with the Indians; he had to deal with other men who were called grafters.

The CHAIRMAN. Their proposition is that the removal of restrictions would go a long way toward removing the occupation of the grafter. That was the idea very generally expressed.

The SECRETARY OF THE INTERIOR. I think it would generally encourage and assist the operation of the grafter. That has been our experience down there right straight along for the last three or four years. I will be very glad, Mr. Chairman, to look over the statement you mention.

The CHAIRMAN. I have made that on my own account. I do not know whether any other member of the committee has approved it, and I do not know whether I would myself, on looking it over.

Senator CLARK, of Montana. We found down there that when allotments were given to children, the father, in many instances, waived his right of guardianship to the children, and in one case we found where one man had been appointed by the court about ninety times—that is, ninety instances of guardianship. There is a strong suspicion that there is a good deal of wrongdoing there, because we find the guardian (who is a professional) and the grafter evidently working very closely together.

The SECRETARY OF THE INTERIOR. Very likely.

Senator CLARK, of Montana. We questioned one clerk of the court down there at Ardmore, who seemed to think it was all right, but it looks to me as if the courts are exceeding their proper jurisdiction in granting those orders without some kind of investigation or restriction—some inquiry, for example, as to the character of the appointee.

The SECRETARY OF THE INTERIOR. You are quite right, and we are taking that matter up. We are getting the courts now to appoint the representative of the Government—the Indian agent—as guardian, because we found an account on file of 42 people, as a result of the investigation made on the spot, in which it appears that certain professional men were leaving the children, at the wind up, without absolutely anything at all.

Senator CLARK, of Montana. No doubt.

The SECRETARY OF THE INTERIOR. There is now up in the constitutional convention a suggestion by certain parties of a clause to be put in the constitution by which our efforts shall be destroyed. That is, that we shall not have the power to make guardians of the Indian agents, but that they shall go on with the old system. The report will, I think, show that that firm of lawyers whose fees will amount to large sums will benefit by such a change. The complaint

we get down there now is that the guardians, some of them—not most of them by any means, because there are some very good judges down there—are appointed no doubt with the connivance of these grafters, and absolutely nothing is left for the children. One was checked up here, I think, last week, and was checked up by the court, and made to pay a large sum of money in back interest.

Senator CLARK, of Montana. There is a good deal of sympathy for the grafter. We have had respectable, well-to-do men in those communities come up and say that the grafter performs a good service to that country and to the people there, because he brings in people who take the property and help to make business for the rest of them; so that the grafter is not looked upon there as a very destructive person.

The CHAIRMAN. There are grafters and grafters.

Senator LONG. The kind of grafter that they speak of in some instances is nothing but an enterprising real estate agent.

Senator BRANDEGEE. You said at one time that it was difficult to make haste with 900 or 1,000 cases pending at one time for the removal of restrictions——

The CHAIRMAN. Nine thousand leases, he said.

The SECRETARY OF THE INTERIOR. Yes.

Senator BRANDEGEE. If an application for removal of restrictions came to you would it have your personal attention?

The SECRETARY OF THE INTERIOR. No; but it would have better. It would have Judge Ryan's personal attention. He is very thorough, and no grass grows under his feet. The time it takes depends entirely on the case. Cases come up here showing all sorts of things; other cases come clear and are disposed of right away.

The CHAIRMAN. Does the Judge personally examine all those cases?

The SECRETARY OF THE INTERIOR. I think he does. When they come to me they bear his signature. I assume that he does. He has also under him Judge Smith. There is some routine and red tape about it, perhaps, but it has to have those things. People down there forget that there is an enormous amount of work to do.

Senator LONG. People there think that possibly the Government might find some one with capacity sufficient to act there in the Territory?

The SECRETARY OF THE INTERIOR. Well, you know, people all over the United States think that you have too many committees here in Congress; but all work takes time, and you have got to do the business properly.

Senator LONG. What would you think of a change of policy that would permit the United States courts in the Indian Territory to pass on the question of the removal of restrictions?

The SECRETARY OF THE INTERIOR. I would not favor it at all, because I think the courts have already more than they can do. I see it stated that they already have 1,200 or 1,400 criminal cases.

The CHAIRMAN. Are there any other suggestions that you care to make, Mr. Secretary, on this general proposition? You can see how much at sea we are on the whole proposition.

The SECRETARY OF THE INTERIOR. No. I wish myself I could be more specific.

WASHINGTON, D. C.,
Wednesday, December 19, 1906.

The committee met at 10 a. m. in the room of the Senate Committee on the Judiciary.

Present: Messrs. Clark, of Wyoming (chairman), Long, Brandegee, Teller, and Clark, of Montana.

There were also present, on the request of the committee, Hon. Ethan Allen Hitchcock, Secretary of the Interior, and Hon. James Wilson, Secretary of Agriculture, accompanied by Mr. Gifford Pinchot, Chief Forester, Department of Agriculture.

The CHAIRMAN. Mr. Secretary of the Interior and Mr. Secretary of Agriculture, the committee that has asked your presence and information and advice is one that was appointed by a resolution of the Senate just prior to adjournment last June, to look over matters connected with the interests of the Five Civilized Tribes in the Indian Territory. It was felt that a good many things down there had got into rather bad shape, and we wanted to see if we could get any information to guide legislation. We have spent considerable time in the Territory and have had some hearings since we returned to Washington. Two or three days ago it came to our attention that there had been a withdrawal from allotment of a very large area of land in the southeastern part of the Territory, and the purpose for which we have asked your presence is to ascertain, if we can, the reason for the withdrawal and the purpose of it, and, if possible, your view as to the effect of the withdrawal, the extent of it, and everything connected with it. Inasmuch as this of necessity comes under the jurisdiction, in the first instance, of the Secretary of the Interior, we would be glad if that Secretary would give us some information in regard to it.

STATEMENT OF HON. ETHAN ALLEN HITCHCOCK, SECRETARY OF THE INTERIOR—Continued.

The SECRETARY OF THE INTERIOR. Mr. Chairman, there are two matters involved in this particular part of the Territory to which you refer.

The first was the application of Mr. Jack Gordon, of Paris, Tex., who came here at the last session of Congress, I think, and recommended the sale to him and associates, for the purpose of creating a game preserve, of some 200,000 acres, I think, altogether. They were willing to take it at the appraised price, the value of the land, to be followed by the organization of a stock company, the purpose of which was to create this game preserve for fishing, hunting, etc. The matter, as I recollect it, after coming to Congress, was referred to the Secretary of the Interior, and has been passing backward and forward from that time to this.

The action taken by the Interior Department was to refer it to both the Geological Bureau of our own Department and to the Department of Agriculture—to the Geological Bureau to ascertain whether there were minerals in this territory, and we had considerable correspondence with the Department of Agriculture as to whether it was desirable, with regard to forestation. We had had some complaints from parties who had made contracts and made purchases from the

Indians down there for portions of the timber that was on this reserve. I see a gentleman here now, Mr. Graham, who entered a courteous protest against this transaction.

The CHAIRMAN. Do you say that this that was sold was where the Indians have taken their allotments?

The SECRETARY OF THE INTERIOR. I can not give you the details now. I got your notice yesterday, and I want to get at the quantity of allotments already made. The number of acres is stated by Mr. Graham at about 20,000 acres.

I am opposed to the game preserve project. I do not think that the Government has any right to give to any corporation that property. The idea was for each shareholder to take 640 acres at the appraised value. Mr. Gordon has, I believe, enough people, subscribers, to take up 640 acres each. I am opposed to it, because I can not find any precedent for the Government's disposing of the land in that way.

The second question is as to the withdrawal of the land for a forest reservation.

Senator LONG. The Jack Gordon proposition was submitted to the Indian Committee of the Senate.

The SECRETARY OF THE INTERIOR. Yes. That is what I said before you came in, and it was referred back, with power and discretion, to the Secretary of the Interior to act upon it.

Senator LONG. What part of the law now gives you that?

Mr. J. H. SHEPARD. Section 13, I think.

Senator TELLER. I would like to see that statute or section.

Senator LONG. I have sent for it.

The SECRETARY OF THE INTERIOR. I should not say, perhaps, "power;" but it was referred back by Congress, in the law.

Senator LONG. The proposition itself, my recollection is, was rejected by the Committee on Indian Affairs, though I am not clear on that.

The SECRETARY OF THE INTERIOR. No action was taken by Congress, at all events, except a reference back to the Department for further consideration.

Senator TELLER. For further consideration of this Gordon proposition?

The SECRETARY OF THE INTERIOR. I think so, sir.

Senator TELLER. I left here a week before Congress adjourned, and nothing of that kind had occurred up to the time I had left.

Mr. MELVIN CORNISH. Section 17 is the section that authorized the Secretary of the Interior to sell areas not exceeding 640 acres.

Senator LONG. That is in section 16. I will read it:

> The Secretary of the Interior is hereby authorized to sell, whenever in his judgment it may be desirable, any of the unallotted land in the Choctaw and Chickasaw Nations which is not principally valuable for mining, agricultural, or timber purposes, in tracts of not exceeding 640 acres to any one person, for a fair and reasonable price, not less than the present appraised value. Conveyances of land sold under the provisions of this section shall be executed, recorded, and delivered in like manner and with like effect as herein provided for other conveyances.

Now under that authority could you make a game preserve there for Jack Gordon?

The SECRETARY OF THE INTERIOR. The authority there given is simply for land not found fit for agricultural, mineral, or timber purposes.

Senator LONG. To any one person?

The SECRETARY OF THE INTERIOR. But there may be enough persons; that is exactly what they did. They got enough people to take 640 acres each, to make up the 200,000 acres.

Senator TELLER. It would not be in the spirit of the law for you to do that, would it?

The SECRETARY OF THE INTERIOR. You need not be afraid that I would do it.

Senator TELLER. I was not afraid that you would.

The SECRETARY OF THE INTERIOR. On the contrary, I am entirely opposed to it.

Senator LONG. I understood that the Jack Gordon proposition was in the bill at one time—a proposition to let the Secretary sell that in bulk.

Senator TELLER. In the Senate bill?

Senator LONG. No; in the House bill. It was stricken out.

Mr. SHEPARD. It was stricken out in the House.

Senator LONG. It was presented again before the Committee on Indian Affairs of the Senate and rejected.

Senator TELLER. We never had that.

Senator LONG. That is what I stated.

The SECRETARY OF THE INTERIOR. I stated exactly what I thought was in section 16—a reference back to the Department, with power to sell to any one man provided there were no minerals in the property or that it was not fit for any other purpose—provided it was practically waste land. Mr. Gordon has sent in reports to show that it is practically a barren country, with only game, and fish in the streams. It is their idea that they are conforming with the law. No action has been taken by the Department, nor will any action be taken unless it is directed specifically by the Congress or the President, or both together.

The CHAIRMAN. One thing I should like to know, and I think the other members of the committee also (leaving out of view altogether the game proposition of Gordon), is this: In case the Agricultural Department ascertains that this is valuable forest land, and that in their opinion the general interests of the whole public of the country would be served by setting it aside as a forest reserve; the matter that presents itself to my mind is, where does the Executive Department, acting through the Department of the Interior, get its authority for withdrawing or for purchasing at forced sale Indian lands for the purpose of creating a forest reserve, or any other purpose?

The SECRETARY OF THE INTERIOR. There are two questions to be considered. If I understand the law and the policy of the administration, it is not to create forest reserves except by taking the public domain. This is not part of the public domain; it is the property of the Indians; and my idea is that some legislation must be had to obtain the consent of the Indians before this can be done. The moment you make this a forest reserve I think you would also have to consider some laws that have been passed heretofore, the effect of which is, as I mentioned to Secretary Wilson, to have a bearing on railroad land grants. It would be necessary to see how this matter is affected by railroad grants heretofore made. There are 6 miles on each side of one of these railroads that the railroads may claim, under

grants heretofore given, if this property becomes a part of the public domain.

On the question of forest reservation, I am entirely and absolutely in favor of creating forest reservations all over this country in the interest of the people at large, because I think that from the way the forests are being wrecked and ruined and decimated, we shall have no forests after a while, unless we resort to forestation, just as they do in Europe, where it is done intelligently, and eventually becomes a source of revenue rather than an expense. Deforestation is going on here at a reckless rate that is perfectly outrageous, and I am in favor of legislation that will remedy it.

The CHAIRMAN. Without saying anything as to the beneficial effects of forest reserves, which I think we all consider necessary and proper when properly created, the question in this case arises as to a withdrawal of land which is not a part of the public domain, but is, as it were, in individual ownership.

The SECRETARY OF THE INTERIOR. Not quite, Mr. Chairman. I would say that we were requested by the Department of Agriculture, in the regular course of business, to withdraw this portion of the reservation that you have in mind, with the view of going to the bottom of the whole question. That is what we are trying to do between the two Departments.

The CHAIRMAN. This particular section of country is subject to allotment.

Senator TELLER. By law.

The CHAIRMAN. Subject to allotment by the Indians who have not already taken their allotments.

The SECRETARY OF THE INTERIOR. That is right.

The CHAIRMAN. Now the question arises in my mind and in the minds, I think, of other members of the committee: Under the operation of what law, without definite action by Congress, can that right to allotment of that land be interrupted or interfered with?

The SECRETARY OF THE INTERIOR. The law may have included certain considerations which are remedial.

The CHAIRMAN. The question in our minds is, did it, and if it did, how long can this law of Congress—looking to men going on there to-day to allot—how long can that be suspended by action of the Ex cutive Departments?

The SECRETARY OF THE INTERIOR. Just long enough to allow an investigation to be made that is now being made. That is only tentative.

Senator TELLER. Who is to judge how long that is to be?

The SECRETARY OF THE INTERIOR. It is the time necessary for the two Departments to make this investigation.

Senator TELLER. Do you not see that, if that is so, it is actually in the province of an executive officer to suspend a statute of the United States indefinitely?

The SECRETARY OF THE INTERIOR. No; I do not.

Senator TELLER. Because if he has a right to suspend for investigation, he has a right to take as long as he chooses.

The SECRETARY OF THE INTERIOR. That is assuming, I think, if you will pardon me, that an executive officer would do that which he has no right to do.

Senator TELLER. Mr. Secretary, I assert that you have not any

right to suspend the law for one hour. There is nothing in the law that authorizes you to make any investigation before you allot. There is the statute that requires you to allot. We have a Commission, that has been in the field for years, trying to close up this thing, and now we are met with this proposition. Where do you get the authority to suspend the statute?

The SECRETARY OF THE INTERIOR. Suppose, Mr. Senator——

Senator TELLER. Let me get through. If it is necessary to make an investigation you may send to Congress a suggestion, and Congress may perhaps authorize you to do it, but until Congress acts I assert that you have not the slightest authority to do it.

The SECRETARY OF THE INTERIOR. Not even if they suppose that the Executive Department——

Senator TELLER. It makes no difference what you suppose. The statute says you shall proceed to allot. You have been doing this for four years. Now, if you can suspend it an hour you can suspend it indefinitely.

The SECRETARY OF THE INTERIOR. Suppose that in the process of making allotment there were found irregularities and violations of law, do you mean to say that we could not suspend it temporarily and tentatively until we found out about those?

Senator LONG. But you have not done it for that purpose in this case.

Senator TELLER. You have not done it for that purpose. In this case you have suspended allotment. Why have you done it? It is without authority of law.

The SECRETARY OF THE INTERIOR. It was a suggestion of the Agricultural Department.

Senator LONG. What has the Agricultural Department to do with allotment?

