

READJUSTMENT OF INDIAN AFFAIRS

HEARINGS BEFORE THE COMMITTEE ON INDIAN AFFAIRS HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

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II

READJUSTMENT OF INDIAN AFFAIRS

TUESDAY, FEBRUARY 27, 1934

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Washington, D.C.

The committee met in the committee room, Capitol, at 2 p.m., Hon. Edgar Howard (chairman), presiding.

Present: Representatives Howard (chairman), Cartwright, Rogers, O'Malley, Stubbs, Hill, Peavey, De Priest, Collins, and Christianson.

The CHAIRMAN. We will resume from the point where the Commissioner left off yesterday at the adjournment.

STATEMENT OF JOHN COLLIER, COMMISSIONER OF INDIAN AFFAIRS—Resumed

The CHAIRMAN. It was st^d that we should have about 5,000 copies of the hearings for the War Department and ourselves, as individual members of this committee, to send to our people, but I discovered that it was impossible to get in excess of 1,000 copies of the hearings, without a special resolution.

I have drafted such a resolution and I filed it this morning, and, of course, it will be referred to the Committee on Printing, and I am quite sure I will be able to get through, calling for a print of 5,000 copies of the hearing. I do not know for sure, but I am quite confident that it will be permitted, and then we will have an abundance of copies.

Mr. Commissioner, if you will please be kind enough to proceed.

Mr. COLLIER. Mr. Chairman, the title under consideration now is title III, beginning on page 25 of the bill.

Before taking up this matter, here is one preliminary statement that I would like to make with considerable care.

In earlier meetings of the committee it has been pointed out that through the allotment system, through the operations of allotments, there have been various rights which may be called vested or they may be called valid; at least, they are property rights in individuals to specified parcels of land.

We have repeatedly stated that such property rights of individuals are respected by the bill; that they are under the Constitution; and that insofar as they are not adequately respected by the bill, we want the bill changed in order that it may not be in violation of the due process clause of the Constitution.

I think it may be well for the record to point out that a "vested right" in property is not necessarily, in fact, it never is, an absolute right to do anything with the property. Every time the Government extends its control over business with a view to keeping the channels

of competition open, to control over production or any other interference, property rights have to be re-adjusted. Of course, a perfect example would be the operations under the present mode. You cannot reorganize any large system of business or land ownership without readjusting something. That readjustment must be within the Constitution.

In the case of these lands, it must be within the constitutional guarantees. Valid or vested individual rights must be protected.

Another thing to be pointed out is this: That while the allotment system has created rights, valid, and in some cases vested, those rights are enjoyed under a very rigid governmental supervision now. The allottee, for example, may not sell his land; he may not hypothecate his land. He may not even assert a right to a continuance of tax-exemption, because the Secretary of the Interior may declare him competent at any time, may fee patent his land to him and, at a stroke of the pen take away from him his tax exemptions that he has been enjoying.

Therefore, while the rights of Indians to allotted land held under trust are valid or vested, as the case may be, they are very definitely limited and subject not only to Congress, but, under existing laws, subject to an unlimited amount of administrative interference.

I dwell on this because it will become apparent in the analysis of these sections that there will arise cases—they will not be numerous or typical—but there will arise cases where under the operation of the proposed language an allottee would find himself required to make some adjustment, not merely enabled to make it, but required to make it.

If that adjustment can be demonstrated to be not only necessary for the common good but of advantage to him, of advantage to his property, then there is no confiscation and there is no disturbance of any valid or vested rights.

It will be exceptional, but there will arise cases where individual allottees under the operation of the language will be required to do things which they would not want to do.

If we may now proceed with the sections: Title III, section 1 is a declaration of policy. It says:

It is hereby declared to be the policy of Congress to undertake a constructive program of Indian land use and economic development, in order to establish a permanent basis of self-support for Indians living under Federal tutelage; to reassert the obligations of guardians where such obligations have been imprudently relaxed; to encourage the effective utilization of Indian lands and resources by Indian tribes, cooperative associations, and chartered communities; to safeguard Indian lands against alienation from Indian ownership and against physical deterioration; and to provide land needed for landless Indians and for the consolidation of Indian land holdings in suitable economic units.

Section 2 modifies all existing law in that it states:

Hereafter no tribal or other land of any Indian reservation or community created or set apart by treaty or agreement with the Indians, act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

It stops allotment in severalty. That is, it stops allotment in severalty, as under the allotment acts, general and special. It would not stop assignment. It would not stop all kinds of arrangements insuring individual landholding. They are contemplated under this bill, but it would stop assignment in severalty, with the conveyance of a title to an individual.

SEC. 3. The Secretary of the Interior is authorized to withdraw from disposal the remaining surplus lands of any Indian reservation heretofore opened or authorized to be opened, to sale, settlement, entry, or other form of disposal by presidential proclamation, or under any of the public land laws of the United States.

In referring to the authority of the Secretary of the Interior "to withdraw from disposal the remaining surplus lands of any Indian reservation heretofore opened or authorized to be opened, to sale, settlement, entry, or other form of disposal", the section relates to the surplus and ceded lands which temporarily are withdrawn from further entry.

Section 3 continues:

Any land so withdrawn shall have the status of tribal or other community lands of the tribe, reservation or community within whose territorial limits they are located.

This relates not to public domain but to the so-called surplus public lands ceded or taken by allotment and being held at the disposal of the Government to be turned over to whites in behalf of the Indians.

Continuing section 3 reads:

Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this act.

The final part of section 3 reads:

The Secretary of the Interior shall determine what lands—

Of these ceded lands—

lying outside of areas classified for consolidation under Indian ownership pursuant to section 6 of this title, are not needed by the Indians, and such lands shall be reopened to sale, settlement, entry, or other lawful form of disposal in accordance with existing law.

MR. ROGERS. Mr. Commissioner, these lands which the Indians own will be outside these areas?

MR. COLLIER. Yes, sir. It means this: There is a large number of cases where, under treaty, Indians have ceded lands which are to be disposed of for the benefit of the Indians by the Government. Often those lands have been awaiting disposal for a generation or longer. Nobody wants them. Again, under the operation of the allotment system, special areas are designated as surplus lands, and instead of being allotted, are held for disposal to whites.

This bill would prevent any more disposal of those lands, until a reexamination of the land is made. Then only the land that the Indians do not need can be so alienated to whites.

MR. ROGERS. But, Mr. Commissioner, the Secretary of the Interior would be the judge?

MR. COLLIER. Yes, sir; he would be the judge as to whether the tribe does or does not need the land.

That could be qualified in various ways, of course. He could be the judge along with the concurrence of the tribe. He could be required to recommend to Congress, and not have final discretion.

SEC. 4. The existing periods of trust placed upon Indian allotments and unallotted tribal lands and any restriction of alienation thereof, are hereby extended and continued until otherwise directed by Congress.

The trust period is continued in all cases until Congress shall direct otherwise. Section 4 continues:

The authority of the Secretary of the Interior to issue to Indians patents in fee or certificates of competency or otherwise to remove the restrictions on lands allotted to individual Indians under any law or treaty is hereby revoked.