The SECRETARY OF THE INTERIOR. Nothing whatever, but it was believed that the two Departments might find out something to recommend to Congress that would result in a modification of the law.

Senator TELLER. For that same reason you could suspend the preemption law, the homestead law, and other laws, because you thought crimes were committed. You have suspended a coal law.

The SECRETARY OF THE INTERIOR. By direction of the President.

Senator TELLER. I do not care by whose direction. You have no authority yourself. I do not think you have any right to suspend coal entries. You may suspend some individual's claim until he proves that he has done his work according to law, but you have no right to say that a man who has gone on the land and complied with the law in every particular, and is ready to pay for his land, can not pay for it. That is what you have done. That has nothing to do with this Indian business. The property here is the property of the Indian. It is not the property of the United States.

Senator LONG. I wish to inquire something as to the extent of this withdrawal—how many acres are involved?

The SECRETARY OF THE INTERIOR. I can not tell at the moment. The Agricultural Department has that information, but I can get it for you.

Senator LONG. Can you tell the boundaries of it?

The SECRETARY OF THE INTERIOR. I can not.

Senator LONG. The Agricultural Department can tell that?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. The Secretary of Agriculture is here this morning, I believe, and I suppose he has that information.

The SECRETARY OF THE INTERIOR. Yes.

Senator BRANDEGEE. This withdrawal spoken of for forest reservation purposes of these lands, was that done at the order of the President?

The SECRETARY OF THE INTERIOR. As I recall it, not by a specific order. Mr. Pinchot has that matter more in hand; but in conference and in consultation with the President; and while I would not say that it was done by direct order of the President, my feeling is that it was done by the knowledge of the President, not by the order of the President.

Mr. PINCHOT. The matter did not come to the President's attention until after the withdrawal had been made.

The SECRETARY OF THE INTERIOR. How is that?

Mr. PINCHOT. This whole matter did not come to the President's attention until the request for withdrawal was made.

The SECRETARY OF THE INTERIOR. At whose request was the withdrawal made.

Mr. PINCHOT. The request was made by Secretary Wilson on my recommendation.

Senator BRANDEGEE. Were you advised by any legal department that you had the right under the law to make the withdrawal?

The SECRETARY OF THE INTERIOR. I do not think that question was asked.

Senator BRANDEGEE. You mean that it did not occur to you that you did not have the right?

The SECRETARY OF THE INTERIOR. It did not.

Senator BRANDEGEE. Are you able now to point to any provision of the law that authorizes you to make the withdrawal?

The SECRETARY OF THE INTERIOR. The withdrawal takes place for various reasons.

Senator BRANDEGEE. I do not care what the reasons are. Is there any provision of law which authorizes you to withdraw these lands from allotment in the face of the statute which makes them avaliable for allotment?

The SECRETARY OF THE INTERIOR. My impression is that, tentatively, for the purposes I have mentioned——

Senator BRANDEGEE. But your impression must be based on some law, and if the law says that this property is open for allotment how do you get the impression that you can suspend, unless there is some statute?

The SECRETARY OF THE INTERIOR. I thought it was for the interest of the Indians themselves.

Senator BRANDEGEE. You do not mean to say, when Congress requires a policy to be taken, that if you think it is not a good policy, or not working well, you have a right to set it aside?

The SECRETARY OF THE INTERIOR. I think you are making a mistake, Mr. Senator, in supposing that this is a definite conclusion—that the suspension is a definite thing.

Senator BRANDEGEE. No; I do not think I made a mistake. As I understand you, you say that when an act of Congress opens land to allotment and instructs the Department to allot the lands to the

Indians whenever they comply with the regulations, that whenever you think that does not work well or that it works to the disadvantage of the Government to continue that statute in operation you have a right to suspend it until you are satisfied that it is for the best interests of the country to put it in operation.

The SECRETARY OF THE INTERIOR. No; I do not go that far.

Senator BRANDEGEE. How far do you go?

The SECRETARY OF THE INTERIOR. Simply tentatively, in this particular case, this request was made by the other Department of the Government for an investigation as to whether this thing was desirable or not. That is what was in my mind and nothing else. Of course it was not in my mind to go counter to an act of Congress.

Senator BRANDEGEE. I know, but "tentatively" is a suspension.

The SECRETARY OF THE INTERIOR. Until that examination can be made.

Senator BRANDEGEE. But "tentatively" is, I say, a suspension.

The SECRETARY OF THE INTERIOR. Yes.

Senator BRANDEGEE. How have you a right to interrupt for one second a law of the United States?

The SECRETARY OF THE INTERIOR. You are putting a question certainly as to a thing I never intended to do.

Senator LONG. But you have done.

The SECRETARY OF THE INTERIOR. The difference is that between "tentatively" and "permanently."

Senator LONG. You have stopped it, have you not?

The SECRETARY OF THE INTERIOR. Have not the executive officers a right to look into a situation and what may result?

Senator BRANDEGEE. They have a right to look in, but until Congress changes the law nobody has a right, in this country, to suspend a law.

The SECRETARY OF THE INTERIOR. May not people have a different interpretation of a law?

Senator LONG. What the Senator wants, I think, is to hear of a statute that authorizes you to suspend allotment down there, even temporarily. We want to be acquainted with the law—the statute authorizing it.

The SECRETARY OF THE INTERIOR. That was my impression and interpretation of the law. I may be mistaken.

Senator LONG. Will you refer us to the statute?

The SECRETARY OF THE INTERIOR. I can look it up and see. I say I may have been mistaken. If a mistake has been made, it is very easy to correct it by withdrawing the withdrawal.

Senator LONG. I understand that, as to forest reservation, you have a right to withdraw a part of the public domain where there is anything to create a forest reservation.

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. You have that authority by statute?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. Where is your authority by statute to stop allotments on Indian lands and wait until Congress determines whether or not it shall create by law a forest reserve on those Indians lands? Where is that statute?

The SECRETARY OF THE INTERIOR. I said a while ago that if we think there is any reason by which the law might be better inter-

preted by certain action tenatively taken—I may be entirely wrong—that the authority rests with the Executive officers to do that temporarily.

Senator LONG. It seems to me that your procedure in this matter was similar to what it would be under the law that authorizes you to withdraw from entry part of the public domain where there was a disposition on the part of the Department of Agriculture to create a forest reserve. But this is not part of the public domain. It is Indian land, subject to allotment.

The SECRETARY OF THE INTERIOR. I understand that. Informally and personally I brought that very fact to the attention of both Mr. Wilson and Mr. Pinchot—Mr. Pinchot at this moment. You have to look into the motive of this thing. What was the motive? To protect the Indians as well as this great forest reservation, and I challenge any criticism of the intent or motive.

The CHAIRMAN. I do not think that anybody questions the motive.

Senator TELLER. Nobody questions your motive. Suppose the Secretary of Agriculture had dropped you a note saying: "I believe we can do a great deal better for the Indians than doing what Congress has suggested. Therefore, I ask you to suspend this statute for a month or six weeks." Would you have done it under the circumstances?

The SECRETARY OF THE INTERIOR. That is precisely what the Secretary of Agriculture meant.

Senator TELLER. That is exactly what you have done. You have suspended the statute.

The SECRETARY OF THE INTERIOR. Not for any particular time.

Senator TELLER. That is the vice of the whole thing. You may do it forever. You have withdrawn in Colorado, under the law, which you can do, land that is open for settlement to-day, and has been for two years, and it is not open for settlement and will not be until the Reclamation Service gets money enough to put a ditch on it. Hundreds of men would like to go on that land and make homesteads now, if they had the privilege. So it is not a question of whether you have a right to do it for an hour. If you have a right to do it for an hour, you have a right to do it for a month and for six months. You have not the right to do it at all unless you have a positive statute. Now show us the statute.

The CHAIRMAN. Mr. Secretary, I understand, and if I am wrong you will correct me, that the withdrawal of the Indian lands from allotment, under the coal segregations, down there was done under your order, was it not?

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN. Was that done by authority of Congress or of the Executive under the general public welfare?

The SECRETARY OF THE INTERIOR. By Act of Congress.

The CHAIRMAN. That is what I thought. That is the only segregation down there that has been authorized by special act of Congress is it not?

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN. Now, could you not as well at that time, without any act of Congress, have withdrawn that land from allotment as you could have withdrawn this timber land from allotment?

The SECRETARY OF THE INTERIOR. I never considered that question; never looked into it, or thought of it. Now, I want to say right here, what had a very important influence with me, without giving it perhaps the investigation I might have done. I have felt with regard to matters on the Indian Territory, especially regarding allotments and the removal of restrictions, etc., that the Department could not be too careful in taking time to investigate, to see whether the Indians were being imposed upon in matters of restriction, alienation, and allotments. The news reached us that the Indians themselves were selling their timber, and my purpose was to look into the whole matter, and that is the only justification that I had in mind, coupled with the fact that the Secretary of Agriculture asked me to do it. We were both together bent upon looking into it and seeing whether this was the best under all the circumstances. If we have violated law I am very sorry for it.

The CHAIRMAN. I understand that prior to the proclamation or order made by the Interior Department any Choctaw or Chickasaw or Cherokee Indian in that portion of the Cherokee Nation covered by this order was entitled to go upon that land, irrespective of whether it had timber of greater or little value on it, and take his allotment in that locality. That is true, is it not?

The SECRETARY OF THE INTERIOR. If it had not been taken up by somebody else, of course.

The CHAIRMAN. Anything that lay over?

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN. No matter how valuable the timber tract may have been—there may have been millions of feet to the acre—any individual or unallotted member of that tribe had the vested right under the law of Congress to go there and take that particular 160 or 320 or 1,000 acres, had he not?

The SECRETARY OF THE INTERIOR. That is as I understand it.

The CHAIRMAN. Now, is not the effect of this withdrawal from allotment a denial of a vested right, whether you make the withdrawal permanent or not? For instance, a keen, sharp Indian may have had his eye on the particular thousand acres of land that one day, under the act of Congress, might be his. The act of Congress may have been bad and your motive, as I know it was, in withdrawing might have been most excellent; but are you not depriving him of a right given him by a statute of the United States?

The SECRETARY OF THE INTERIOR. Now let us put another question: Suppose the Department had reason to believe that there was some fraud connected with that allotment; have they not the right to hold it up at all and investigate that fraud?

The CHAIRMAN. Yes.

The SECRETARY OF THE INTERIOR. They have the right?

The CHAIRMAN. Yes.

The SECRETARY OF THE INTERIOR. There is a law; and if there be fraud, and we let that Indian go ahead and take that land——

The CHAIRMAN. But it would not be a fraud in the case I suggested. It may be bad public policy.

The SECRETARY OF THE INTERIOR. But cases have arisen in which we were obliged in duty to ascertain whether the application for allotment is of a fraudulent nature. Now, as I understand it, according to your theory, we have to go ahead and make that allotment, fraud or no fraud.

The CHAIRMAN. No, no.

Senator TELLER. Nobody says that.

The CHAIRMAN. My theory is that if Senator Teller has a particular piece of land that he wants to allot under the law, you can not deprive him of his right under the law because of my fraud.

The SECRETARY OF THE INTERIOR. That is what I have been saying—that whoever applies for an allotment, wherever we have reason to think that there is fraud connected with it and there is evidence of it, we want the evidence.

Senator LONG. Did you do this because you suspected fraud, or expected to make a forest reserve?

The SECRETARY OF THE INTERIOR. We did it simply on the ground that the Secretary of Agriculture asked us to do it.

Senator LONG. He was not acting because of fraud, was he?

The SECRETARY OF THE INTERIOR. No; but to ascertain whether it was necessary to protect the timber in that country for the benefit of the Indian.

Senator LONG. As I understand, you have withdrawn from allotment all this land indicated by the blue line (referring to a map of the Geological Survey), from the Arkansas line on the east to the Missouri, Kansas and Texas Railroad on the west.

The SECRETARY OF THE INTERIOR. I think that is what we were requested to do.

Senator LONG. This map has been given us by Mr. Cox, who made this investigation. You are aware that if this could be made into a forest reserve up within the 10-mile limit of the Missouri, Kansas and Texas Railroad, the land grant of the "Katy" Railroad within the Indian Territory would in all probability attach to that land the moment it became public land.

The SECRETARY OF THE INTERIOR. We called the attention of the Agricultural Department to that fact. It is now under investigation, and I do not think it is fair to reach a conclusion charging us with doing this, that, or the other while this investigation is pending.

Senator LONG. You are aware of this, however?

The SECRETARY OF THE INTERIOR. Yes; and the Secretary of Agriculture assured me that this whole matter would be investigated by his Department as well as ours. The whole thing is tentative. Nothing has been done.

The CHAIRMAN. How long is this tentative investigation to stand?

The SECRETARY OF THE INTERIOR. I can not tell you that, but long enough to enable us to investigate, and as soon as that is investigated, the question will be met.

Senator TELLER. What question are you investigating?

The SECRETARY OF THE INTERIOR. Whether or not we will withdraw that.

Senator TELLER. This is not public land. You may do that with public land. This is private property. Who gave you authority to stop for one moment your public service and consider what should be the policy of the Government with reference to some private investigation?

The SECRETARY OF THE INTERIOR. The withdrawal was made, as I said before, at the request of the Department of Agriculture.

Senator LONG. You made the withdrawal, and you are now investigating whether you had authority to do it?

The SECRETARY OF THE INTERIOR. Yes.

Senator TELLER. No; they are investigating whether we ought to do it.

The SECRETARY OF THE INTERIOR. Whether we ought to submit it to Congress.

Senator TELLER. And then, I suppose, it will be suspended until we come to some conclusion and say that the law will be suspended, without any act of the legislature, for the next several years.

The SECRETARY OF THE INTERIOR. It is not the purpose, and and never has been for one instant, of the Department of Agriculture or the Department of the Interior to take any action not fully authorized by Congress; but meanwhile we both felt—at least I felt—that this was a matter of such importance that when requested by another Department to investigate it or put it in a position for investigation, it was our duty to do it.

The CHAIRMAN. Here is a suggestion that comes to my mind now. It is your statement that it was not your purpose to do anything that was not authorized by Congress.

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN. As a matter of fact, have you not already done something that was not authorized in making this tentative withdrawal?

The SECRETARY OF THE INTERIOR. That may be, but are we to go ahead and not make any investigation, in view of the facts that may come to our knowledge—and not hold it up temporarily for the purpose of investigation—not for the purpose of defeating the law? Now I understand hereafter that so far as this committee is concerned Congress determines that we are to go ahead and not stop——

The CHAIRMAN. Not at all. I, as a member of this committee, believe this. Not that you should cease investigation, but that no investigation, whether of the Department of the Interior, or of the Department of Agriculture, of any other, should set aside a distinct and definite law of Congress of the United States. Now, I wish to get down to a practical proposition. Of course the purpose of this withdrawal is to give time for this investigation. The only purpose would be to prevent frauds that are in process of being effected, because otherwise the investigation could be made without suspension. If it is true that this land is rapidly passing into other hands by fraud——

The SECRETARY OF THE INTERIOR. What is that?

The CHAIRMAN. I say if it were not for the fact that this land is passing out from the hands of the Indians rapidly by fraud——

The SECRETARY OF THE INTERIOR. That is exactly what was in my mind.

The CHAIRMAN. I say if it were not for that this would not be in your mind.

The SECRETARY OF THE INTERIOR. Not at all.

The CHAIRMAN. There are about 2,000,000 acres of land. What amount of definite, distinct fraud has come to your knowledge, say for one month or two months? How much of it would you avoid in that time?

The SECRETARY OF THE INTERIOR. I could not say.

The CHAIRMAN. Would you avoid enough of it to justify you in acting outside the law?

The SECRETARY OF THE INTERIOR. This committee returned last week from the investigation in the Indian Territory. I may be mistaken, but I understood it was said here in this room that that Territory was full of fraud—full of fraud by railroad men who were trying by all sorts of measures and means to rob these Indians of those lands, and that largely influenced me, when I received the request of my colleague, in withdrawing those lands for the purpose of looking into the matter.

Senator TELLER. What evidence have you of fraud within this segregated land?

The SECRETARY OF THE INTERIOR. I have not said that I have any.

Senator TELLER. What is there?

The SECRETARY OF THE INTERIOR. I do not know. I am investigating the question.

Senator TELLER. Why not cease the alloting until you get the evidence?

The SECRETARY OF THE INTERIOR. Here was a specific request. I do not suppose that it was in the mind of Mr. Pinchot or the Secretary of Agriculture. Their purpose was a forest reserve.

Senator TELLER. Is it not the fact that you withdrew this land not because of fraud, but because the Department of Agriculture has a policy for segregating this land and making it a forest reserve in the future? That is the fact, is it not?

The SECRETARY OF THE INTERIOR. As a part of the public duty of the United States, through those two Departments, to protect the interests of those Indians which, in other directions, were being so attacked by fraud, and looking at the whole thing, primarily I was perfectly willing to make the suspension.

Senator TELLER. I can not understand your idea in not withdrawing it all.

The SECRETARY OF THE INTERIOR. I was not asked to withdraw it all.

Senator TELLER. If you had been asked to withdraw it all I suppose you would?

Senator LONG. How long would it take you to investigate this question of authority under the law to make that withdrawal?

The SECRETARY OF THE INTERIOR. I do not know. Secretary Wilson can speak for himself. I primarily take the responsibility of withdrawing that land, and I will investigate the subject of my authority immediately, but neither of us has the slightest disposition to do anything that will violate a law of the United States.

Senator LONG. I understand that you are investigating that?

The SECRETARY OF THE INTERIOR. If that is so, gentlemen, what more is there to say?

Senator LONG. Of course there is an impression, on the part of myself at least, that you ought to have made that investigation first.

The SECRETARY OF THE INTERIOR. I have given you my reason.

The CHAIRMAN. There is another proposition that you will not, perhaps, be able to answer, and perhaps it ought to be asked of the Forest Service. Perhaps I ought not to speak of a newspaper report, but one of the papers stated the other day that the purpose was to purchase this land from the United States, and, as forestalling the matter, the article stated that there was now sufficient available timber there, that could be cut without detriment to the forest, so that the Indians could be paid for the timber without reference to forestation at the appraised value, the idea being that the appraised value would influence the Congress of the United States in appropriating money. We have had experience in the Indian Territory, but very seldom has any of that land passed from the possession of the Indian without his getting more under those circumstances than the Government would in this instance give for this land—that is, more than the appraised value. Now, Mr. Secretary, would you agree to the proposition that this land should pass to the Government at its appraised value when there are other parties right now perhaps in this very section of land giving two or three or four or five times the appraised value of the land?

The SECRETARY OF THE INTERIOR. Of course I would not. As I said the other day about coal, I am not in favor of selling the coal lands, but I would take the $4,000,000,000 that the State of Oklahoma, it was said, proposed to give for them. I would take it as quick as a wink. As to the first part of your question, I am not familiar with that matter at all. I did not know anything about the subject mentioned in the newspaper article until I saw it in the paper, and I am not responsible for it in any way.

Senator TELLER. How many allotments have been made in this withdrawn land?

The SECRETARY OF THE INTERIOR. I can not tell now.

Senator TELLER. You can tell from your office?

The SECRETARY OF THE INTERIOR. Yes; certainly.

Senator TELLER. I wish you would.

The SECRETARY OF THE INTERIOR. I will do that.

Senator BRANDEGEE. You have asked him to make answer to some propositions.

The CHAIRMAN. I do not suppose the Secretary has had time yet.

The SECRETARY OF THE INTERIOR. Yes; I have had time and I propose to submit at once what my views are and embody them in a bill. Shall I read your letter, Mr. Chairman?

The CHAIRMAN. Yes; if you please. I did not consult the committee before sending that letter.

The SECRETARY OF THE INTERIOR. It was addressed to me on the 17th. I will read it.

The Secretary of the Interior read the letter addressed to him by the chairman of the committee, as follows:

COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE,
Washington, D. C., December 17, 1906.

Hon. ETHAN ALLEN HITCHCOCK,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: Referring to the hearing had before the Select Committee on the Five Civilized Tribes, I inquired as to your views at that time regarding the removal of restrictions, and made a certain definite inquiry, which you desired to be submitted to you in writing, in order that you might more fully consider the question. I hereby submit the said query in effect, as follows:

In your judgment, would it or would it not be a wise provision of legislation to enact, with relation to the matter of alienation in the Five Civilized Tribes, first, in regard to Indians of the mixed blood:

(*a*) The removal, by an act of Congress, of all restrictions upon the surplus lands.

(*b*) The removal of restrictions upon the homesteads upon application and proper and sufficient showing before some competent authority, and approval by the Secretary of the Interior, or some other tribunal, much in the same manner as is now provided for the removal of restrictions upon surplus lands.

Second, as to the full bloods:

(*a*) Removal of restrictions upon the surplus lands in the same manner as suggested above for the removal of restrictions upon the homestead of the mixed bloods.

(*b*) Homesteads of the full bloods to be absolutely inalienable.

For the benefit of the committee I would be glad to have the benefit of your views upon the proposition stated in general terms as above.

Yours, respectfully, C. D. CLARK.

I have thought of the matter very carefully. The reasons I gave here last week were strong reasons. The reasons were specific as to the 16 full-blood Indians whose restrictions were removed without their knowldege or consent, and they were practically robbed of their property.

The CHAIRMAN. Those were the 16 removed by act of Congress?

The SECRETARY OF THE INTERIOR. Yes; and on which I requested the report of our inspector, and I understood you to agree that it might go into the record.[a]

There was another case in which a white husband tried, in my judgment, to rob a wife of her property by selling it at $125 an acre, when he was selling a part of the acreage already allotted to that town at $250 a lot.

Senator BRANDEGEE. He proposed to sell her property at $125 an acre to add to a town in which the lots were being sold at $250 a lot?

The SECRETARY OF THE INTERIOR. Yes. These two cases are illustrations of hundreds of other cases.

Senator TELLER. He was probably in the town himself.

The SECRETARY OF THE INTERIOR. I understand that he is a speculator. You gentlemen may think that this is an isolated case, but the woods are full of just such cases down there.

Senator TELLER. They are full now.

The SECRETARY OF THE INTERIOR. I say they are full now, and if this goes on the Indians will be stripped of everything they have got.

This is the bill that I propose:

A BILL To remove restrictions on the alienation of lands allotted to Indians in the Indian Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized, in his discretion and under such rules and regulations as he may prescribe, to remove the restrictions on the alienation of lands heretofore or hereafter allotted to members of either of the Five Civilized Tribes who are enrolled as of Indian blood, except minors and except as to homesteads.

SEC. 2. That all restrictions on the sale, taxation, and alienation on all allotments of adult Indians, in Indian Territory, other than members of the Five Civilized Tribes, except homesteads, shall be removed by the Secretary of the Interior, in his discretion, and under such rules and regulations as he may prescribe, and in all such cases patents in fee simple shall issue: *Provided*, That the homesteads excepted by this section shall comprise not less than eighty acres in each case.

The CHAIRMAN. I did not just get that, Mr. Secretary.

The SECRETARY OF THE INTERIOR [handing up the paper]. In other words, it leaves the whole matter of removal of restrictions and the alienation just where it is at present.

Senator TELLER. Then why pass an act?

The SECRETARY OF THE INTERIOR. There is a little difference.

Senator TELLER. Except as to the provision that we put in the

[a] Full particulars of the 16 cases referred to by the Secretary of the Interior will be be found elsewhere in these proceedings. See statement of Indian Inspector J. George Wright, before this committee, Muskogee hearing, November 16, 1906.

last bill you have authority to remove restrictions wherever you think best.

The SECRETARY OF THE INTERIOR. Except as to the full bloods.

Senator TELLER. That is, under the act of last winter.

The SECRETARY OF THE INTERIOR. Yes. There is no practical difference in that bill.

Senator LONG. On the 1st of next July the restrictions on allotment in the Cherokee Nation—or next August, I believe?

The SECRETARY OF THE INTERIOR. August; yes.

Senator LONG (continuing). Are removed under the original agreement, are they not?

The SECRETARY OF THE INTERIOR. Yes; we can not help that.

Senator LONG. And in the Creek Nation on the 1st of July, with the exception, in both nations, as to homesteads?

The SECRETARY OF THE INTERIOR. Yes, sir.

Senator LONG. And in the Seminole Nation the restrictions are already removed, are they not?

The SECRETARY OF THE INTERIOR. Yes, sir.

Senator LONG. Your bill does not affect those nations?

The CHAIRMAN. The effect of this bill, as I understand it, is to provide for an absolute prohibition of alienating the homestead of mixed bloods; is that so?

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN (reading):

That the Secretary of the Interior be, and is hereby, authorized, in his discretion and under such rules and regulations as he may prescribe, to remove the restrictions in the alienation of lands heretofore or hereafter allotted to either of the Five Civilized Tribes who are enrolled as of Indian blood, except minors and except as to homesteads.

That makes no distinction, as I understand it, between the mixed bloods and the full bloods.

The SECRETARY OF THE INTERIOR. No; I think not.

The CHAIRMAN. Now, what we want to get at is what the second section means:

That all restrictions on the sale, taxation, and alienation of all allotments of adult Indians in the Indian Territory other than members of the Five Civilized Tribes.

The SECRETARY OF THE INTERIOR. This bill puts the full bloods in the same position as mixed bloods, subject to our action.

The CHAIRMAN. Yes.

The SECRETARY OF THE INTERIOR. The purpose is to simply give the Department of the Interior the right to review in all cases where the application is made for the removal of restrictions.

The CHAIRMAN. In the second section there is used the expression "other than members of the Five Civilized Tribes." What Indians are there in the Indian Territory besides the Five Civilized Tribes? The Quawpaws—are those the ones that the second section refers to?

The SECRETARY OF THE INTERIOR. The bill has reference only to the Five Civilized Tribes.

The CHAIRMAN. But the second section does not apply to the Five Civilized Tribes.

The SECRETARY OF THE INTERIOR. It was intended to, if it does not.

The CHAIRMAN. It says: "That all restrictions on the sale, taxation, and alienation on all allotments of adult Indians in Indian Territory other than members of the Five Civilized Tribes, except homesteads, shall be removed by the Secretary of the Interior in his discretion."

The SECRETARY OF THE INTERIOR. Whoever may be in the Territory other than the Five Civilized Tribes, it would refer to them.

Senator LONG. There are some small tribes down there in one corner.

Senator TELLER. A couple of dozen of them—Quawpaws, and perhaps others.

Senator BRANDEGEE. What do you mean by the removal of restrictions on those lands in your "discretion?"

The SECRETARY OF THE INTERIOR. How is that?

Senator BRANDEGEE. I did not understand the force of the language in section 2 that you should remove restrictions in your "discretion."

The SECRETARY OF THE INTERIOR. I should like to report fully on that bill.

The CHAIRMAN. Can you leave it with the committee?

The SECRETARY OF THE INTERIOR. Yes.

Senator TELLER. Let me get your idea on this point: Whether you could not get some tribunal created that could be nearer to the interests to be treated than the Secretary of the Interior—without any discredit to the Secretary. For instance, it appears to me from what we could learn down there that very largely Mr. Kelsey, the Indian agent, and Mr. Wright (and I am glad to say I heard nothing but good of both of them; I heard practically no complaint against them, I think) are the men who first pass on it. Then they send it up here, and the complaint down there is that it is held up here for a long time. I can easily understand why that is, with the multiplicity of business. Would it not be practicable to have some responsible man in your Department, like Wright and Kelsey, and perhaps somebody else associated with them, to do that work down there, and not have it sent up here?

Senator LONG. And the action be final?

Senator TELLER. That seemed to be the opinion of everybody down there.

The SECRETARY OF THE INTERIOR. As I said last week, of course everybody down there thinks that their business should be made special over every other. There is no delay up here that is avoidable at all, but I do think that the right of review up here by the Department, even if it does take time, is absolutely necessary.

Senator TELLER. There was another suggestion made down there by various people, and that was that we should turn over this matter to the Federal authorities—the courts which are going to be established shortly down there, as soon as the State organization is in operation—instead of letting the Secretary deal with this matter let the court deal with it on the ground, telling the Indian to go into court and try his case before the judge. What would you say to that?

The SECRETARY OF THE INTERIOR. I should rather think over that a little, Senator.

Senator TELLER. I wish you would.

The SECRETARY OF THE INTERIOR. Offhand I can say that the complaints we have had heretofore from the United States attorneys down there have been such as to show that the same delays you speak of as occurring up here are likely to occur down there, because all the courts down there, nearly, are so loaded up with criminal cases.

Senator TELLER. That is the case with the present courts, but when they get State courts they will take those out of the hands of the Federal courts. The present courts are not able to deal with them.

The SECRETARY OF THE INTERIOR. It looks so, because of the pressure of business.

Senator TELLER. The criminal court will then have very little to do. I do not suppose you can give your personal attention to these matters.

The SECRETARY OF THE INTERIOR. I try to.

Senator TELLER. You can not give very much, can you?

The SECRETARY OF THE INTERIOR. I try to. They go first to Judge Ryan. He has had very large experience in Indian matters, especially in the West. You gentlemen know very well what his equipment is for that class of work. He conscientiously examines these cases, and there would be the same number of cases to be examined down there that come up here. Then the cases come to me, or rather Judge Ryan examines these cases, and then they come to me. We constantly exchange views about the cases. There are many questions that come up, as was referred to by me last week.

The CHAIRMAN. Where does the first question arise—in the office here or down there?

The SECRETARY OF THE INTERIOR. It arises down there, and the Indian agent and the inspector look into it, and there is a report from both.

The CHAIRMAN. In the class of cases as to which you and Judge Ryan consult, does the question on which you consult arise ordinarily in the Department here or is it first raised by the people down there and then brought up here?

The SECRETARY OF THE INTERIOR. Both. They may make an adverse report down there, and we, after examination here, may think that they were mistaken in making an adverse report and reverse their opinion.

The CHAIRMAN. In ordinary cases, when they make a favorable report down there, does a case of that sort give rise to any particular discussion between yourself and Judge Ryan or other officers of the Department when it comes here, or is the proposition that the action of the Department here is rather formal than otherwise, where it is all clear down below?

The SECRETARY OF THE INTERIOR. Where it is all clear down below, and we are satisfied of that, it goes through at once. There is no more delay in the adjudication of those cases than in the case of a bill before Congress. Committees take action on bills in Congress. Then the bills go to the House or Senate, and when there is a vast volume of business delays are absolutely unavoidable. Mistakes have been made and will be made, and the review up here is necessary.

Senator TELLER. It looks as if we might be able to dispense with the task of civilizing the Indians when they become citizens. Is it not a fact that the great majority of cases approved by Wright and Kelsey go through?

The SECRETARY OF THE INTERIOR. Well, yes, I should say, on the whole. At the same time there is a sufficient number of them that are not approved.

Senator TELLER. Those adverse cases you take up and examine here?

The SECRETARY OF THE INTERIOR. Yes; we examine all here.