Congress takes back that power, takes it away from the Secretary. I may say that that particular power has been abused with terrible results in years gone by. Section 4 continues:

No lands or other capital assets owned by an Indian community, or any interest therein, shall be voluntarily or involuntarily alienated: *Provided, however*, That the community may grant the use of the surface of, or any mining privileges in, any land to a nonmember, by lease or revocable permit for a period not to exceed one year, or with the approval of the Secretary, for a longer period, and may, with the approval of the Secretary, sell or contract to sell to a nonmember any standing timber, or dispose of any capital improvements, owned by the community.

I shall have some new wording to suggest there, but I will first explain the section as it stands.

At present all leases are subject to the approval of the Secretary of the Interior. This language would give to the Indian community an independent power to lease, for a term of not more than 1 year, and would give it the initiative in all leasing, but would require the approval of the Secretary for a lease of longer duration.

Mr. STUBBS. Mr. Commissioner, I see a weakness there, seemingly. It says:

That the community may grant the use of the surface of, or any mining privileges in—

for a period not to exceed 1 year.

It seems to me that if the community, after a mining company had gone in and made a great investment, for some reason would want to revoke that lease for a period of 1 year, it would work a hardship upon the mining company.

Mr. COLLIER. It would; but, of course, the mining company would not go in on those conditions. The mining company would insist on a 5-year lease, which would require the authority of the Secretary of the Interior.

Mr. ROGERS. By the terms of the bill he could get that?

Mr. COLLIER. Yes, sir; but that could be corrected by inserting on line 4, page 27, after "one year", the following language: "Nor without the approval of the Secretary to be renewed." We would not want a condition where the tribe would lease it a year, lease it another year, and then lease it still another year, thereby completely evading the restrictions which are intended to govern. In other words, it is an unrenovable lease of 1 year, or a lease which, if renewed, requires the approval of the Secretary of the Interior.

The CHAIRMAN. Mr. Commissioner, let me suggest right here that we could save a great deal of time when we come to the consideration of this bill, if your Office—and I say this to the members, to be considered after reading this over—if your Office will be kind enough to present in writing the amendments which you may desire, and have them here so that we will not have to stop and write them out while we are considering the bill.

Mr. COLLIER. Yes, sir; we will do that.

The CHAIRMAN. But I suggest to my colleagues on the committee, that while we are reading the bill, if any of us shall discover an amendment which we would like to offer, that we had better mark our copy and then have our amendment here typewritten, so that we won't have to stop any of our general consideration of the bill for amendments, because this is quite a lengthy bill, my colleagues, and it will probably keep our noses to the grindstone for quite a while, when we get into it.

Mr. COLLIER. I just mention in passing that we are going to suggest that the outside limit of a lease, even when approved by the Secretary, shall be 5 years.

Section 5 says:

No sale, devise, gift, or other transfer of Indian lands held under any trust patent or otherwise restricted, whether in the name of the allottee or his heirs, shall be made or approved: *Provided, however*, That such lands may, with the approval of the Secretary, be sold, devised, or otherwise transferred to the Indian tribe from whose lands the allotment was made or the chartered community within whose territorial limits they are located: *And provided further*, That the Secretary of the Interior may authorize exchanges or lands of equal value—

Mr. HILL. Should not that be "of" instead "or"?

Mr. COLLIER. Yes, sir.

* * * may authorize exchanges of lands of equal value whenever such exchange is in his judgment necessary for or compatible with the proper consolidation of Indian lands classified for the purpose pursuant to the authority of section 6 of this title.

The beginning of this section—

No sale, devise, gift, or other transfer of Indian lands held under any trust patent or otherwise restricted—

would allow a sale of Indian land by allottees only to the tribe or to the community. That is clear.

The second proviso:

And provided further, That the Secretary of the Interior may authorize exchanges of lands of equal value whenever such exchange is in his judgment necessary for or compatible with the proper consolidation of Indian lands * * *

He may permit an Indian to surrender a piece of land and get another piece of land of equal value, more available for use.

The CHAIRMAN. Contiguous to his own holdings?

Mr. COLLIER. Contiguous to his own holdings. It is merely an authorization of exchange, as a means toward consolidation.

Mr. KENNEDY. Mr. Collier, might it not be advisable sometimes to exchange a piece of land not of equal value?

Mr. COLLIER. It would not be safe to depart from the valuation principle there. Area could be no criterion. All exchanges under existing law require that we adhere to the valuation principle.

Mr. SIEGEL. The difficulty otherwise might be that a transfer would be allowed which would continue for the life of the transferee and might, through use of such a device, continue the allotment system indefinitely.

Mr. COLLIER. Section 6:

The Secretary of the Interior is authorized and directed—

this section is quite important—

is authorized and directed to classify areas of land allotted in whole or in part—

that is tribal or allotted—

now under restricted Indian ownership which are reasonably capable of consolidation into suitable units for grazing, forest management, or other economic purposes, and to proclaim the exclusion from such areas of any lands not to be included therein. In order to bring about an orderly and sound acquisition and consolidation of lands and to promote the effective use of Indian resources and the development of Indian economic capacities, the Secretary is hereby authorized and directed to make economic and physical investigation and classification of the existing Indian lands, of intermingled and adjacent non-Indian lands and of other lands that may be required for landless Indian groups or individuals; to make necessary maps and surveys; to investigate Indian aptitudes and needs in the agricultural and industrial arts, in political and social affairs and in education, and to make such other investigations as may be needed to secure the most effective utilization of existing Indian resources and the most economic acquisition of additional lands.

In carrying out the provisions he is then authorized to use other Federal departments, as well as the Interior Department.

The main substantive feature in section 6 is that the Secretary is directed to mark the areas to be consolidated.

That is important because it is only within those areas that he has certain powers, later to be explained in the bill. Those certain powers are not universal but are limited to those lands marked for consolidation, which would be much less than the land now allotted.

SEC. 7. The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to acquire, through purchase, relinquishment—

That means voluntary relinquishment—

gift, exchange, or assignment, lands or surface rights to lands, within or outside of existing reservations—

That is lands and their minerals or just the surface rights—

including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians for whom reservation or other land is not now available and who can make beneficial use thereof, and for the purpose of blocking out and consolidating areas classified for the purpose pursuant to the authority of section 6 of this title.

The Secretary is authorized, in the case of trust or other restricted lands or lands to which fee patents have hitherto been issued to Indians and which are unencumbered, to accept voluntary relinquishments of, and to cancel the patent or patents or any other instrument removing restrictions from the land.

There is hereby authorized to be appropriated, for the acquisition of such lands and for expenses incident thereto, including appraisals and the investigations provided for in section 6 of this act, a sum not to exceed \$2,000,000 for any one fiscal year. The unexpended balances of appropriations made for any one year pursuant to this act shall remain available until expended.

The Secretary of the Interior is hereby authorized to accept voluntary relinquishments from any Indian allottee or Indian homestead entryman, or from his heirs, of all rights in and to any land included in any Indian public domain allotment, homestead, or application therefor, which has been heretofore or may hereafter be made, where such land lies within the exterior boundaries of any Indian reservation or area heretofore or hereafter set apart and reserved for the use and benefit of any Indian tribe or band; and the Secretary of the Interior is hereby authorized and empowered to cancel any patent which may have been issued conveying such land, or any interest therein, to any Indian allottee or Indian homestead entryman.

That is a feature of local interest. There are some places where, in the first instance, there have been allotments made to individual Indians on public domain. At a later time, through Executive order, as a rule, or through act of Congress, the whole of the surrounding public domain has been made into a reservation for the tribe. He is permitted to relinquish his allotment to the tribe.