Senator TELLER. But those are the ones you give most attention to?

The SECRETARY OF THE INTERIOR. Naturally.

Senator TELLER. We heard a good deal of complaint down there.

The SECRETARY OF THE INTERIOR. That is true, no doubt. They send in requests to-day which they want settled to-morrow, and that would be an impossibility anywhere. Complaints are made of delay by the Patent Office and of other offices. The volume of business is so great in every bureau that it is impossible to take a matter up to-day and settle it to-morrow.

Senator LONG. That being the case, the question arose whether some competent tribunal could not be organized down there that would relieve the Department of much of this work and its decision be as correct as the decision which the Department gives now.

The SECRETARY OF THE INTERIOR. I think the additional supervision is necessary. I may be mistaken, but I think so.

Senator LONG. The question was whether some competent court or commission could not be organized down there that could settle these important questions without referring them up here—that is, the question of whether or not the restrictions ought to be removed. That commission or court would see the individual Indian and would be able to decide the question probably as well as it could be decided.

The SECRETARY OF THE INTERIOR. I do not think——

Senator TELLER. You do not think much of Congress removing the restrictions, do you?

The SECRETARY OF THE INTERIOR. Certainly not.

Senator TELLER. I do not, either. I do not think we are advised on these subjects.

The SECRETARY OF THE INTERIOR. I think it is too great a question, gentlemen. Here you are involving the future interests and property and prosperity of the Five Civilized Tribes. A great many of those Indians are undoubtedly able to take care of their own property, but most of them are not.

The CHAIRMAN. The Secretary of Agriculture says that he has an engagement with some Congressmen and would like to keep it, and so perhaps we had better hear him now. I want to apologize, Mr. Secretary, for detaining you so long. It was unavoidable. We will now be glad to hear you.

The SECRETARY OF AGRICULTURE. I am glad to meet the committee and to give it any information I can. Some Congressmen, however, have been some time in my office waiting to see me with regard to the enforcement of the pure food law. I do not suppose you have much to ascertain from me, but I am willing to tell you anything I know.

WASHINGTON, D. C.,
Wednesday, January 9, 1907.

The committee met at 10.30 a. m., in the room of the Senate Committee on the Judiciary.

Present: Messrs. Clark, of Wyoming (chairman), Long, Brandegee, Teller, and Clark, of Montana.

There were also present Hon. Ethan Allen Hitchcock, Secretary of the Interior, and Hon. Frank L. Campbell, Assistant Attorney-General for the Interior Department.

STATEMENT OF HON. ETHAN ALLEN HITCHCOCK, SECRETARY OF THE INTERIOR—Continued.

The CHAIRMAN. You intimated to me a few days ago, Mr. Secretary, especially with regard to the withdrawal of allotments in the Choctaw and Chickasaw nations, that you had some matters you wished to present to the committee. We would be glad to hear you on that or any other matter that you may have to present.

The SECRETARY OF THE INTERIOR. That is true, Mr. Senator, but in thinking it over I believe the better way will be to make a written formal report, and we are preparing it now.

The CHAIRMAN. Of course this particular committee will have to report very soon to the Senate. We should have reported at the opening of this session, but we found such a tremendous amount of work involved that we were unable to do it, and the Senate granted us leave to postpone the report until the reassembling of Congress after the holiday recess, and when we reassembled, the matter, in compliance with your request, was further postponed so as to carry it over to this week. If we postpone the report very much longer it will be a question whether we can put in a report that will be of much value.

The SECRETARY OF THE INTERIOR. I do not ask you to postpone your report, Mr. Chairman.

Senator TELLER. Have you your written report ready?

The SECRETARY OF THE INTERIOR. Not the written report.

Senator TELLER. You will have it in a day or two?

The SECRETARY OF THE INTERIOR. Yes.

Senator LONG. Is that a report to this committee or is it your regular report?

The SECRETARY OF THE INTERIOR. My idea is to make a report as we make our regular reports, formally, to Congress. It will be referred to the committee and they will have it before them and can do with it as they think best.

The CHAIRMAN. That report will hardly be referred to this committee.

The SECRETARY OF THE INTERIOR. It can be referred to this committee if requested. I think it can be.

Senator BRANDEGEE. What report do you speak of?

The SECRETARY OF THE INTERIOR. There is another branch of the Indian Territory matters—a matter that I understood that for lack of time was not investigated in the Territory that I want to bring to the notice of the committee. I think that can be done later on as well as now, unless you think otherwise. I would not think of you delaying your report a minute.

The CHAIRMAN. What the committee particularly wants is to get at the right of this matter of withdrawing the lands from allotment. As I understand the matter, the lands were withdrawn from allotment by the same letter which directed the Commissioner to theFive Civilized Tribes to make no more allotments, and it was also directed that no further patents should issue upon allotments already made on this land. The question in the minds of the committee was whether or not there was any legal authority for such action as that. Thereupon the committee asked your office to inform them, if in your power, under what statute you acted in directing that withdrawal. That is

what the committee is very desirous of being informed about, because I am satisfied that the individual members of the committee have pretty well concluded, and had at that time in their minds that, laying aside the question whether beneficial results were to flow from that action, the action was itself not within the authority of the Department of the Interior. We were very desirous to get your views and the views of the legal officers of your Department on that proposition before we take it up and dispose of it; because if the Department had the legal authority it would be a matter that perhaps this committee ought not to do anything with at all, or if they came to think that you had authority which, in their judgment, ought not to have been conferred, they might wish to recommend legislation which would divest the Department of the Interior of that authority. It is a matter that has bothered some members of the committee a good deal.

The SECRETARY OF THE INTERIOR. The situation, as I understand it, is just this: Secretary Wilson, of the Department, requested our Department to withdraw certain lands for the purpose of creating a forest reserve. On his request, and on the facts and statements presented to me at that time, I withdrew, tentatively and temporarily, the allotment because of the interest which the Indians had in the matter, in order that I might make an investigation. Secretary Wilson was absent from the city the whole of last week—he went away on "pure-food" business—and it was only yesterday that I got his report.

The question of the legality of my action has been questioned by the committee and the propriety of withdrawing these lands, or making this forest reservation, has also been questioned. Those are the two facts before this committee, as I understand the matter. So far as concerns the propriety and legality of my action, that part I shall be ready to report on as soon as I get prepared the report which will cover the reservation part, the facts of which I got only yesterday afternoon from Secretary Wilson. I have not had time since yesterday to prepare the report, but it will be prepared by to-morrow.

My idea would be—I may be entirely mistaken about it and of course I intend to be absolutely courteous to this committee—my idea would be to let the matter take the form of a regular report to Congress and then to have that report take the channel of a reference to this committee. There will be no trouble about it. You can then report on that report. You will have all the facts before you, with statements and affidavits, and you will arrive at such conclusions as you deem best.

Senator BRANDEGEE. The report of Secretary Wilson to you on the advisability of making a forest reserve would not have any bearing, would it, on the legality of your action?

The SECRETARY OF THE INTERIOR. I understand they are two separate questions, but at the same time they are interwoven. The forest reserve was the basis of the action that was supposed to be illegal on my part.

Senator LONG. Are you prepared this morning to submit your reasons or authority for the action you have taken on the question?

The SECRETARY OF THE INTERIOR. No; I think not. I think I ought not to go into that until I get the whole report in. As I have said, the matters ought to go together.

The CHAIRMAN. Of course, Mr. Secretary, it was a very startling proposition to this committee when the matter first came to our attention through protests, letters, and telegrams from the Indian Territory and the country about there—it was a very startling proposition that it lay within the province of any executive officer of the Government to suspend, as I said the other day, an affirmative action of Congress. We were not prepared to say that you had no authority, but we did want to ascertain, at the earliest possible moment, in case there was authority, in what section of the statute it was lodged. It was for that reason, more than any other, that I suggested in my letter to you that Judge Campbell could perhaps throw some light on the matter, not knowing whether he had made any report to you on the matter.

The SECRETARY OF THE INTERIOR. He has made a report to me—a very exhaustive report, indeed—and he thinks he has found precedents for my action.

The CHAIRMAN. Of course, it is not the desire of this committee to enter into any controversy, but to gain information as soon as possible. I confess, so far as I am concerned, that while I have not looked into this matter exhaustively, as probably Judge Campbell has, I have been unable to find any precedent, much less any law, for setting aside such directions of Congress as were given in the allotting act. I will also be very frank to say that so far as I am concerned I have not considered that the action of the Interior Department, or of the Executive, with regard to public lands, the property of the United States, forms any precedent whatever for dealing with lands which are held in fee simple by the Indians or Indian tribes. I have not spoken to the other members of the committee about that, and they may differ from me in that respect.

The SECRETARY OF THE INTERIOR. I think you will find that it was not intended at all by the Department of the Interior to interfere with any patenting rights, or anything else, but to stop the allotments until we could look into the matter.

Senator LONG. The allotments are not completed yet?

The SECRETARY OF THE INTERIOR. No.

Senator LONG. There are still members of the tribe who desire to take these lands?

The SECRETARY OF THE INTERIOR. That is right; and the question was whether it was in their interest to call a halt tentatively until we could find whether this was in their interest.

Senator LONG. Congress had by statute said that they might have the lands, and you have suspended that?

The SECRETARY OF THE INTERIOR. Yes; for the purpose of ascertaining whether it was in their interest.

The CHAIRMAN. Suppose you should determine, upon due investigation, that, as matter of fact, it will be to the interest of the Indian to make permanent this tentative suspension?

The SECRETARY OF THE INTERIOR. I do not think it is for me to determine that, but for Congress to determine it.

The CHAIRMAN. I do not know whether I make myself perfectly clear, but I can not exactly understand how the Department of the Interior could suspend the operation of a law until such time as would enable them to ask Congress whether the law should be repealed or not.

what the committee is very desirous of being informed about, because I am satisfied that the individual members of the committee have pretty well concluded, and had at that time in their minds that, laying aside the question whether beneficial results were to flow from that action, the action was itself not within the authority of the Department of the Interior. We were very desirous to get your views and the views of the legal officers of your Department on that proposition before we take it up and dispose of it; because if the Department had the legal authority it would be a matter that perhaps this committee ought not to do anything with at all, or if they came to think that you had authority which, in their judgment, ought not to have been conferred, they might wish to recommend legislation which would divest the Department of the Interior of that authority. It is a matter that has bothered some members of the committee a good deal.

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The SECRETARY OF THE INTERIOR. No; I think not. I think I ought not to go into that until I get the whole report in. As I have said, the matters ought to go together.

The CHAIRMAN. Of course, Mr. Secretary, it was a very startling proposition to this committee when the matter first came to our attention through protests, letters, and telegrams from the Indian Territory and the country about there—it was a very startling proposition that it lay within the province of any executive officer of the Government to suspend, as I said the other day, an affirmative action of Congress. We were not prepared to say that you had no authority, but we did want to ascertain, at the earliest possible moment, in case there was authority, in what section of the statute it was lodged. It was for that reason, more than any other, that I suggested in my letter to you that Judge Campbell could perhaps throw some light on the matter, not knowing whether he had made any report to you on the matter.

The SECRETARY OF THE INTERIOR. He has made a report to me—a very exhaustive report, indeed—and he thinks he has found precedents for my action.

The CHAIRMAN. Of course, it is not the desire of this committee to enter into any controversy, but to gain information as soon as possible. I confess, so far as I am concerned, that while I have not looked into this matter exhaustively, as probably Judge Campbell has, I have been unable to find any precedent, much less any law, for setting aside such directions of Congress as were given in the allotting act. I will also be very frank to say that so far as I am concerned I have not considered that the action of the Interior Department, or of the Executive, with regard to public lands, the property of the United States, forms any precedent whatever for dealing with lands which are held in fee simple by the Indians or Indian tribes. I have not spoken to the other members of the committee about that, and they may differ from me in that respect.

The SECRETARY OF THE INTERIOR. I think you will find that it was not intended at all by the Department of the Interior to interfere with any patenting rights, or anything else, but to stop the allotments until we could look into the matter.

Senator LONG. The allotments are not completed yet?

The SECRETARY OF THE INTERIOR. No.

Senator LONG. There are still members of the tribe who desire to take these lands?

The SECRETARY OF THE INTERIOR. That is right; and the question was whether it was in their interest to call a halt tentatively until we could find whether this was in their interest.

Senator LONG. Congress had by statute said that they might have the lands, and you have suspended that?

The SECRETARY OF THE INTERIOR. Yes; for the purpose of ascertaining whether it was in their interest.

The CHAIRMAN. Suppose you should determine, upon due investigation, that, as matter of fact, it will be to the interest of the Indian to make permanent this tentative suspension?

The SECRETARY OF THE INTERIOR. I do not think it is for me to determine that, but for Congress to determine it.

The CHAIRMAN. I do not know whether I make myself perfectly clear, but I can not exactly understand how the Department of the Interior could suspend the operation of a law until such time as would enable them to ask Congress whether the law should be repealed or not.

The SECRETARY OF THE INTERIOR. No; that is not exactly the point, Mr. Chairman. The idea is to give Congress the information we have, which we think will justify temporary or tentative action until the matter is settled.

The CHAIRMAN. Then it is your opinion that Congress, after having made the contract with the Indians, by which they agreed to take these lands under allotment, could modify that contract in any way it saw fit?

The SECRETARY OF THE INTERIOR. If good reasons were given to Congress for such action.

The CHAIRMAN. That is the way Congress has done very often; but I, for one, do not believe that it has any right to do it.

The SECRETARY OF THE INTERIOR. Any modification or change in law must come from Congress.

Senator LONG. How long is it your purpose to suspend operation of this law in order to give Congress the opportunity?

The SECRETARY OF THE INTERIOR. We will make our report immediately, and Congress can take such action as it sees fit.

The CHAIRMAN. Suppose Congress takes no action. Suppose it does not want to be put in the position of ordering a Secretary of the Interior to withdraw that withdrawal?

The SECRETARY OF THE INTERIOR. I should rather not be put in the position of answering that until we make our report.

The CHAIRMAN. Suppose the case, that Congress, after having received your report, did not see fit to take any action upon the subject-matter of that report, what then would be the result as to this land that you have withdrawn?

The SECRETARY OF THE INTERIOR. Well, I can not say now.

The CHAIRMAN. Should you then withdraw your order to the Commissioner to the Five Civilized Tribes?

The SECRETARY OF THE INTERIOR. I can not answer that question just now. That question has not been presented to me, and I do not wish to answer such questions off-hand. It is a very serious matter, and ought to be dealt with exactly right, and we thought we were so dealing with it.

The CHAIRMAN. We have no disposition to think otherwise. I think you will give us credit for that. In regard to the patents on the lands already allotted there—how is it as to those?

The SECRETARY OF THE INTERIOR. We will see that they are issued at once.

Senator LONG. I believe, Mr. Chairman, you have copies of the letters, and I suppose they will be entered in the record?

The CHAIRMAN. Yes. (To the Secretary of the Interior.) I sent to you a few days ago, Mr. Secretary, for a copy of the order of suspension and I presume it is embraced in this letter to the Commissioner to the Five Civilized Tribes (reading):

DEPARTMENT OF THE INTERIOR,
Washington, December 8, 1906.

The COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Ind. T.

SIR: There is inclosed for your information copy of a letter addressed to the Department by the Secretary of Agriculture, dated December 7, 1906, together with the map transmitted therewith, and you are requested to suspend all selections and issuance of patents within the area indicated on the inclosed map until further advised.

Respectfully,

E. A. HITCHCOCK, *Secretary.*

I suppose that is the order?

The SECRETARY OF THE INTERIOR. That is the order.

Senator LONG. That is the only order that has been issued to the Commissioner to the Five Civilized Tribes?

The SECRETARY OF THE INTERIOR. The only order.

Senator LONG. And that withdrew all the lands within the blue lines on this map [exhibiting a map]?

The SECRETARY OF THE INTERIOR. I presume so.

Senator LONG (to the Chairman). This is the map that was sent us as showing the lands withdrawn?

The CHAIRMAN. Yes.

The SECRETARY OF THE INTERIOR. The reason I do not want to go into this matter now, either informally in this way or officially in this way, is because the Secretary of Agriculture has modified his suggestion somewhat, and I think you should have all the facts before you up to date. They will all be shown in my report.

Senator LONG. He has modified his request as to the size of the reserve?

The SECRETARY OF THE INTERIOR. Yes; and has given his reasons for it.

Senator LONG. But you have not yet modified your order to the Commissioner to the Five Civilized Tribes?

The SECRETARY OF THE INTERIOR. Not yet, for the reason that I got only yesterday the statement of the Secretary of Agriculture.

Senator LONG. At present the suspension of allotments operates within the blue lines on that map, in the Cherokee and Choctaw nations. That has not been modified?

The SECRETARY OF THE INTERIOR. No; but it will be modified at once. We got this report only yesterday afternoon.

Senator LONG. When this letter was written to the Commisssioner to the Five Civilized Tribes all allotments and the issuing of patents were suspended within these blue lines in the Choctaw and Cherokee nations?

The SECRETARY OF THE INTERIOR. That is correct.

Senator BRANDEGEE. It seems to me, Mr. Secretary, that when this committee is authorized to look into these matters, with the authority to send for persons and papers, and they send for you and ask you by what authority you took certain action and you say that you can not tell them—that you have already prepared a written opinion in response to their inquiry, but you can not give it to the committee because you want to answer that question to Congress—it seems to me that you do not take a correct course. I think you should answer the inquiries of this committee.

The SECRETARY OF THE INTERIOR. I do not think you were in here, Mr. Senator, when I made my first statement—that I thought the two subjects should go together—that is, the question of the legality of my action and the request of the Department of Agriculture. They form part of the one matter. That report will be ready to-morrow.

Senator BRANDEGEE. But we ask you a certain question, and you take legal advice upon the matter of answering our question, and then you say you are going to send a special report to Congress.

The SECRETARY OF THE INTERIOR. Well, I suggested that that would be perhaps the proper way to do it.

Senator BRANDEGEE. I think the proper way would be to answer the committee's question.

The CHAIRMAN. I will say that so far as this committee, or at least this part of the committee, is concerned, it makes no difference whatever as to the relations that existed between the Department of Agriculture and the Department of the Interior as to the advisability of this matter, looking at it from the point of view of the welfare of the Indians. The sole question, so far as I am concerned, in making this inquiry, is the question of law—as to what authority was exercised when this withdrawal was made. That, it seems to me, Mr. Secretary, is a matter that concerns your action and the action of your Department only and in no way whatever concerns the Department of Agriculture. What we want to know, certainly what I want to know is, not what motives induced you to make the withdrawal—because I am perfectly well satisfied that those were proper motives—but under what law, under what authority, you acted, when, after the act of Congress had said that those lands should be allotted, you suspended the allotment? It is a simple question of the law under which your Department has acted. That is the information that I have been wanting all through this inquiry.

The SECRETARY OF THE INTERIOR. You shall have the information, Mr. Chairman.

Senator LONG. I think it is well for the Chairman to inform the Secretary that a report to Congress on his action will not be referred to this select committee, but will be referred to the Committee on Indian Affairs, which ordinarily, under the rules, has jurisdiction of these matters. This committee will not request—at least I, as a member of it, will not request—its reserence to this committee. We were created a committee for a special purpose, and are not a standing committee of the Senate, but a committee to get this information.

The SECRETARY OF THE INTERIOR. I merely threw out that suggestion. I have not the slightest objection in the world to sending that report to this committee.

Senator LONG. When, Mr. Secretary?

The SECRETARY OF THE INTERIOR. I hope to-morrow, Mr. Senator.

Senator TELLER. So far as I am concerned, I am satisfied now as to what the law is. I looked the matter up myself. On general principles I think I know what the law is that governs this matter, but I think we ought to have the matter from the Secretary. If he can show any law or reason—I am speaking of a legal reason—we ought to have it. But I do not think that this committee need to take up the question of whether there ought to be a reservation in that country or not.

The SECRETARY OF THE INTERIOR. Do I understand that so far as the reservation part of the matter is concerned we ought to report to this committee in connection with the other part, or are we at liberty, in your judgment, to send the reservation part of it to Congress?

Senator TELLER. Speaking myself alone, all I want is the legal phase of the question.

The SECRETARY OF THE INTERIOR. All I want to do is simply to get this matter before the committee and before Congress in the regular way.

Senator BRANDEGEE. If you file the legal opinion as to the question of power with this committee that is all we care for.

The SECRETARY OF THE INTERIOR. Very well. That is what I wish to have understood, because I do not wish for a moment to be guilty of the slightest disrespect or discourtesy to this committee.

The CHAIRMAN. The thing that occurred to me when we were considering the matter before was this. That unless it was perfectly clear that authority was vested in the Department of the Interior to perform this act, the act ought to be rescinded, and that the question of creating a forest reservation should be separate and distinct from it. Of course, Mr. Secretary, if you have no authority to interrupt the due operation of the law for other purposes you have no authority to do so for the purpose of creating a forest reserve.

The SECRETARY OF THE INTERIOR. That is how the whole thing originated. The request of the Department of Agriculture to set apart this land for a forest reserve was the basis of the entire matter.

The CHAIRMAN. I know it was; but it was not a basis on which the Secretary of the Interior was bound to act, or in fact was justified in acting, unless he had statutory authority for so acting.

The SECRETARY OF THE INTERIOR. We think we have it.

The CHAIRMAN. That is what we have been trying to obtain for the past ten days.

Senator TELLER. The Secretary of Agriculture said he had not looked into a statute at all.

The SECRETARY OF THE INTERIOR. That is what he said.

Senator TELLER. He was very explicit that he did not look up any law about it. I understand Mr. Pinchot, in a newspaper, stated that he had legal authority, but he did not point it out.

The CHAIRMAN. I saw Mr. Pinchot last night and asked him to be here this morning. I did not, however, know that there was anything in particular that might make his presence necessary, but it might be desirable.

Mr. GIFFORD PINCHOT. May I say a word?

The CHAIRMAN. Surely.

Mr. PINCHOT. I wish merely to say that I take the same attitude in the matter now that the Secretary of Agriculture took; that is, that the authority in the matter was not my business in any way. My action was limited to ascertaining the facts on the ground and reporting them to the Secretary of Agriculture. Whether Secretary Hitchcock had the right or the authority to do what the Secretary of Agriculture requested was a matter for Secretary Hitchcock.

The CHAIRMAN. And you hope he will find the authority?

Mr. PINCHOT. Personally, I thought he had the authority.

Senator TELLER. The newspapers gave what purported to be an interview with you, in which you said you had found the authority.

Mr. PINCHOT. I have given no interview whatever or opinion to any newspaper man.

Senator TELLER. You have perhaps seen the interview?

Mr. PINCHOT. The only thing I have seen was a clipping from the New York Tribune when I returned to Washington.

Senator TELLER. The interview I saw was ten days ago.

Mr. PINCHOT. I know nothing of it. I have been away. I left the day after Christmas, and have only just got back.

Senator TELLER. I saw the interview to which I refer a few days after we had our meeting at which you were present, and the newspaper stated that you had said you had found the authority.

Mr. PINCHOT. I took good care not to say anything about the matter, as it was a matter for the Secretary of the Interior.

The SECRETARY OF THE INTERIOR. No person connected with our Department has made any statement in the newspapers since we were here last.

The CHAIRMAN. I asked the Secretary of the Interior if he would have Mr. Campbell come up here this morning. I thought that perhaps Mr. Campbell might have some suggestion or be able to give us the benefit of some "looking up" that he had done into the statutes that would relieve the situation.

Senator LONG. I understood from the Secretary's statement that the legal part of the matter had been determined on Mr. Campbell's report, or at least that Mr. Campbell had reported to him.

Assistant Attorney-General CAMPBELL. That is correct, Senator. But the Secretary has just said that he wanted to make that legal presentation a part of his report and that he would prefer not to discuss it now, unless it is the pleasure of the committee.

The CHAIRMAN. I would like—I would be more than glad—that that reply might be made, so that we could discuss it with the Secretary or Mr. Campbell. Of course, if the Secretary preferred merely to file it with the committee, I, as a member of the committee, would be willing to let it go at that. If the Secretary is right, the committee would want to acquiesce in his position, but might want to take steps to repeal the act under which he issued the order; and if they thought that the Secretary was not right and that he acted against the legal rights and interests of the people, they would want the order rescinded.

Senator TELLER. It is quite evident that the Secretary is satisfied with his position. If he sends his report to us and we are not satisfied with it, he will not be liable to change his views because we do not agree with him.

The CHAIRMAN. He might.

Senator TELLER. I doubt it. I think it likely he would not change.

Senator BRANDEGEE. Have you a copy of the opinion here, Mr. Secretary?

The SECRETARY OF THE INTERIOR. Not with me.

Senator BRANDEGEE. Has Mr. Campbell a copy?

Assistant Attorney-General CAMPBELL. No; it is in the hands of the Secretary.

The SECRETARY OF THE INTERIOR. I shall be glad to send it up at once.

Senator TELLER. Can you send it up to-day?

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN. That is what you were relying upon?

The SECRETARY OF THE INTERIOR. Yes.

Senator BRANDEGEE. Has that opinion been submitted to the Attorney-General, or is it Mr. Campbell's opinion?

The SECRETARY OF THE INTERIOR. It is Mr. Campbell's. He is in charge of our law division.

Assistant Attorney-General CAMPBELL. It is prepared in the form of a memorandum, so that it might be incorporated in the Secretary's report.

Senator BRANDEGEE (to the Secretary of the Interior). You could telephone for that and have it here in half an hour, could you not?

The SECRETARY OF THE INTERIOR. No; it is locked up.

Senator LONG. I have a letter here from a gentleman in Atoka, Ind. T., taking some exceptions to a statement of Mr. Cox, made before this committee by the forest inspector of the Department of Agriculture, who inspected the land which it was intended to set apart as a forest reserve. I desire to have the letter filed in answer to Mr. Cox's statement.

The letter is as follows:

SOUTHERN TRUST COMPANY OF ATOKA, IND. T.,
Atoka, Ind. T., January 5, 1907.

Senator CHESTER I. LONG,
Washington, D. C.

DEAR SIR: It is reported to us that in a statement made by William T. Cox, forest inspector, touching the proposed Choctaw Forest Reserve, the following occurs:

"Unless a reserve is created in timber, at the rate it is now being acquired, it is certain within two or three years to pass into the hands of a few large lumber companies, chief of which are the Chicago Lumber and Coal Company and the Southern Trust Company."

This statement is wholly untrue as to the Southern Trust Company. The Southern Trust Company has never owned a foot of Indian land or a foot of Indian timber, and has never traded in a foot of either during its corporate life. It has not the power, under its charter, to deal in lands.

We have written letters of a similar import to this to the Secretary of the Interior, to the Secretary of Agriculture, and to William T. Cox, inspector.

We would thank you very much to make this letter a part of the proceedings on this subject.

Very respectfully,

SOUTHERN TRUST COMPANY,
Per A. G. MOSELEY, *Counsel.*

The SECRETARY OF THE INTERIOR. Now, Mr. Chairman, let us understand the situation. I shall send you this afternoon, as chairman of this committee, a copy of Mr. Campbell's memorandum opinion. I understand that you consider that as separate from the reservation question, and that the Department is at liberty to adopt its usual custom of making a report to Congress, both Houses of it, with respect to this whole matter.

The CHAIRMAN. Assuredly. This committee holds no strings on any of the Departments with regard to making reports to Congress. The thing we are looking into specifically is the action of the Department reserving this land from allotment.

The SECRETARY OF THE INTERIOR. All I want is to have it understood that I do not wish to do anything that in the slightest degree could be considered discourteous to the committee. As to my making a report to Congress, does this committee object to my making a report to Congress?

The CHAIRMAN. Not in the slightest degree.

Senator LONG. Not at all.

The CHAIRMAN. Is it your purpose, in making that report, to ask for legislation making permanent this tentative withdrawal?

The SECRETARY OF THE INTREIOR. No; but to simply submit the whole matter to Congress.

The CHAIRMAN. Then what do you want done?

The SECRETARY OF THE INTERIOR. To let this whole matter rest with Congress, unless something else should develop in the meantime.

The CHAIRMAN. What else—the opinion of the committee, or what?

The SECRETARY OF THE INTERIOR. I should be delighted to have the opinion of this committee.

The CHAIRMAN. Would it make any difference in your action?

The SECRETARY OF THE INTERIOR. I can not say whether it would or not.

The CHAIRMAN. Suppose there is no action on this subject before Congress adjourns, what would be the status of this matter?

The SECRETARY OF THE INTERIOR. So far as the patents are concerned, they would be issued, and the recommendations of the Department of Agriculture would be carried out.

The CHAIRMAN. Then, unless some affirmative action is taken by Congress asserting that you have no authority to do this thing, you will let it stand?

The SECRETARY OF THE INTERIOR. I should construe it that I had that authority.

Senator TELLER. Mr. Secretary, do you mean to say that you have authority to create a forest reserve on that property?

The SECRETARY OF THE INTERIOR. No, sir.

Senator TELLER. Then, what do you mean by saying that the recommendations of the Department of Agriculture would be carried out?

The SECRETARY OF THE INTERIOR. Unless Congress should——

Senator TELLER. You mean, then, that unless Congress says you shall not establish a reservation, you will?

The SECRETARY OF THE INTERIOR. I think that that ought to be determined by Congress.

Senator TELLER. But I understand you to say that if Congress does nothing you will carry out that decision establishing a reservation.

The SECRETARY OF THE INTERIOR. I am not prepared to say distinctly and definitely what I would do under those circumstances.

The CHAIRMAN. But I understand you to say that unless Congress takes definite action the tentative withdrawal will stand and the lands will not be subject to allotment?

The SECRETARY OF THE INTERIOR. Under that opinion.

The CHAIRMAN. And that is the opinion under which you will act?

The SECRETARY OF THE INTERIOR. Yes.

The CHAIRMAN. I should dislike very much to have the Congress of the United States brought face to face with the question whether the Secretary of the Interior may, upon the advice of the Attorney-General of his Department, interfere with what Congress might say were the express terms of a statute. That situation would not be very agreeable to me as a Member of the Senate, and I doubt whether it would be agreeable to other Members of the Senate or Members of the House of Representatives.

The SECRETARY OF THE INTERIOR. Is it not possible that you may change your mind after reading the opinion that we will present to you?

The CHAIRMAN. It is quite possible that I might change my mind.

The SECRETARY OF THE INTERIOR. Therefore, until you read the opinion——

The CHAIRMAN. But I can not conceive the possibility of the head of an Executive Department of the Government going quite that far in the administration of the affairs of his Department.

The SECRETARY OF THE INTERIOR. I have not gone "quite that far" at all. I have suggested here more than once that this matter should be considered after you have read the opinion. I stated a moment ago that I would send you the opinion of our law division,

prepared by Judge Campbell. The other matter, I said, would go to Congress with my report.