Mr. KENNEDY. Do you think that last arrangement is constitutional, Mr. Collier?

Mr. COLLIER. It is only an authorization to make a surrender.

Mr. SIEGEL. That provision is purely voluntary.

Mr. KENNEDY. It does not say that. It says—

The Secretary of the Interior is hereby authorized and empowered to cancel any patent which may have been issued.

And so forth.

The CHAIRMAN. I will ask you gentlemen outside the committee if you will be kind enough to announce your name for the benefit of the reporter, whenever you care to propound a question, please.

Mr. KENNEDY. R. L. Kennedy, Indian Rights Association.

Mr. SIEGEL. The first part of that reads that he is authorized to accept voluntary relinquishments. If there is any doubt as to the cancelation, I think it should read: "with the consent of the Indian." That would be satisfactory, Mr. Collier?

Mr. COLLIER. Yes, sir. We assumed that was all carried under the preceding language of the paragraph. It is intended to be a voluntary matter entirely.

Beginning on line 11, page 30, section 7 reads:

Title to any land acquired pursuant to the provisions of this section shall be taken in the name of the United States in trust for the Indian tribe or community for whom the land is acquired, but title may be transferred by the Secretary to such community under the conditions set forth in this act.

In this the community acts as an instrumentality of the Federal Government.

Section 8: Any Indian tribe or chartered Indian community is authorized to purchase or otherwise acquire any interest of any member of nonmember in land within its territorial limits, and may expend any tribal or community funds, whether or not held in the Treasury of the United States, for this purpose, whenever, in the opinion of the Secretary of the Interior, the acquisition is necessary for the proper consolidation of Indian lands.

That is merely an authorization for use of tribal funds by the tribe, to buy the land needed for consolidation, whether from a member or nonmember.

The Secretary of the Interior is authorized to transfer to an Indian tribe or community, and to accept on behalf of the tribe or community, any member's interest in restricted farming, grazing, or timberlands, and shall issue a non-transferable certificate in exchange, evidencing a proportionate interest in tribal or community lands of similar quality, if in his opinion such transfer is necessary for the proper consolidation of Indian lands.

I call your attention to that. We have now passed on into a grant of authority to the Secretary to act without a petition from an allottee.

Provided, however, That any Indian making beneficial use of such transferred lands shall be entitled to continue the occupancy and use of such lands—

That is, lands where the title has gone back to the tribe—

and to any improvements thereon—

As an alternative—

or to receive adequate compensation for such improvements, subject to the provisions of section 14 of the title. For the purpose of this section "proportionate interest" shall be construed to mean a right to use or to receive the income from an equivalent amount of tribal or community land of similar quality or to receive the money value of any lawful disposition of the interest transferred if such right of use is not exercised.

Mr. O'MALLEY. Mr. Commissioner, I notice in the first part of this paragraph, authority is given to the community, or rather to the Secretary of the Interior to transfer to a community restricted farming, grazing, or timberlands.

Mr. COLLIER. Yes, sir.

Mr. O'MALLEY. But it says nothing about the improvements thereon until you get down to where the provision is included that any Indian can continue the occupancy and use of not only such lands as are mentioned in lines 3 and 4, but also the improvements thereon. Would that mean that the transfer would be of the land and the improvements would still belong to the Indian?

Mr. COLLIER. He may continue to use the improvements or may be compensated for them in the event that they are transferred too.

I may say that this is the most difficult paragraph in the bill. It will require the most analysis in relation of every part to the other parts.

Mr. O'MALLEY. Of course, if he is compensated for improvements, it is taken for granted that he has transferred them.

Mr. COLLIER. Yes, sir.

Mr. O'MALLEY. But the language in line 4 does not provide for the transfer of improvements.

Mr. SIEGEL. I should say that it is legally included, because any fixed improvement on the land is included as a part of the land, and that would mean that the Secretary of the Interior would have transferred them. If he did transfer them, he could either give compensation or continued use.

Mr. O'MALLEY. How about a house?

Mr. SIEGEL. The house would be transferred with the land and the right to use it would descend, as the section later provides, or else they would receive compensation for it. The Secretary, however, need not transfer. He has the power to, but need not do so.

Mr. O'MALLEY. Here he does not need to transfer the improvements. He might transfer the land, but there is no authority to transfer the improvements.

Mr. SIEGEL. I think there is an authority, because any fixed improvement on the land is a part of the land technically.

Mr. COLLIER. May I suggest that we look at the remaining language, which will somewhat reflect back on this.

The CHAIRMAN. I think the remaining language will clarify the situation as suggested by Mr. O'Malley, as I remember from reading it. Let us see if it will not.

Mr. COLLIER (reading):

For the purpose of this section "proportionate interest" shall be construed to mean a right to use or to receive the income from an equivalent amount of tribal or community land of similar quality or to receive the money value of any lawful disposition of the interest transferred if such right of use is not exercised. A member's proportionate interest may descend to the heirs of such member but not to any nonmember, and his right of use of transferred land, if exercised, may similarly descend to the heirs of such member.

The Secretary of the Interior may sell and convey to an Indian, to an Indian tribe—

There is a repetition, "to an Indian", should go out—

The Secretary of the Interior may sell and convey to an Indian tribe or community, any restricted lands inherited by any member, whenever, in his opinion, the sale is necessary for the proper consolidation of Indian lands.

At present he may sell it to the whites. He could not sell under this provision:

The time and mode of payment of the purchase price of any lands authorized to be sold or purchased under this section shall be governed by the agreement between the parties, but insofar as practicable the purchase price shall be paid in annual installments equal to the estimated actual proceeds realizable from any lawful disposition of the land, and the vendor, if a member, may accept any right of use in tribal or community lands as satisfaction of the purchase price in whole or in part.

Mr. ROGERS. It says, "shall be governed by the agreement between the parties". Is the Indian owning the land one of the parties?

Mr. COLLIER. The Indian owning the land is one of the parties.

Mr. ROGERS. It said that by agreement of the tribe and the Secretary of the Interior those lands could be sold or transferred without an agreement.

Mr. COLLIER. He is certainly a party.

Mr. ROGERS. Suppose he does not agree, and the reading of the preceding language says that this land may be sold upon agreement between the Secretary and the tribe.

Mr. SIEGEL. He is usually a party but is not necessarily a party. The Secretary is authorized in the preceding paragraphs to transfer, with or without consent, and here also, as well, with or without consent.

Mr. COLLIER. This relates to the mode of payment of the purchase price.

Mr. SIEGEL. The Indian might be included and might not.

Mr. ROGERS. He might be excluded?

Mr. SIEGEL. Yes, sir. The thought of that paragraph is that the terms of payment should be so arranged that the community would be enabled to purchase. In other words, they would purchase out of what the Indian is now entitled to, the use or rental.

Mr. O'MALLEY. Is there any reason why this particular section should not specify that the party whose lands are to be transferred shall be a party to this agreement?

Mr. SIEGEL. There is a reason. One of the reasons of making a transfer or sale compulsory, in some instances, is that there may be a party who will hold out. Those lands which are an integral part are necessary for the purpose of consolidating the lands. However, the section carefully guarantees the equivalent in exchange.

Mr. COLLIER. May I suggest why I think in practice we should not leave it wide open? You will find a great many cases where land has a small rental value and no sale value. The community would be able to pay an installment price. It would not be able to pay cash down, either through the tribal funds or the available appropriations.

The individual Indian who did not want to have his land consolidated could, by insisting upon a cash price, block the entire transaction. Yet he should really not be entitled to do that because it is not proper, because his land could not be sold at all and because it is not probable his land would have any value beyond a low rental value.

Mr. O'MALLEY. Would it be a general case? It is an obstacle which would appear generally, is it?

Mr. COLLIER. No, sir; it would not be a general case, but it might be a rather important case, in a given, local situation.

Mr. ROGERS. Mr. Commissioner, could we not say that this means the Secretary of the Interior and the tribe, and that it might include the individual in it, but not necessarily so?

Mr. COLLIER. It almost always would.

Mr. ROGERS. He could be excluded?

Mr. COLLIER. Yes, sir.

May I say, departing somewhat from the technical language, and in explanation of it, that what we have to deal with here is a question of the compensation which could be made. The compensation might be any variety of things. Very often when an allotment was taken and title put back into the community, the payment would not be in money at all. It would be in a preferential right to use land, equivalent land.

Mr. ROGERS. Or use what he had?

Mr. COLLIER. Or equivalent land, but it often would be equivalent land.

Mr. ROGERS. In most cases he chooses to do that?

Mr. COLLIER. Take a family, for example, whose allotments are now scattered. It wants to get its holdings together. It would pool its preferential rights into one area.

Mr. ROGERS. I think it is a good thing where you permit him to use the same land.

Mr. COLLIER. Again there would be cases where there is a realizable, regular tribal income available to be paid in dividends under this bill or per capita under the old scheme. The individual might prefer to surrender his land in exchange for increased dividends, for a larger amount of annual income. We have got to allow for all those things. In other words, he may want to use that land or other land, or he may want to use that land plus more land lying beyond. He may want cash. He may prefer, even if the cash were available, to have it paid in installments, as we do in a spendthrift trust. We have to allow for all those varieties of compensation.

In assuring that due compensation is provided, of course, we are relying in the first instance on proper administration by the Secretary of the Interior. The tribe has an ultimate recourse to the courts in the event of abuse of discretion.

Mr. ROGERS. Mr. Commissioner, this is getting ahead, but I notice it refers to a separation under section 14. Could not we conceive of a case like this, where an Indian belonged to one tribe and they were trying to consolidate, and he chose to remain living with the other tribe, instead of exchange for land in the tribe in which he naturally belongs.

Mr. COLLIER. Yes, sir.

Mr. ROGERS. Under section 14, with the limitation, you say the land will be divided up equally between the members. Could not you conceive of a case where he might have part of his lands taken away, if he wanted to remain on his own land? Say he had 160 acres and only 80 acres could be assigned to each Indian.

Mr. COLLIER. In that case his right to an equivalent land would be protected.

Mr. ROGERS. But he would have to move in order to get it in that case, would he not, because this language here says subject to the provisions of section 14 of this title?

Mr. COLLIER. Let us read section 14.

Mr. ROGERS. Yes, sir.

Mr. COLLIER (reading):

Section 14: The Secretary of the Interior is authorized and directed to classify and divide the lands owned or controlled by an Indian tribe or community into economic units suitable for farming, grazing, forestry, and other purposes, and may lease or permit the use of, and may regulate the use and management of, such lands whenever in his opinion necessary to promote and preserve their economic use.

Section 14 merely means that where, for example, land should be blocked for grazing, he shall designate that it shall be blocked for grazing.

Mr. ROGERS. It does not mean it shall be divided into units?

Mr. COLLIER. That does not mean individual units at all, but classifying the land for its most effective use.

Here is a fact which is easily lost sight of: Here we are dealing with agricultural land within the consolidated area. Often there would be no need for any change at all in the status quo. Your agricultural land may be perfectly effective for use by that individual.

You might even get along without absorbing the title, except that then you would run into the problem of subdivision, as you go down through the heirship phase.

Practically the agricultural readjustments under this would be meager. There would be extensive readjustments of the control of grazing areas and timber areas, where you would block and operate a unit of 1,000 acres or less, whereas now you have to lease scattered areas of 20 or 30 acres.

We do not know whether the language in section 8 has yet by any means been perfected. We are hoping that the Committee will devote much thought to it in order that it shall be clear and shall accomplish the desired aims.

I think the aims are easier to secure agreement on, if we can only find language which will securely accomplish those aims.

I may add that this section is the one which may be expected to require a great deal of explaining to the Indians.

Mr. ROGERS. They will be vitally interested in this.

Mr. COLLIER. Yes, sir. They are very right in demanding that they be shown because they recall that the Re-allotment Act was presented to them as something which would do a certain thing and it did something else. No doubt the people who told them that thought it was going to do something else.

SEC. 9. The Secretary of the Interior shall assign the use of tribal or community lands to any member according to the right or interest of such member for a period not to exceed the life of the assignee and shall make rules and regulations governing such assignments.

Equal uses of land are not contemplated.

The Secretary of the Interior may in addition assign to any such member the right of exclusive occupancy of any community lands for farming or domestic purposes in proper economic units: *Provided*, That any Indian making beneficial use of land shall be entitled to preference in the assignment of the use of such land and to any improvements thereon or to adequate compensation for such improvements.

In a sense part of section 9 duplicates section 8, but it is an attempt to rivet home this guarantee of the property right being protected.

Now, reading from page 33:

All rights of exclusive occupancy of, and all physical improvements lawfully erected on, tribal or community lands, shall descend according to rules of descent and distribution to be prescribed by the Secretary of the Interior.

Mr. O'MALLEY. Mr. Commissioner, what do you assume that the rules of descent and distribution shall be in connection with this section? There is already an established form of rules?

Mr. COLLIER. A great many of them.

Mr. O'MALLEY. Rules of descent? Is it assumed that those rules will be necessarily what they are today?

Mr. COLLIER. Not exactly. Generally the thing follows State law, but in other cases it does not follow State law, but just tribal custom. We have varying conditions. Undoubtedly, the main factor of novelty which would be contained in such rules or any probate law—which I will speak of later—would be this, that something must be done to prevent the subdivision of holdings down to such a point that they cannot be used any more. That is the thing which must be guarded against.

Mr. O'MALLEY. Your Department undoubtedly has in mind some uniform rule to prescribe if this act were enacted.

Mr. COLLIER. It would not be uniform. I am inclined to think that for the time being, at least in the areas where tribal customs govern, those peculiarities should be followed because they are used to them, except in cases where they may lead to this excessive fragmentation of lands.

Mr. O'MALLEY. It is being followed now in the question affecting the allotted lands?

Mr. COLLIER. The main point is just this: That the State laws might compel the physical subdivision down to impossible points. You might have to substitute, for example, some scheme of primogeniture, so that a family must designate which of its members shall operate the area.

I may say at this point that the language of the bill now places on the Secretary of the Interior the task of formulating these rules and regulations. His action is final. I am sure that the committee will want to consider whether they want it that way or whether it will want him to recommend to Congress in that regard.

Mr. O'MALLEY. We face that problem in connection with some of these enrollment propositions.

Mr. COLLIER. Yes, sir.

Mr. O'MALLEY. There seems to be no uniform way in which you could decide these rules in connection with bills that are before the subcommittee.

Mr. COLLIER. Of course, that is another thing. At least in the matter of heirship, I have an idea that the committee is going to insist on bringing that control into Congress in some way, and not leave it discretionary with the Secretary.