The CHAIRMAN. I further understood you to say—and I hope you will correct me if I did not understand you correctly—that unless Congress made some definite counter-statement by affirmative legislation, this withdrawal would still continue—would stand.

Assistant Attorney-General CAMPBELL. I would say that that branch of the case, or of the question involved, was not considered by me at all.

The CHAIRMAN. What is that?

Assistant Attorney-General CAMPBELL. That question was not before me.

The CHAIRMAN. What question?

Assistant Attorney-General CAMPBELL. As to what might be done in that event.

The CHAIRMAN. I understand your report was made as to the authority of the Secretary.

Assistant Attorney-General CAMPBELL. As to whether he had the authority.

The SECRETARY OF THE INTERIOR. The first point is that we have the opinion of the Assistant Attorney-General as to the legality of my action. The question of what I shall or shall not do later will come up for consideration later.

Senator TELLER. He has merely given you an opinion as to whether you could suspend operations for the time being, but your statement made awhile ago that if Congress did not do anything you would carry out the suggestions of the Secretary of Agriculture is equivalent to a declaration that Congress has determined to establish that forest reserve.

The SECRETARY OF THE INTERIOR. No.

Senator TELLER. You ought to be able to say whether that is a correct statement—whether you mean that.

The SECRETARY OF THE INTERIOR. I do not mean that. The whole matter is up for consideration with you, gentlemen. See the report and advise me as to your opinion of the legality or the contrary of my action.

Senator TELLER. Suppose this committee should say that you have not got that authority——

The SECRETARY OF THE INTERIOR. I would rather not go that far.

Senator TELLER. Let me finish the question. Suppose they should say that; what would be your attitude?

The SECRETARY OF THE INTERIOR. I can not answer that question at present. [To the chairman.] As to the other matters, Mr. Chairman, to which you referred a while ago, I shall report them, as I understand, to Congress?

The CHAIRMAN. That will be perfectly satisfactory to this committee; any report you may wish to make to Congress.

The SECRETARY OF THE INTERIOR. They have reference to matters that were not investigated in the Territory for want of time.

The CHAIRMAN. We do not wish to cut you off from calling the attention of this committee to any matters you wish it to consider, affecting the Territory—whether anything that was not called attention to while we were down there, or otherwise.

Senator TELLER. You could send to us any matters affecting the Territory, even though you sent them to Congress also.

The SECRETARY OF THE INTERIOR. One matter is, from our point of view, extremely disagreeable.

Senator TELLER. Just what?

The SECRETARY OF THE INTERIOR. We can not get the information we want. It is withheld from us. They refuse to give it to us.

Senator TELLER. Who refuses?

The SECRETARY OF THE INTERIOR. I will send in the report.

Senator LONG. To this committee?

The SECRETARY OF THE INTERIOR. Yes. It is not as to any matter that you investigated at all. It was outside.

The CHAIRMAN. As to the finances of the Indian tribes?

The SECRETARY OF THE INTERIOR. The financial condition generally, and what has been done, more particularly with reference to some warrants that they will not account for, and we can not allow for, and they are writing us every day about the matter.

Senator TELLER. I should like to ask you whether you have considered the question whether we ought to continue the school appropriations?

The SECRETARY OF THE INTERIOR. Yes.

Senator TELLER. What do you think about that?

The SECRETARY OF THE INTERIOR. I think we should. At one of the meetings of this committee I suggested that the segregated coal fund should be applied to that purpose.

Senator TELLER. I am pretty certain that we could not get that done in time.

The SECRETARY OF THE INTERIOR. I would by all means continue the appropriation, and, in fact, would have an increased appropriation.

Senator TELLER. Have you made any recommendation to Congress about it?

The SECRETARY OF THE INTERIOR. In our estimates, yes.

Senator TELLER. Did you consider that this new State will not be able to collect taxes for some time, and that there may be a necessity for the Government of the United States helping them out for some time, until they can collect taxes? That is not a matter that has been referred to this committee, but down in the Territory we ran across the question. We were told that if we did not do something the schools would be embarrassed.

The SECRETARY OF THE INTERIOR. I think that the $300,000 appropriation will take care of them until the State can come in and make an additional provision. That is more than we asked for. I think we asked for $175,000, but the other House increased it very properly to $300,000 as a result of a conference on the part of Mr. Leupp and members of the committee. It was thought that $300,000 would cover the needs.

The CHAIRMAN. You were speaking of the revenues of the coal lands being used for school purposes. I received a short time ago a communication from Mr. Leupp, inclosing a draft for the proposed incorporation, by which those lands would be incorporated and the individual members of the tribes made stockholders. It was a proposition submitted for consideration. I would like to ask you whether, in the consideration of the Department and of the Indian Office, that would be a good solution of the great difficulty in regard to the coal lands? Mr. Leupp did not say whether he did or did not recommend that particular plan, but submitted it for consideration.

The SECRETARY OF THE INTERIOR. You may remember that I referred to that in one of my statements here.

The CHAIRMAN. I remember you referred to it incidentally.

The SECRETARY OF THE INTERIOR. I expressed myself about it at the last hearing and said that I had the greatest admiration for Mr. Leupps's ability and appreciated his anxiety for this particular plan, and that it was worthy of the committee's deepest consideration; but I had a plan of my own, which was that the fund be taken and made into a sinking fund for the education of the children. Now, I do not want my plan considered in preference to Mr. Leupp's, if the other is the better plan. The committee can say which plan it considers best. But I told Mr. Leupp frankly that the ownership of stock by enrolled citizens leaves a certain amount of transferable property in the hands of those citizens which sooner or later would get out. His idea is that no transfer of stock should be made without the approval of the Secretary of the Interior.

The CHAIRMAN. We found in the Territory that there is a great deal of sharp practice going on in relation to everything. To express it generically, the people use the word "graft." What is the cause, do you think, of all that?

The SECRETARY OF THE INTERIOR. The love of money.

The CHAIRMAN. Does not that love of money exist just as strongly in other places as there?

The SECRETARY OF THE INTERIOR. Perhaps so. I do not know whether you gentlemen saw the statement of a newspaper correspondent that I had said those people would "go for the gold in an Indian's teeth." Some correspondent of a Chicago paper took that up and related the story of a grafter who was told by an Indian that he was feeling very badly, that he had a very bad toothache, and would have to go and see a dentist. The grafter told him by all means to go and to send the bill to him. The Indian went to the dentist and the dentist took out all his teeth—upper and lower—and gave him a new set and sent the bill to the grafter. It was a bill for $250. [Laughter.]

The CHAIRMAN. If that story is true, it would seem to indicate that the Indian is pretty well able to take care of himself?

The SECRETARY OF THE INTERIOR. Yes; but they are not all in that fix. The poor Indian woman who sold for $2,400 her property which was worth $25,000 was not of that class.

The CHAIRMAN. Is there any possible way to stop that tide of sharp practice there?

The SECRETARY OF THE INTERIOR. I can not suggest anyway, unless there could be some way of stopping the breed.

The CHAIRMAN. The practice is very decidedly in evidence there?

The SECRETARY OF THE INTERIOR. I think you gentlemen found that to be so, yourselves, did you not? Was there not a man there who boasted that he was the "king of the grafters?"

Senator TELLER. He was introduced as the king of the grafters.

The CHAIRMAN. Yes; but he gave us an illustration that had much force, and it suggested to my mind the question whether the course we have taken down there has not led up to this condition. The

particular authority that he was working under was an act of Congress, for which Congress was responsible and for which the Interior Department was not at all responsible.

The SECRETARY OF THE INTERIOR. I am glad to hear that.

Senator LONG. I shall have to take exception to the observation of the chairman. It was recommended by the Department, as I remember.

The CHAIRMAN. Well, Congress is responsible, and ought to be responsible, when it acts on the recommendation of a Department. This man of whom we have been speaking was working along that particular line—getting deeds to land for very much less than they were worth, because Congress had said that the Indian should not sell the land.

Senator LONG. Because the Indian could not give a perfect title.

The CHAIRMAN. And because the Indian could not give a perfect title the grafter was buying an imperfect title at very much less than a perfect title would have been worth. He himself said that if the Indian had been able to give a perfect title to that land it would have brought in the market a very much greater sum than he was paying. Now, the question arose in my mind whether this great crop of sharp practice down there has not been directly caused both by the acts of Congress dealing with the situation down there—acts often ignorantly passed—and the very effort which the Interior Department has put forth to prevent the practice. In other words, whether the line has not been drawn so close that it has prevented free competition as to the Indian's lands and left him to methods which an honest man would not take.

The SECRETARY OF THE INTERIOR. It is a tremendous question, but on behalf of the Department of the Interior I do not plead guilty to the charge.

Senator TELLER. Mr. Secretary, I want to say that this condition is not peculiar to this present Secretary.

The CHAIRMAN. Oh, no.

The SECRETARY OF THE INTERIOR. I suppose it will go on until the Indians are annihilated.

Senator TELLER. It has been going on for fifty years, or certainly thirty.

The SECRETARY OF THE INTERIOR. We are doing the best we can to protect the Indians.

Senator TELLER. We passed a law last winter extending the time to twenty-five years for the full bloods. That was worth more to the grafter than any bill passed for twenty years.

The CHAIRMAN. That is the act to which I referred, under which Mr. Bradley is working, and under which he says he has bought nine hundred farms.

The SECRETARY OF THE INTERIOR. He has bought the chance of getting nine hundred farms.

Senator LONG. He has the best legal advice that he can get, to the effect that after the expiration of the original agreement with the Cherokees and Creeks the full blood has the right to dispose of or alienate his allotment the same as the mixed blood; and that being a contract made with the Indians, and approved by them, Congress can not afterwards, without the consent of the Indians, place an additional restriction on them and extend the time twenty-five

years. At the expiration of the five years mentioned in the original agreement there will be litigation there to determine whether or not this action of last winter is valid. The best legal advice of lawyers in that country is that it is absolutely worthless.

The SECRETARY OF THE INTERIOR. The opinion—or what?

Senator TELLER. That extension for twenty-five years.

The SECRETARY OF THE INTERIOR. I suppose atmospheric conditions had a good deal to do with that opinion.

Senator TELLER. Well, that opinion exists here also.

Senator LONG. That opinion is also held by some of the best lawyers in St. Louis, I am told.

The SECRETARY OF THE INTERIOR. If you will mention the names of the lawyers I will tell you whether the opinion is worth something.

The Secretary of the Interior then withdrew, and later transmitted to the chairman of the committee the opinion referred to in the Secretary's foregoing statement, being the opinion of Hon. Frank L. Campbell, Assistant Attorney-General for the Interior Department, which is as follows:

[Memorandum.]

OPINION OF HON. FRANK L. CAMPBELL, ASSISTANT ATTORNEY-GENERAL FOR THE INTERIOR DEPARTMENT.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, January 3, 1907.

November 23, 1906, the following telegram was sent to the Commissioner to the Five Civilized Tribes:

> Upon request of Secretary Wilson, issue no allotment certificates for land within the limits designated by Jack Gordon for game preserve, and suspend preparation, execution, and recording of patents for any such land until further advised.
>
> E. A. HITCHCOCK.

On the same day a letter was addressed to the Commissioner to the Five Civilized Tribes stating that the Department was in receipt of a letter from the Secretary of Agriculture, dated November 22, 1906, to the following effect

> The member of the Forest Service who is engaged in examining the lands in the Indian Territory, for which Mr. Jack Gordon has made application to purchase for a game preserve, recommends that all allotments in the timber portion of the Choctaw and Cherokee (evidently Chickasaw) lands be suspended. I have the honor, therefore, to request that no allotments of such lands be approved pending his complete report, which will be received during the first week of December.

and confirming the telegram of that date.

December 3, 1906, the following telegram was sent to the Commissioner to the Five Civilized Tribes:

> Upon request of Acting Secretary Hays, 30th ultimo, departmental telegram 23d ultimo extended to all lands containing timber in Choctaw Nation east and south of Kiamichi River. Letter follows.

On the same day a letter was addressed by the Secretary of the Interior to the Commissioner to the Five Civilized Tribes confirmatory of the telegram of that date.

December 5, 1906, a telegram was sent to the commissioner to the Five Civilized Tribes by the First Assistant Secretary of the Interior, as follows:

> Answering telegram 4th instant referring to departmental telegrams November 23 and December 3, allow no selection of land containing pine timber, value estimated and appraised by commission, within the territory described in telegram of 3d instant.

December 8, 1906, the Secretary of the Interior addressed a letter to the Commissioner to the Five Civilized Tribes, as follows:

> There is inclosed for your information copy of a letter addressed to the Department by the Secretary of Agriculture, dated December 7, 1906, together with the map transmitted therewith, and you are requested to suspend all selections and the issuance of patents within the area indicated on the inclosed map until further advised.

A question having been raised as to the authority of the Secretary of the Interior to direct the suspension of the preparation and execution of patents under the allotment selections for these lands within the Indian Territory, there is submitted herewith an expression of the views of the Department as to the law which it is believed justified these several orders.

In order that it may be better understood how these several directions for the suspension of action within the territory above described came to be issued, it is necessary to briefly review the correspondence that has passed between the two Departments and others bearing upon these lands. An abstract of this correspondence here follows:

On January 24, 1903, acting chairman of the Dawes Commission wrote to the Forester that there would be a very large tract of unallotted land in the Choctaw and Chickasaw nations, and within one year the question of establishing a forest reserve in the Indian Territory might be taken up with the Choctaws and Chickasaws with the hope of obtaining their acquiescence.

October 13, 1905, the Forester wrote Mr. John T. Bailey, Talihina, Ind. T., in reply to his letter of October 7, concerning a proposed forest reserve in the Indian Territory; that he was much interested, but that the land in question was under the jurisdiction of the Secretary of the Interior, and that Mr. Bailey should correspond with the Secretary on that subject.

On May 3, 1905, the Forester wrote Mr. Jack Gordon, of Paris, Tex., in reply to a letter concerning Gordon's proposed game preserve in Indian Territory, that it would require an act of Congress to give the Secretary of Agriculture authority to purchase any private lands for forestry reserve purposes, and therefore no steps could be taken in the matter.

On January 4, 1906, the Secretary of the Interior transmitted to the Secretary of Agriculture a letter of the Commissioner of Indian Affairs, dated December 22, 1905, inclosing a resolution of the Choctaw national council, asking that the Choctaw and Chickasaw nations be permitted to sell to Jack Gordon and his associates 100,000 acres of land for a game preserve.

On January 13, 1906, the Secretary of Agriculture reported to the Secretary of the Interior that the land described in the inclosures sent him with the letter of January 4 is especially vaiuable for forest-reserve purposes. He asked that the Secretary of the Interior hold the matter under advisement until the forest assistant best

acquainted with the tract of land could make a report. He also agreed with the recommendation of the United States Indian inspector of the Indian Territory that the whole matter should be held under advisement until after the Choctaw allotments were complete.

February 5, 1906: Letter from Secretary of Agriculture to Secretary of the Interior said that the forest officer referred to in the letter of January 13, 1906, was not ready to make a direct recommendation, but the Secretary promised that the Forest Service would have an expert examination and report made upon the area during the approaching field season. He also suggested that the Secretary of the Interior should hold the proposition of Jack Gordon and others under advisement, in accordance with the recommendation of the United States Indian inspector, pending completion of Indian allotments.

On November 6 the Secretary of the Interior wrote the Secretary of Agriculture, and said:

> In view of section 16 of the act of Congress approved April 26, 1906 (24 Stat. L., 137), the Department would appreciate the information contained in a report of an expert examination of these lands with reference to their value as a timber reservation at as early a date as it may be available.