Mr. ROGERS. Now, Mr. Commissioner, I notice that the Secretary may assign for individual use lands for farming or domestic purposes. Then he may prescribe rules whereby this assignment will descend.

Mr. COLLIER. Yes, sir.

Mr. ROGERS. But there is nothing here that would make it possible for the Secretary of the Interior, after he had assigned an individual certain lands, to take that land away during the life of that individual.

Mr. COLLIER. If an individual has no preferential right in the first instance, and gets an assignment of land to use it and abandons the use, then the proper thing is to give it to somebody who will use it.

Mr. ROGERS. But the language does not say that.

Mr. COLLIER. That would be under the rules and regulations governing such assignments?

Mr. ROGERS. Yes, sir.

Mr. COLLIER. It would seem clear to me, in connection with such land, that after you had once taken care of the vested rights, then the residual land should go to those who use it. For instance, a man creates improvements on land and then ceases to use the land; he would be entitled to those improvements.

Mr. ROGERS. In other words, under these rules and regulations, there could be included in there provision for the Secretary of the Interior to reclaim this, to assign it to someone else?

Mr. COLLIER. That could be made direct instead of leaving it optional.

Mr. ROGERS. That would be in the rules and regulations?

Mr. COLLIER. That would be in the rules and regulations.

Mr. ROGERS. Thank you.

Mr. COLLIER (reading):

I am going over this in a hurry because I know the committee is going to dwell on it a long time—

Section 10—

Wherever the Secretary shall find that existing State laws governing the determination of heirs, so far as made applicable to any restricted Indian lands by Congressional enactment, are not adapted to Indian needs and circumstances, he may promulgate independent rules governing such determination, including such rules as may be necessary to prevent any subdivision of rights to lands or improvements thereon which is likely to impair their beneficial use.

The Secretary may delegate to a chartered Indian community the authority conferred by this section.

That is, to make its own rules of descent.

Mr. O'MALLEY. It would seem to me, Mr. Commissioner, that section 10 should logically be a part of section 9.

Mr. COLLIER. It could be.

Mr. O'MALLEY. Or vice versa. At least, the last paragraph of section 9 deals with about the same thing that section 10 deals with.

Mr. COLLIER. Section 10 might well be moved up to line 3.

We have here the option, that the Secretary may make the rules about descent, or the tribe, with his consent, may make them.

Mr. DE PRIEST. That is in chartered communities?

Mr. COLLIER. Yes, sir; that is in chartered communities. I raise the question as to whether the Indians or Congress are going to want that discretion to be left with the Secretary, whether they may not want to direct him to report to Congress for you to act on the heirship laws and enact appropriate legislation.

SEC. 11. On and after the effective date of the passage of this act, and beginning with the death of the person presently entitled, all right, interest, and title in restricted allotted lands, but not including any proportionate interest acquired pursuant to section 8 of this title or any improvements lawfully erected, shall pass to the chartered community within whose territorial limits such lands are located or, if no community has been chartered, to the tribe from whose lands the allotment was made: *Provided, however,* That individuals who would be otherwise entitled, save for the provisions of this section, shall acquire a contingent interest in such lands, and title to any such land shall vest in such individuals when and only when the Secretary shall determine that such lands lie outside

any area classified for consolidation pursuant to section 6: *And provided further*, That prior to such determination the individuals otherwise entitled shall enjoy the use and income realized from any lawful disposition of such lands.

That will not be clear enough, but if you will allow me to go on, we will come back to it.

Mr. O'MALLEY. Mr. Commissioner, again the question of improvements comes up. This section 11 would pass to the tribal community all the land but not the improvements, according to the language in line 20.

Mr. COLLIER. Before coming to that, do you want to make clear this rather obscure language about "individuals otherwise entitled"?

Mr. O'MALLEY. All right.

Mr. COLLIER. I am going to ask Mr. Siegel to expand on that.

Mr. SIEGEL. This section is designed to provide that after the death of the person who is now regarded as the present owner of any lands, whether it be regarding allotments or lands which have passed into heirship status shall descend to the tribe or community, whichever is prescribed herein, but it is specifically provided that this should happen only if the land is within an area which is classified for consolidation.

In other words, we are not concerned with lands which, because they lie outside such an area cannot be consolidated into economic units.

We realize, however, that the determination will not be made for some time, and, therefore, we reserve the power to pass such land to the tribe or community in the event that the Secretary shall determine that such lands do lie within such areas, even after the death of some persons presently entitled, such death occurring after the passage of this act.

Any person who would acquire the land under the present laws of heirship, as modified perhaps by section 10, described herein as persons otherwise entitled to acquire, have only a contingent interest until that determination. I doubt if that language is entirely clear, where it says, "shall enjoy the use and income realized from any lawful disposition of such lands." I think it should read, "acquire and enjoy" until such determination.

It is further provided, "That prior to such determination the individuals shall be entitled to the use of the land and the income therefrom." Perhaps it should be income accruing, because some of it may not have been realized, but accrued during that period.

Shall I go on?

Mr. COLLIER. I wanted to make that clear first. Let us dwell on that for just a moment. A very substantial part of the Indian allotted land would not be within areas marked for consolidation. I think it is safe to say in the case of Oklahoma, for example, that on the remaining Indian allotted lands nine tenths would not be within areas marked for consolidation.

Mr. ROGERS. Mr. Commissioner, by "marked for consolidation", do you mean specifically to lay the boundary?

Mr. SIEGEL. Section 6 provides that.

Mr. COLLIER. Because in Oklahoma, as you gentlemen know, the land is so scattered. In the main in Oklahoma, it is going to be a matter of getting new lands for colonization. This proposal as to the descent of the title to the community applies only within the consolidated area. Hence, that confusing language.

Now, on the question of improvements: The improvements descend or, if taken, are compensated for, and the compensation descends.

Mr. O'MALLEY. To the heirs?

Mr. COLLIER. Yes, sir.

Mr. O'MALLEY. The lands do not, but the improvements do?

Mr. COLLIER. The underlying title goes to the tribe. Let us begin on line 10 (p. 34):

The Secretary shall issue to the individuals otherwise entitled—

That is, those Indians who might later be brought within a consolidated area, if they have not yet—

a nontransferable certificate evidencing a descendible interest in tribal or community lands of similar quality in the proportion which the acreage of the farming, grazing, or the timber lands, whichever, passing to the tribe or community at any time, bears to the total tribal or community acreage of farming, grazing, or timber lands: *Provided, however*, That such persons shall enjoy a preference in the assignment of lands passing to the tribe or community in accordance with the provisions of this section.

No will purporting to make any other disposition of such lands shall be approved.

This carries down into heirship the same attempt to guarantee the individual property rights applied in the first instance to the land of living Indians. They get the preferential right or they get the equivalent in value.

No will will have any validity which contravenes these provisions. Here again I am confident, in a measure, that the ideas will have unanimous approval but the problem is to get legislation which unquestionably accomplishes the result sought.

SEC. 12. The Secretary of the Interior is authorized and directed to issue to each member of an Indian tribe or community which owns or controls lands allotted in whole or in part a nontransferable certificate evidencing the member's right to an equal interest in all tribal or community assets, including the right to make beneficial use of a proportionate share thereof: *Provided, however*, That in the administration of sections 8, 9, 10, and 11 of this title, members so entitled may be given the right to actual beneficial use of more than their proportionate shares of such tribal or community lands and resources: *And provided further*, That in the administration of sections 8, 9, 10, and 11 of this title, appropriate deductions may be made from the undivided interest of any member proportionate in value to any special interest acquired or inherited by such member, in exchange for property passing, transferred, or sold, to a tribe or community, or any restricted lands retained in severalty by such member.

The effect of that is this: Every member of the community, in the matter of what his equity is to be, takes a point of departure from a sort of norm. If he surrendered land to the tribe without compensation, he arrives above the norm and has a higher equity in the land, in its earnings or the use of it. If, on the other hand, he sells the land to the community and takes the cash, then, obviously, his equity in the land should be less.

The Indian who voluntarily surrenders his land gets paid in an increased equity, in the right to use more land, the right to more income. Whereas, the Indian who has to be bought out, while still a member of the community, would not have as large an equity as the Indian who contributed something, turned in real property to the community.

Mr. KENNEDY. In connection with that, on page 32, lines 17, 18, and 19 state:

The Secretary of the Interior may in addition assign to any such member the right of exclusive occupancy of any community lands for farming or domestic purposes in proper economic units.

In this section 9 there is no equal distribution, but it reserves it to the discretion of the Secretary of the Interior as to the extent of the land allotted to each Indian.

It is not a question of having disposed of his land and thereby no longer having an interest in it, but gives to the Secretary of the Interior a discretion to allot a larger or smaller amount, in his judgment.

Mr. COLLIER. Subject to these preferential rights, subject to all of the preferential rights prescribed by relinquishment.

You have got to have flexibility. If the Secretary has to go out and by purchase acquire large new areas of land, or get them in some other way, he is going to be guided by readiness to use the land. He is going to assign land to those who want to live on it and work it. But in all those cases, subject to these conditions, you will observe that the individual who surrendered the land acquires a correspondingly greater equity in preferential use.

Ordinarily, the appropriation regarding the use of areas would not be done by the Secretary at all but by the chartered community.

Mr. SIEGEL. Mr. Kennedy, is it your opinion that this section does not protect their interests, which are especially affected by reason of transfer and inheritance under sections 8 and 11?

Mr. KENNEDY. Not exactly. It seems to me it gives discretion to the Secretary of the Interior to allot to any Indian a larger proportion than the others are entitled to.

Mr. SIEGEL. Sections 8 and 11 assure each individual who has transferred and whose land has descended to the community, a proportionate interest. Section 12 refers only to the equal interest which any member of the tribe might get as a member subject to these preferential rights. And the assignment made by the Secretary, within the limits marked by that extent of interest there, you find in sections 8, 11 and 12. That is, every individual may have two or three interests. He has an interest which he may acquire by reason of transfer or by reason of the fact that the property has descended to the community or tribe, which is proportionate to what he had before.

In addition to that, he has a right to participate equally in any other tribal lands with all other members.

Then the extent of that interest is all defined, and within this interest the Secretary makes his finding.

Section 12 does provide that with regard to the equal right which everybody has as a member, that an additional right may be given to those who make beneficial use. It includes the object which the Commissioner just stated, and it includes another object which might be added, which is:

We recognize that one of the advantages of private ownership is the provision of an incentive to use and development, and, as a substitute of the incentive provided by private ownership, it is herein provided that a person who uses land rather than depending on the income from it may get more than an equivalent interest as a member.

Section 12 in no way qualifies the right of an individual in the property which he has acquired by reason of transfer either to the community or descent to the community. It is merely with regard to the interest which he has as a member in any other land.

Probably section 12 should read that, "each individual" and "evidencing the member's right", as a member, "to an equal rate as a member."

Mr. COLLIER. May I indicate, Mr. Kennedy—and I think it will enlighten us all—how it is practically going to be done?

In a case where consolidation is decreed; where exchanges have been made before any new land is added; where there is only enough land for the use of those who have land now, what would be the situation of those having the basic equity? They would not have any land. The preferential rights of those whose lands made up the proposed area would cover the whole area of land presently possessed. The only way that those members who did not have any land could get any land would be through the acquisition of new land by purchase.

This is a point that has been obscure, particularly to the Indians.

Mr. KENNEDY. In that connection I call your attention to page 26, line 10, the last paragraph of that section, to the effect that:

The Secretary of the Interior shall determine what lands, lying outside of areas classified for consolidation under Indian ownership pursuant to section 6 of this title, are not needed by the Indians, and such lands shall be reopened to sale, settlement, entry, or other lawful form of disposal in accordance with existing law.

Mr. SIEGEL. Where is that?

Mr. KENNEDY. The last paragraph of section 3 on page 26. Now, if land lies outside of the area classified for consolidation, what becomes of that Indian's right?

Mr. COLLIER. This is not allotted land but relates to surplus or ceded lands, which is totally another matter. It merely says that when the secretary determines that a given piece of surplus or ceded land is not going to be needed by the Indians, then it can be sold under existing law for the benefit of the Indians.

Mr. KENNEDY. It does not refer to allotments?

Mr. COLLIER. No, sir. I would like to dwell on that point for a moment and get it into the record: Various Indian tribes have sent in either protests or queries. They want to know, "Is this bill going to work so that the land, now allotted to Indians, will be taken and divided up with the Indians who have not got any land." They say that is confiscation. Naturally it would be. These somewhat complicated provisions may not be the best language. Their intent is to establish that the land which allottees have been thrifty or lucky enough to have kept shall not be taken and divided among other Indians. An organization is formed of all of those entitled to be members of the community, and then if new land is acquired, the new land passes equally to all the members.

The individual who has surrendered land to make up the original nucleus of community land has a preferential right to hold that land, take other land of equal availability and value, and, in addition, he has his share of the new land as a member of the community.

In effect, the allotted Indian, whose land goes into the community, keeps what he has got and gets the additional amount represented by his share in the new land as a member.

That point is the hardest one to make clear, at least by correspondence, to Indian groups.

Mr. ROGERS. Mr. Commissioner, is it not going to be just a little hard to make the Indian understand exactly what all of his rights are? That is going to be a very great problem, is it not?

Mr. COLLIER. It is hard.

Mr. ROGERS. Even after the bill passes, he may choose something which, if he fully understood, he would not have chosen, but would have chosen something else.

Mr. COLLIER. We have to depend on his being wise and well advised, and, above all, getting competent local people under these chartering arrangements who will explain the local charters to their members.

Mr. ROGERS. His choice is going to be very important, and once he makes his choice—

Mr. COLLIER. His choice might be remade.

Mr. ROGERS. It might not.

Mr. COLLIER. He cannot surrender that which is inalienable, his right to a proportionate interest.

Mr. ROGERS. He could not make a rechoice, provided he made a choice and took land at another place, as an example.

Mr. COLLIER. Suppose an Indian decided on this body of community land; he did not want to keep what he got, but surrendered his preferential rights and asserted it over there.

Mr. ROGERS. Yes, sir.

Mr. COLLIER. Of course, he might make a mistake.

Mr. ROGERS. But he could not correct it.

Mr. COLLIER. He could correct it by negotiation with the community. There is no end of swapping in the community. We have a perfect illustration in the Pueblo grants today, which are held in common, but in which every district is individually owned.

Mr. ROGERS. What is the situation there?