Section 16 referred to provides for the sale of the residue of the unallotted lands.

November 22, 1906: The Secretary of Agriculture informed the Secretary of the Interior that a report of the expert would be received during the first week in December and requested that no allotments for the timbered portions of Choctaw and Chickasaw lands be approved until his complete report is received.

November 23, 1906: The Secretary of the Interior wrote the Secretary of Agriculture that he had requested of the Commissioner of Indian Affairs an immediate report and that no patents of lands within the tract described would be approved until the report of the forest inspector was received.

November 30, 1906: The Acting Secretary of Agriculture amended the letter to the Secretary of the Interior dated November 22 to request that the approval of all allotments containing timber located in the territory east and south of the Kiamichi River be suspended pending the report of the forest inspector.

December 3, 1906: The Secretary of the Interior informed the Secretary of Agriculture that he would follow the suggestion of the letter of November 30, and that he had, by wire, instructed the Commissioner to the Five Civilized Tribes to suspend the approval of all allotments containing timber located on the territory east and south of the Kiamichi River.

December 7, 1906: The Secretary of Agriculture suggested to the Secretary of the Interior that he continue the suspension of approval of Indian allotments upon the area marked upon a map inclosed in order that Congress might have an opportunity to take action toward the establishment of a forest reserve. The Secretary also gave the names of the following people who have unqualifiedly expressed their approval of the suggested national forest reserve: Principal Chief McCurtain, of the Choctaw Nation; Indian Inspector, J. George Wright; Hon. Tams Bixby, Commissioner to the Five Civilized Tribes; Mr. Peter C. Hudson, auditor of the Choctaw Nation; Mr. B. F. Hackett, United States commissioner in Indian Territory; Judge T. C. Humphrey, of Atoka, Ind. T.

December 14, 1904: The Secretary of Agriculture transmitted the forest inspector's report to the Secretary of the Interior and suggested that it would be for the best interests of the Indians and the Government that a national forest reserve, with proper compensation to the Indians, be created within the boundaries indicated on the maps transmitted; also that the compensation could be provided from the receipts of the proposed forest reserve without direct appropriation.

In a report from the United States Indian inspector for the Indian Territory of November 10, 1906, on the character of the lands involved in the proposed purchase of Mr. Jack Gordon in the southeastern part of the Choctaw Nation, it is stated that none of the lands referred to are fit for agricultural purposes, although several Indians have been allotted certain tracts. No Indians are living on such allotments, which undoubtedly had been secured in the interest of outside parties, who desired to subsequently purchase the lands for hunting or for the pine timber located thereon. The inspector also says that the tract of land comprised within certain indicated lines on the two maps submitted may be considered the roughest, rockiest, and most mountainous in the Indian Territory, absolutely unfit for agricultura purposes; the valleys being in many instances mere gulches containing rocks and bowlders—mountains rising abruptly on each side from the creek beds. In some places where the valleys are wide there is but little if any soil. Two or three white settlers were found on this land who rented from the Indians and who have small clearings. The inspector also called attention to the fact that the Choctaw and Chickasaw nations, through their national councils, have, by resolutions, which have been forwarded to the Department, indorsed this proposed sale and recommended this land for disposition at not less than its appraised value.

The following extract is taken from a report of the Acting Director of the Geological Survey, dated November 23, 1906:

> In conclusion I desire to state that aside from the question of mineral deposits that these lands may contain or the agricultural or grazing character the problem of the preservation and disposition of the forest lands is of supreme importance. These forests deserve special consideration since the United States Bureau of Forestry is has been for some time engaged in devising means of extending the native forest in the regions of Oklahoma and Indian Territory. The Kiamichi Mountains are but a small part of the stony, mountainous forest lands in the southeastern Choctaw Nation, the most of which are public Indian domain. That all of these public lands are of little value except for the forest and should be preserved for the future inhabitants of the region is worthy of careful consideration. The income to be derived from these forests, properly conducted, would without doubt more than pay the appraised value of the lands, and at the same time the forest may be kept intact for the continued enjoyment and profitable use of the inhabitants in the future.

The following extract and report of Forest Inspector W. T. Cox is also worthy of consideration:

> Unless a reserve is created, timber, at the rate it is now being acquired, is certain within two or three years to pass into the hands of a few large timber companies, chief of which are the Chicago Lumber and Coal Company and the Southern Trust Company. The prices being paid for stumpage are exceedingly low. Oak has scarcely any value in the back districts, and estimates made by cruisers are invariably far below the actual stand. The Indians will, therefore, under present conditions receive practically nothing for their valuable timber holdings, and monoply of timber in the Territory will be certain.

Mr. Cox also reports that Principal Chief McCurtain, of the Choctaw Nation, is in favor of the Government buying all unallotted timber lands and administering them according to the regulations now in force on western reserves, it being stated that there is bound to remain, after all allotments are completed and advertised sales made, a large amount of rough mountain land which will be only a source of trouble, complications, and expense. He also claims that Inspector Wright; Hon. Tams Bixby, of the Dawes Commission; Peter J. Hudson, auditor of the Choctaw Nation; Mr. B. F. Hackett, United States commissioner at Antlers, and Judge Humphrey, of Atoka, are all in favor of a reserve. The forest inspector recommends that all unallotted lands within the lines indicated on the accompanying map should be purchased at the value placed upon lands and timber by the Dawes Commission.

It should be said at the outset that it is perfectly apparent from an examination of the correspondence above noted that the action of the Secretary of the Interior was taken with a view to submitting to Congress the propriety of making some provision that would not only protect these lands from the spoliation of the timber, but also to provide for due compensation to the Indians, it being understood that further legislation would be necessary to authorize such action. Indeed, a bill was prepared during the first session of the present Congress looking toward this end and indicating the views of the Secretary of Agriculture, a copy of which is attached hereto, marked "Appendix A."

The orders under consideration necessarily include within the exterior limits of the lands affected thereby many tracts that have been patented, many that have been selected, and for which allotment certificates have issued. As to all such lands it is needless to say that the orders above mentioned can have no effect to change their status, nor was it contemplated by said orders that such result would follow. But as to all lands that may have been selected, but for which no allotment certificates have been issued, and as to lands that remain unselected, the orders are intended to be operative, and the question therefore to be now considered is, whether the Secretary of the Interior is vested under the law with the authority to make such orders for the purposes hereinbefore indicated.

By section 441 of the Revised Statutes—

> The Secretary of the Interior is charged with the supervision of public business relating to the following subjects: * * * Third. The Indians.

By section 463 of the Revised Statutes it is further provided:

> The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

By this express provision Congress has confided to the Secretary of the Interior a general supervisory authority in all matters involving the rights of Indians who yet maintain their tribal relations. They right of Congress to thus legislate with respect to Indian affairs and its absolute control therein is no longer a question for discussion. (Cherokee Nation *v.* Hitchcock, 187 U. S., 294; Lone Wolf *v.* Hitchcock, 187 U. S., 553.)

The action of the Secretary of the Interior in the execution of the duties thus imposed upon him, "agreeably to such regulations as the President may prescribe," is the action of the President. (United States *v.* Blendauer, 122 Fed. Rep., 703; Wilcox *v.* Jackson, 13 Peters, 498; Wolcott *v.* Des Moines Company, 5th Wallace, 681; Wolsey *v.* Chapman, 101 U. S., 755.)

Even were there not express provision thus made for the Secretary's authority in these matters, yet he might under the general authority conferred in the creation of his Department have exercised his discretion in the execution of the laws falling within the domain of his Office. Speaking upon this power that rests with the head of the Department the Supreme Court said in the case of the United States *v.* Macdaniel (7 Peter, 1):

It is insisted that as there was no law which authorized the appointment of the defendant his services can constitute no legal claim for compensation, though it might authorize the equitable interposition of the legislature. That usage, without law or against law, can never lay the foundation of a legal claim, and none other can be set off against a demand by the Government.

A practical knowledge of the action of any one of the great departments of the Government must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law; but it does not follow that he must show a statutory provision for everything he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government would evince a most unpardonnable ignorance on the subject. Whilst the great outlines of its movements may be marked out and limitations imposed on the exercise of oits powers, there are numberless things which must be done that can neither be anticipated nor defined and which are essential to the proper action of the Government. Hence, of necessity, usages have been established in every department of the Government which have become a kind of common law and regulate the rights and duties of those who act within their respective limits, and no change of such usages can have a retrospective effect, but must be limited to the future.

Usages can not alter the law, but it is evidence of the construction given to it and must be considered binding on past transactions.

But there is not wanting specific legislation amply sufficient to justify the Secretary of the Interior in suspending temporarily the execution of a law where he believes the interests of the public or of those the subject of such legislation demand the further attention of Congress, with a view to the better protection of all interests, both public and individual.

So far as the legislation providing for the distribution of the lands in the Indian Territory and the breaking up of the tribal relations is concerned, ample authority in the way of general supervision has been conferred upon the Secretary. Sometimes this authority is conferred by words requiring his approval of the acts of those engaged in the work of distributing the lands and property of the several communities amongst the individuals and in other cases specifically giving him a general directory authority. See sections 11, 12, 15, and 21 of the act of June 28, 1898 (30 Stat., 495); also sectons 11, 14, 25, 30, 48, 55, 58, and 63 of the act of July 1, 1902 (32 Stat., 641).

Similar provisions in other legislation with respect to these Indians and their property might be easily referred to, but this suffices to show the general tendency of Congress to repose in the Interior Department the controlling power over the execution of the laws providing for the dissolution of Indian territorial rights.

The Attorney-General in an opinion rendered May 22, 1905 (25 Op., 460), discussing the duty imposed upon the Secretary of the Interior under legislation of this character in connection with the issuance of Indian patents, said:

"In view of the broad and general powers conferred upon the Secretary of the Interior in relation to the public lands and Indian affairs and the comprehensive supervision expressly given him by the acts of 1898 and 1902 concerning the matters therein dealt with, considered in connection with the contemporaneous and subsequent indications of Congressional intent, I can not conceive that Congress in confirming the agreement recited in the act of 1898 above quoted, which contains in itself nothing inconsistent with the necessity for the approval of the patents by you, intended a course should be pursued in this instance different from your practice in matters of this nature."

It will be seen from what the Attorney-General said that he held in mind the analogy which necessarily exists between the authority of the Executive to control public lands for public purposes and the exercise of a similar authority by the Secretary of the Interior over Indians lands for purposes consistent with the interests of the Indians. This analogy follows as a matter of course from the legislation which confers upon the Secretary of the Interior authority over the public lands of the United States and gives him complete jurisdiction over their survey and disposition, acting primarily through the Commissioner of the General Land Office. (Secs. 441 and 453, Rev. Stat.)

The decisions of the Federal courts, including the United States Supreme Court, are uniform in the recognition of the validity of all orders of withdrawal made by the Secretary of the Interior in the execution of the public-land laws for purposes consistent with the disposition of the lands subject thereto. A few citations of the holdings of the courts along these lines are furnished herewith.

Where a withdrawal of public lands along a railroad, in aid of which a grant has been made by Congress, is made by the chief officers of the Land Department in advance of the definite location of the road, that the lands may be preserved for the satisfaction of the grant, such withdrawal, if not made in opposition to the terms of the grant or other Congressional enactment, is a reservation by competent authority, and removes the lands embraced therein from the the category of public lands and excludes them from subsequent railroad land grants, containing no clear declaration of an intention to include them, though the withdrawal may have been ill-advised, it is not required for the satisfaction of the grant. (Northern Lumber Co. *v.* O'Brien, 139 Fed., 614 (1905).)

The President has authority at any time before the issuance of patent to withdraw public lands from sale and to declare them reserved for public purposes. (Russian-American Packing Co. *v.* U. S., 39 Ct. Cls., 460 (1904).)

A proclamation setting apart public lands as a forest reservation under act of March 3, 1891 (26 Stat., 1103), need not be signed by the President, but, if made by the Secretary of the Interior will be presumed to have been made by the direction of the President. (United States *v.* Blendauer, 122 Fed., 703 (1903).)

The President of the United States had power, in 1842 and 1849, by Executive order, and without special act of Congress authorizing him to do so, to reserve part of the public domain on the north end of Amelia Island, in the State of Florida, for a military reservation. (Florida Town Imp. Co. *v.* Bigalsky, 33 So., 450 (1902).)

The Secretary of the Interior can withdraw public lands from settlement and market at will, and it is immaterial what may be the basis of the order of withdrawal or what public lands it may affect. (O'Connor *v.* Gertgens, 89 N. W., 866; 85 Minn., 481 (1902).)

Where no right to withdraw indemnity lands of a railroad grant from settlement existed under the granting act until losses within the place limits were ascertained and selections made, but an order of withdrawal was made in 1872, and one settling on the land in 1886 filed a claim in 1887, after the withdrawal was canceled, and attempted selections by the railroad prior to such filing had been ineffectual, because not specifying losses in the place limits, in an action by the railroad to recover the property a judgment for defendant was proper. (Northern Pacific Rwy. Co. *v.* Spray, 67 Pac., 377 (1901).)

The act of Congress granting certain lands to the Northern Pacific Railway Company did not deprive the Executive Department of the power to withdraw from entry lands within the limits of the grant. (Hewitt *v.* Schultz, 76 N. W., 230; 7 N. Dak., 601.)

The President acts, in many cases, through the heads of Departments; and the Secretary of War having directed a section of land to be reserved for military purposes the court presumed it to have been done by the direction of the President, and held it to be, by law, his act. (Wilcox *v.* Jackson, 13 Pet., 498; United States *v.* Tichenor, 12 Fed. 415.) (See Wolcott *v.* Des Moines Company 5 Wall., 681, 688–689.)

According to the practice of the Government, as recongnized by Congress, the President may reserve from sale and set apart for public uses parcels of land belonging to the United States; and he may modify, by reducing or enlarging it, a reservation previously made. (Grisar *v.* McDowell, 6 Wall., 364.)

The order of the Secretary of the Interior of April 6, 1850, directing that the lands on the Des Moines River above the Raccoon Fork be reserved from sale, was, in contemplation of law, the order of the President, and had the same effect as a proclamation mentioned in said act of 1841. (Wolsey *v.* Chapman, 101 U. S., 755.)

A reservation of public land from entry, made by the Department of the Interior as coming within the limits of a railroad grant, operates to withdraw the land from homestead entries, even if found afterwards not to come within such limits. (147 U. S., 531; Hamblin *v.* Western Land Co.)

The President of the United States can, by proclamation or Executive order, reserve a part of the public domain for a specific lawful purpose. (United States *v.* Payne, 8 Fed., 883.)

The withdrawal by the Secretary in aid of the grant to the State of Wisconsin was valid, and operated to withdraw the odd-numbered sections within its limits from disposal by the land officers of the Government under the general land laws. The act of the Secretary was, in fact, a reservation. (Northern Pacific R. R. Co. *v.* Musser-Sauntry Co., 168 U. S., 607.)

From several of these authorities it will appear that the operative effect of the withdrawal was not in any way dependent upon the absolute necessity for its having been made, notably the decision of the Supreme Court in the case of Wolsey *v.* Chapman (101 U. S., 755), where an order of the Secretary of the Interior directing that the lands on the Des Moines River above the Raccoon Fork should be reserved from sale was in contemplation of law the order of the President, and it was fully effective to reserve lands from the operation of the pre-emption law, although, as a matter of fact, there was no grant above the Raccoon Fork, and hence no occasion for the order of withdrawal. A similar doctrine is also found in the case of the Northern Lumber Company *v.* O'Brien. (139 Fed. Rep., 614.)