Mr. COLLIER. Your Pueblo Indian born today is just in the position of the newer member of the community. Most of the Indians do differently, but the Pueblos always try to have common land which can be allotted to the new member or which a boy can always go out and get. If he cannot, and there is no common ground, he has to do something for somebody else that gets him a piece of ground.

It often goes back and forth continuously within a community, but it cannot pass between an Indian and an outsider.

I never saw a case where a Pueblo Indian did not have exact knowledge of what his rights were. They get used to it. As soon as they have stability they will find out. There will be blunders made in the beginning.

Mr. ROGERS. Mr. Commissioner, would there be anything to hinder a smart Indian under this arrangement from, in the course of time, accumulating a good many tracts of land from his brothers?

Mr. COLLIER. I think there would be. This may be looked upon adversely, too, but the proportionate interest is there. A man has got more because he surrendered something. The equal interest is there.

Mr. ROGERS. Yes, sir.

Mr. COLLIER. But the acquisition of land otherwise depends on beneficial use.

Mr. ROGERS. If he could not use it all beneficially, he could not accumulate a number of tracts?

Mr. COLLIER. He could not accumulate a lot of land under this unless his tribal council and the Secretary of the Interior are asleep on the job. Sometimes they are asleep on the job. There are cases in the Pueblo area where that has been done through the Government, but it is upset after a while.

Mr. KENNEDY. I do not want to interrupt, but, as I stated, it seems to me that the Secretary of the Interior is given a considerable discretion in this matter, because in section 9 it says: "The Secretary of the Interior shall assign the use of tribal or community lands to any member according to the right or interest of such member * * *" and then it says: "The Secretary of the Interior may in addition assign to any such member the right of exclusive occupancy * * *"

That is a very wide discretion.

Mr. COLLIER. Those are the two things. He shall award any member what his preferential rights entitle him to.

Mr. KENNEDY. That is very true.

Mr. COLLIER. That he shall. He may from the new lands and the surplus lands assign to any member the right of exclusive occupancy for farming or domestic purposes in proper economic units.

Mr. KENNEDY. Is that limited to new lands?

Mr. SIEGEL. I think Mr. Kennedy may have noted a weakness in the drafting. You are saying that the right or interest should qualify all interests assigned. That right or interest is defined by sections 8, 11, and 12; section 8 with regard to transferred property, section 11 with regard to property descending to the community, and section 12 with regard to remaining lands in which he only has an interest.

Sections 8, 11, and 12 considered together give every individual Indian exactly what he has now, that is, his same individual interest in all land which has been allotted, and an equal interest as a member in all lands which have not been allotted, including lands which will be purchased.

Mr. KENNEDY. That comes in the first sentence of section 9?

Mr. SIEGEL. I think you are perfectly right in saying that the phrase "According to the right or interest of such member" should qualify not only assignments but the assignment of an exclusive right of occupancy. That was intended to cover everything.

Mr. COLLIER. Is that clear now?

Mr. KENNEDY. It does not seem to me to be so worded.

Mr. SIEGEL. I think you are right. It should be redrafted.

Mr. COLLIER. It should be reworded. The word "may" is the thing that is wrong. It should be "shall", subject to the conditions in the specified sections. That would be controlling then.

Mr. PEAVEY. Mr. Commissioner, the passage of an act of this kind, that so greatly and far-reachingly seeks to settle and fix the rights and ownership and limitations and restrictions, and so forth, and so forth, of all individual and tribal Indian ownership, will that in effect act

as an estoppel on the final decision for all time on the part of Congress from the change of tribal rules and the right of members to participate?

Mr. COLLIER. No, sir, not in any way.

Mr. PEAVEY. Not in any way.

Mr. COLLIER. We keep away from that piece of hot iron in this bill.

If this bill settled those rights we would never pass it, because the contention would be so acute. It may be that we ought to cover it in this bill, but we left it out because we do not want to make the bill a football of the enrollment groups. We are hoping that your subcommittee of this committee will settle that for us.

Mr. ROGERS. What is the qualification—three fourths?

Mr. COLLIER. That has to do only with the voting right in order to decide whether a community wants a charter.

Mr. ROGERS. What would be the qualification?

Mr. COLLIER. The same qualifications that make a man a member now. We would follow the existing conditions in a given place. Those who are enrolled—

Mr. DE PRIEST. Members by blood?

Mr. COLLIER. It is so varying. Everything has been done about enrolling at different places. Some enrolled folks are without a drop of Indian blood.

Mr. DE PRIEST. They are supposed to have.

Mr. COLLIER. No, sir; just intermarried or admitted through act of Congress or act of the tribes, and there is no blood rule or any other formula. That is the trouble. That is why enrollment bills must be handled carefully so that they will not be a precedent for the next one coming along.

Since that question is so involved and controversial, we left it out of this bill.

Mr. DE PRIEST. May I ask one question not on this bill? Have the different societies who are friends of the Indians in the West read over this bill?

Mr. COLLIER. We are getting this bill out generally. Thousands of copies have gone out to all Indian groups to begin with.

Mr. DE PRIEST. They have somebody here to protect the interests of that association?

Mr. COLLIER. Yes, sir; several organizations right here in Washington, the Indian Rights Association, represented by Mr. Kennedy; Indian Defense Association, General Federation of Women's Clubs, National Association on Indian Affairs.

Mr. DE PRIEST. They have gone into this matter further than the members of the committee, the new members particularly, and I think they ought to have a copy of the bill to study it.

Mr. COLLIER. They have been studying it and they are now ready to testify, I am quite sure.

This came out when you were not present, Mr. De Priest. It is now being put up to the Indians for referendum. Congresses of all Indians in the different parts of the country are being called. The plains tribes are meeting, beginning Friday.

Mr. DE PRIEST. They will be guided by what the Indian welfare groups say about it?

Mr. COLLIER. They are studying it hard and are on record favoring the general principles of the bill, but not committed to any detail of the bill.

Section 11 has been disposed of. Now, referring to section 13 on page 35:

Each certificate issued pursuant to the authority of any section of this title shall be issued in triplicate.

That is, certificate of membership—

one copy of which the Secretary of the Interior shall retain in a register to be kept for the purpose and the others of which he shall forward to the tribe or chartered Indian community. The said tribe or community shall deliver to the Indian in whose favor it is issued one of such certificates so forwarded and shall cause the other to be copied into a register of the tribe or community to be provided for the purpose, and shall file the same.

It further states:

The Secretary may delegate to a chartered community the authority conferred by this section and may countersign certificates of interest issued by such community to its members.

That means that each individual Indian would know exactly what his rights were.

SEC. 14. The Secretary of the Interior is authorized and directed to classify and divide the lands owned or controlled by an Indian tribe or community into economic units suitable for farming, grazing, forestry, and other purposes, and may lease or permit the use of, and may regulate the use and management of, such lands whenever in his opinion necessary to promote and preserve economic use. The Secretary may delegate to a chartered Indian community the authority conferred by this section.

The object of this section is simply to get the lands blocked so that they can be economically used.

SEC. 15. The Secretary of the Interior is authorized and directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, and like purposes. The Secretary may delegate to a chartered Indian community the authority conferred by this section.

All the authorities mentioned in section 15 are already being assumed by the Department and are presumptively legal, section 15 makes those authorities definite.

The declaration that sustained yield shall be practiced in the forests is very important. It is a direction.