The history of withdrawals in connection with the early railroad land grants will show that very often withdrawals were made of large amounts of territory in anticipation of probable legislation. Illustration of this is found in the records in the Land Office with respect to withdrawals in Iowa, made by telegrams on May 10, 1856, addressed to Dubuque, Sioux City, Chariton, Des Moines, Fort Dodge, and Council Bluffs land districts, substantially directing the withdrawal of all lands in these districts. On May 15, 1856, letters were addressed to these local officers explaining that the telegrams of the 10th were to withdraw from sale lands granted the State by act of Congress, which had passed both houses, for four railroads from the Mississippi to the Missouri River, said bill not having been approved until the 15th, and directing the continuance of the reservation until further orders.

An excellent illustration of the exercise of Executive discretion in the execution of the public land laws is found in the action of the President of the United States, who, by his proclamation of August 19, 1893, in providing for the opening of the land within the Cherokee Outlet and Tonkawa and Pawnee reserves, reserved section 13 in each township for university, agricultural colleges, and normal schools, "subject to the action of Congress." There was not only no direct authority for these reserves, but the law under which the lands were

opened to entry specifically provided for the disposition of said section with others, under the general provisions of the act of March 3, 1893 (27 Stat. L., 612), which did not in any manner contemplate the exercise of the authority of the President to withdraw said lands, even temporarily, from disposition. Notwithstanding this, Congress subsequently, by act of May 4, 1894 (28 Stat. L., 71), ratified and affirmed this action of the President in so reserving section 13 from disposition.

A case well illustrating the broad supervisory authority of the Secretary of the Interior in dealing with the public lands is found in Williams *v.* United States. (138 U. S., 514.) This case involved, among other things, a construction of section 2 of the act of June 16, 1880 (21 Stat. L., 287), making a grant to the State of Nevada, and also providing that when the lands had been selected the selection should be certified to said State by the Commissioner of the General Land Office and "approved by the Secretary of the Interior." In passing upon this feature of the case the court said:

The certification, after selection by the State, is to be approved by the Secretary of the Interior. This is no mere formal act. It gives to him no mere arbitrary discretion, but it does give power to prevent such a monstrous injustice as was sought to be accomplished by these proceedings. It gives the power to the Secretary to deny this application of the State and refuse to approve its selection, and hold the title in General Government until, within the limits of existing law or by special act of Congress, a party who, misinformed and misunderstanding its rights, has placed such large improvements on the property, shall be enabled to obtain title from the Government.

We would not be misunderstood in respect to this matter. We do not mean to imply that any arbitrary discretion is vested in the Secretary; but we hold that the statute requiring approval by the Secretary of the Interior was intended to vest a discretion in him by which wrongs like this could be righted and equitable considerations, so significant and impressive as this, given full force. It is obvious, it is common knowledge, that in the administration of such large and varied interests as are intrusted to the Land Department, matters not foreseen, equities not anticipated, and which are therefore not provided for by express statute, may sometimes arise, and, therefore, that the Secretary of the Interior is given that superintending and supervising power which will enable him, in the face of these unexpected contingencies, to do justice.

The language of the court in this case is of peculiar interest in so far as it construes the effect to be given to the provision that the selections of a State were not effective until they had received the approval of the Secretary of the Interior. The power of approval vested in the Secretary of the Interior and laid upon him the duty of determining whether the law had been properly executed and that all rights were properly considered in the making of said selections and their certification to him for approval. This bears directly upon the consideration of the matter we now have before us for the reason that at every important step taken in the dissolution of the Indian tribal relations and the distribution of their property, the approval of the Secretary is required. By placing this supervisory authority in the hands of the Secretary of the Interior, he is enabled to finally review the actions of his subordinates and thus determine whether or not the law has been properly executed. From this it necessarily follows, if, in the progress of the work, it shall be discovered that the interests of the Indians, considered either tribally or individually, require further consideration by Congress, that it is the duty of the Secretary to immediately call the attention of Congress to the situation, and, in the meantime, suspend the further execution of the law, so far at least as it may operate to remove the subject-matter from the control of Congress.

What has heretofore been said with respect to the Secretary's supervisory authority in respect to the land within the Indian Territory covered by these several orders of withdrawal has been largely based upon the general legislation whereby it is believed that he was fully warranted in taking the action under consideration. In addition, however, to such legislation, the provisions of section 16 of the act of April 26, 1906 (34 Stat. L., 137–143), should not be overlooked.

This section provides as follows:

That when allotments as provided by this and other acts of Congress have been made to all members and freedmen of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, the residue of the lands in each of said nations not reserved or otherwise disposed of shall be sold by the Secretary of the Interior under rules and regulations to be prescribed by him and the proceeds of such sales deposited in the United States Treasury to the credit of the respective tribes. In the disposition of the unallotted lands of the Choctaw and Chickasaw nations each Choctaw and Chickasaw freedman shall be entitled to a preference right, under such rules and regulations as the Secretary of the Interior may prescribe, to purchase at the appraised value enough land to equal, with that already allotted to him, forty acres in area. If any such purchaser fails to make payment within the time prescribed by said rules and regulations, then such tract or parcel of land shall revert to the said Indian tribes and be sold as other surplus land thereof. The Secretary of the Interior is hereby authorized to sell, whenever, in his judgment, it may be desirable, any of the unallotted land in the Choctaw and Chickasaw nations which is not principally valuable for mining, agricultural, or timber purposes, in tracts of not exceeding six hundred and forty acres to any one person, for a fair and reasonable price, not less than the present appraised value. Conveyances of land sold under the provisions of this section shall be executed, recorded, and delivered in like manner and with like effect as herein provided for other conveyances: *Provided further*, That agricultural lands shall be sold in tracts of not exceeding one hundred and sixty acres to any one person.

From this section it will appear that the Secretary of the Interior, under such rules and regulations as he may adopt, may sell the residue of unallotted lands left to the several Indian nations, the proceeds to be turned in to the credit of the respective tribes, and further, that he is given specific authority, "whenever in his judgment it may be desirable," to sell any of the unallotted lands in the Choctaw and Chickasaw nations, not principally valuable for mining, agricultural, or timber purposes, in tracts of not exceeding 640 acres to any one person for a fair and reasonable price, not less than the present appraised value. From these provisions it will be seen that Congress fully contemplated conferring upon the Secretary an exceedingly broad discretion in the disposal of unallotted lands and particularly within the Choctaw and Chickasaw nations. This being so, and the matter being confided to the discretion of the Secretary, it is not incumbent upon him to exercise his discretion with respect to the sale so far as to carrying into execution these provisions until, in his judgment, the entire subject is thoroughly understood, not only by him, but also by Congress. If he may, within this discretion, sell bodies of land to the extent of 640 acres to any one person, he may also, in the interest of securing the best results to the Indians, as well as to the general public, delay such sales until he can submit the matter to Congress with a statement of the conditions which, in his judgment, make such submission advisable.

It is not infrequent, in fact it may properly be said to be the rule, that in the execution of laws conditions grow up or are presented that were not and could not be foreseen. This is peculiarly true when the legislation relates to so new and complicated a matter as the administration of the affairs of the Five Civilized Tribes. When

such a situation confronts the executive officer, it is not only his right but his duty to advise Congress thereof, that it may determine as to the necessity for remedial or additional legislation. If continued action under existing law would have the effect of removing the matter beyond the jurisdiction of Congress, thus defeating any possibility of remedying the evil and protecting interests entitled to protection, the power to temporarily suspend action in the premises is absolutely necessary to make of any avail the presentation of the matter to Congress. Whatever power is necessary to enable an executive officer to properly and effectually discharge a duty devolving upon him is necessarily presumed to rest in him.

APPENDIX A.

A BILL To provide for the disposal of Indian land chiefly valuable for the timber thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States may, in his discretion, by proclamation set apart and reserve as national forest reserves, or parts thereof, any unallotted Indian lands not disposed of at the date of any such proclamation, and chiefly valuable for the timber thereon; and lands thus proclaimed shall thereafter, except for specific limitations herein contained, be subject to all the laws, rules, and regulations governing national forest reserves, the same as though proclaimed under authority of section twenty-four of an act approved March third, eighteen hundred and ninety-one, entitled "An act to repeal timber-culture laws and for other purposes:" *Provided*, That immediately after any such proclamation the value of Indian land thus created into a forest reserve shall be appraised by three appraisers, appointed one by the Secretary of the Interior, one by the Secretary of Agriculture, and a third by the Indians directly interested, in a way to be prescribed by the Commissioner of Indian Affairs, such appraised value to be reimbursed to the Indians in the following manner: If the proclamation creates any Indian land into a separate forest reserve, the gross proceeds therefrom, except any portion provided by law to be paid to States or Territories, is hereby appropriated, to be applied, under the direction of the Secretary of the Interior, to the payment of the appraised value of the said land until the total value has been reimbursed to the Indians affected by the proclamation. If, however, any Indian land is made part of an existing forest reserve, such portion of the gross proceeds from that entire reserve, after deducting any payments provided by law for States or Territories, is hereby appropriated to be applied to reimbursement of the Indians directly affected by the proclamation, as is represented by the ratio between the area of the Indian lands included therein and the total area of the reserve; all payments from the proceeds of forest reserve under this proviso to be made at the end of each fiscal year from and after the passage of this act: *Provided further*, That no interest shall be allowed upon said appraised values prior to the payment of money to any Indian fund in the Treasury under this act, such interest being totally accounted for by the expenditures of the Government incident to the care and administration of the Indians' timber land thus created into forest reserves: *And provided further*, That the addition to the Uinta Forest Reserve, created by proclamation of the President dated July fourth, nineteen hundred and five, shall be appraised as soon as possible after the passage of this act in the manner provided herein for other Indian lands, and the Indians affected by said proclamation shall be reimbursed in the same manner as is herein provided in the case of other Indian lands.

EXHIBIT F.

DEPARTMENT OF THE INTERIOR,
SECRETARY'S OFFICE,
Washington, D. C., January 15, 1907.

SIR: On January 8, 1907, the Secretary of Agriculture addressed a communication to the Secretary of the Interior relative to the area desirable for a forest reserve in southeastern Indian Territory. He advised the Secretary that the Forester, under his direction, had made a careful study and investigation of the matter and reported that the lands temporarily withdrawn from approval of allotment, as previously suggested by the Secretary of Agriculture, shown upon a map transmitted to the Department by letter of the Secretary of Agriculture, dated December 14, 1906, should be modified to include only the part colored "green" upon the map transmitted therewith. With said communication the Secretary of Agriculture transmitted three memoranda, namely:

1. Memorandum of principal correspondence concerning the proposed forest reserve in Indian Territory.
2. Memorandum concerning suspension of approval of allotments in southeastern Indian Territory.
3. A memorandum condensed from the other two.

On January 9, 1907, the Commissioner of Indian Affairs recommended that the proposed reservation be reduced in accordance with the suggestion of the Secretary of Agriculture, and—

that the withdrawal shall not in any way affect lands covered by allotment certificates heretofore issued, or lands that have been selected in allotment by citizens of the Choctaw or Chickasaw nations, irrespective of whether the certificates have been issued.

On January 12, 1907, the Commissioner to the Five Civilized Tribes was advised that the withdrawal made by departmental letter of December 8, 1906, was modified, and—

that the lands within the limits of the map transmittted herewith marked "green," which have not been duly allotted or selected by members of the Choctaw and Chickasaw nations, are reserved from allotment until March 4, 1907, unless previously changed or modified, in order that in the meantime Congress may consider the recommendation of the Agricultural Department that a national forest reserve be established within the area thus reserved. All previous withdrawals of land not reserved, as shown upon the map herewith transmitted, are hereby revoked.

On January 10, 1907, the Forester transmitted, at my request, a memorandum concerning a method of dealing with said proposed forest reserve in a way both to close up relations with separate Indians and furnish them a compensation for the property taken. He states that during the first period of five years, the Forester should dispose of as much timber as can be sold without injury to the reserve, in order that the individual Indians may receive as much return as possible before beginning on the fund for their general benefit.

The report and the Forester's memoradum mentioned therein were referred to the Commissioner of Indian Affairs for report on January

11, 1907, and under date of January 14 the Commissioner reported upon said papers, and expressed the opinion—

that if any of the lands in the Choctaw Nation are to be segregated for forest purposes, the Indian title should be extinguished and the Indians paid the appraised value thereof by the Government, and that title thereto should be taken in the name of the Government.

He further says that he would be in favor of canceling the allotments of land within the proposed forest reserve and pay the allottees from the proceeds of the sale of the forest lands the appraised value of their improvements and the difference between the actual value of said allotments and of the lands they select in lieu thereof were he not advised informally that the Department of Agriculture does not consider that allotments within the forest reservation will detract from its usefulness or interfere with the management and control thereof.

The Commissioner transmitted a draft of an item to be prepared authorizing the segregation of land for the purpose mentioned.

The Department is not prepared to recommend the enactment into law of the item submitted by the Commissioner of Indian Affairs, but is of the opinion that the Department should be authorized to enter into negotiations with the Choctaw tribe or nation, looking to the acquisition of the unallotted land desirable for the forest reserve, should the Congress conclude that it is desirable to establish any reserve in said nation.

At the hearing before the Senate Select Committee on Indian Affairs to Investigate Conditions of the Five Civilized Tribes the question arose as to the authority of the Department to make a temporary withdrawal of any lands for a proposed forest reserve. At my request the matter was referred to the Assistant Attorney-General for the Interior Department to ascertain and report whether the action taken by the Secretary of the Interior withdrawing said lands was within the scope of the authority of the Secretary of the Interior. The Assistant Attorney-General submitted an elaborate memorandum report on the 3d instant, which, in my judgment, fully maintains the action of the Department in withdrawing said lands. On the 9th instant, said memorandum was transmitted to the chairman of said Senate committee. A copy of said letter of transmittal and a copy of the memorandum report of the Assistant Attorney-General are also transmitted herewith.

Copies of the communication of the Secretary of Agriculture and the memoranda transmitted therewith, together with copies of the report of the Acting Forester and the letter of Mr. Hackett addressed to the Forester, dated December 17, 1906, are herewith transmitted, together with a copy of the map furnished by the Secretary of Agriculture, upon which the diminished reservation is indicated in "green." There are also inclosed copies of the letter of the Forester, dated January 10, 1907, the memorandum referred to therein, and the report of the Commissioner of Indian Affairs, dated January 14, 1907, together with a copy of the draft of legislation recommended by the Commissioner.

The whole matter is submitted to Congress for such action as may be considered advisable in the premises.

Respectfully,

E. A. HITCHCOCK.

THE PRESIDENT OF THE SENATE.

EXHIBIT G.

DEPARTMENT OF THE INTERIOR,
SECRETARY'S OFFICE,
Washington, D. C., January 9, 1907.

DEAR SIR: Pursuant to your request and my promise when before your committee this morning, I herewith transmit for examination and consideration by your committee, a memorandum report and opinion submitted to me on the 3d instant by the Assistant Attorney-General for this Department, at my request, in the matter of suspension of the approval of Indian allotments within certain limits in the southeast part of Indian Territory. I need only add that I have given this memorandum opinion very careful consideration and feel confident that under the authorities cited I did not exceed my lawful power as Secretary of the Interior in taking the action referred to.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

Hon. CLARENCE D. CLARK,
Chairman Select Committee to Investigate
the Affairs of the Five Civilized Tribes,
United States Senate.

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