In the case of the Menominee Tribe, Congress made a direction of that kind. It was not followed by the Department. Much of their timber was devastated, and, as a result, they have a claim against the Government, an assertable and collectible claim, that they were protected by a specific direction from Congress that the timber should be operated on a perpetual yield basis. The other tribes are entitled to a similar protection.

SEC. 16. The Secretary of the Interior is authorized to proclaim new Indian reservations on lands purchased for the purposes enumerated in this act, or to add such lands to the jurisdiction of existing reservations. Such lands, so long as title to them is held by the United States or by an Indian tribe or community, shall not be subject to taxation, but the United States shall assume all governmental obligations of the State or county in which such lands are situated with

respect to the maintenance of roads across such lands, the furnishing of educational and other public facilities to persons residing thereon and the execution of proper measures for the control of fires, floods and erosion, and the protection of the public health and order in such lands, and the Secretary of the Interior may enter into agreements with authorities of any State or subdivision thereof in which such lands are situated for the performance of any or all of the foregoing functions by such State or subdivision or any agencies or employees thereof authorized by the law of the State to enter into such agreements, and for the payment of the expenses of such functions where appropriations therefor shall be made by Congress.

No taxation of any of these lands, old or new, is permitted. The Government assumes the upkeep of the lands, and the services upon them. Naturally, a State is not going to do the work unless there is a tax.

Mr. ROGERS. Mr. Commissioner, there is nothing in this which would keep the Secretary of the Interior, provided he wanted to do so, from spending all or nearly all the money which is provided here for the purchase of new lands in a given area.

Mr. COLLIER. No, sir.

Mr. ROGERS. In other words, there would be nothing that would guarantee that any of that money would have to be spent in any given State, regardless of how many Indians were in that State.

Mr. COLLIER. He is directed here simply to ascertain the needs and proceed to buy the land.

Mr. ROGERS. Mr. Commissioner, not criticizing at all, but we have had quite a little experience with appropriations that are not earmarked, being spent all in one place. I just raise that question.

Mr. COLLIER. May I say what happened?

Mr. ROGERS. Yes, sir.

Mr. COLLIER. This is an authorization of an appropriation. It would be budgeted, duly budgeted.

Mr. ROGERS. And when the appropriation is made, it could be earmarked, if necessary?

Mr. COLLIER. And, in fact, it would be earmarked, if we get this reformed budget, Congress would have to know in advance where the moneys were going to be spent, because even under the existing appropriation system you could put on any limitations you wanted to.

Mr. ROGERS. But as the system is now, it would more likely not be put on unless you get the budget system of which you speak.

Mr. COLLIER. You can always put a rider onto any appropriation bill, directing anything. That would make it necessary, automatically. We would have to let you know in advance where the money was going to be spent, and you could change it if you wish, and so forth.

Mr. PEAVEY. The gentleman, of course, is referring to the action of the Senate and not the House when he talks about rider amendments.

Mr. COLLIER. The alternate budget has now been knocked out. That measure was reported by the Senate Indian Affairs Committee today.

SEC. 17. Nothing contained in this title shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or to be established hereafter.

That merely means that in some parts of the public domain some Indians have taken up homesteads of their own, or have been granted

homestead allotments, and they are let alone. They are scattered Indians away out beyond the limits of any reservation.

Mr. KENNEDY. Their holdings might not consist of allotments of homesteads, necessarily?

Mr. SIEGEL. What do you have specific reference to, Mr. Kennedy? Do you have any particular kind of interest in mind?

Mr. KENNEDY. I have none. It occurred to me that some Indians might have other kinds of property outside the reservations. I met one in Philadelphia the other day. I think he owns some property there. It seems to me that there are other properties belonging to Indians.

Mr. COLLIER. That is not under Government trust. This relates to the homesteading of public domain, where the Indian goes out and takes up a piece of public domain and it is then held in trust for him, under the control of the Government; and where that allotment is away off from anybody else there is no reason why it should become involved in this act.

Mr. KENNEDY. I appreciate that.

Mr. SIEGEL. Unrestricted property is not included in anything here. The surrender of fee patented land may be accepted voluntarily. It is included in another section of the bill.

Mr. COLLIER (reading):

SEC. 18. Whenever used in this title the phrase "a member of an Indian tribe" shall include any descendant of a member permanently residing within an existing Indian reservation.

The descendants of members continue to be members. I may say that in the new communities, where new communities are created for Indians who are scattered and are now landless, the bill does introduce the Indian blood rule.

SEC. 19. Whenever used in this title the phrase "lands owned or controlled by an Indian tribe or community" shall include all interest in land of any of its members.

SEC. 20. The provisions of this Act shall not be construed to prevent the removal of restrictions on taxable lands of members of the Five Civilized Tribes nor operate to effect any change in the present laws and procedure relating to the guardianship of minor and incompetent members of the Osage and Five Civilized Tribes, but in all other respects shall apply to such Indians.

That is the self-governing features in the purchase of land.

SEC. 21. None of the provisions of this Act, except the provisions of title II, relating to Indian education, shall apply to the Indians of New York State.

They do not want it and their condition is entirely peculiar. That is the end of the land section of the bill.

Mr. CARTWRIGHT. My Commissioner, you are talking about these properties. You have established a colony near Wilburton, Okla., in my district. How was that done and who did you put on—what Indians?

Mr. COLLIER. That is the Choctaws, as I recollect.

Mr. CARTWRIGHT. Yes sir; that is the Choctaws.

Mr. COLLIER. That is a little piece of tribal land they had. Homeless Choctaws just went and took it up with our help and went to live on it.

Mr. PEAVEY. Mr. Commissioner, I wish to make some observations with respect to the Court of Indian Affairs, when this bill comes up. While I do not intend to take up any of the legal phases with

respect to this special Indian court, I would like at this time to ask you this question: Does that court in the manner set up in this bill, have jurisdiction of the solution and settlement of all Indian claims?

Mr. COLLIER. Claims against the Government?

Mr. PEAVEY. Claims against the Government by tribes and so forth, such as this committee has contemplated at times past.

Mr. COLLIER. No. As I explained the other day, Indian claims are something else again. We shall submit a bill providing for the prompt and complete settlement of these innumerable claims, through a special claims body that would, under the proposal, be created by Congress; but those claims do not go to this Court of Indian Affairs. This court has jurisdiction over civil and criminal matters affecting the Indians outside of the jurisdiction of the local courts.

Mr. YELLOWTAIL of the Crow Indians. I have in mind the condition on the Crow Reservation, referring to a provision further back in the bill, where you provide for boundaries of the different Indian communities. I visualize my own condition in Montana, where our lands are interspersed with other lands, now belonging to the whites, and we are now sandwiched and dovetailed in with the sold pieces of inherited land, and where the white population in the reservation is twice that of the Indian population. Those lands owned by the whites are confined to the most valuable tracts in the reservation, to the river-bottom lands and the best agricultural lands; and those tracts were made many years ago to the matured Indians, who selected the best lands.

Now, then, when we define the exterior boundaries, in the desire to create Indian communities, we run amuck of this condition of valuable dead inherited lands that have been sold; and it is necessarily so because we have a divided population and we have a State law operating as to the right of ingress on those lands owned by the white population; and right now it is a difficult proposition, so far as law and order is concerned.

Now, then, we define the boundary of an Indian community and we proceed to purchase and buy out those white tracts. Immediately we run into this fellow, Mr. Hinrichs, that wants \$40 an acre for his lands that he has irrigated by his own efforts, and he wants \$45 for his grazing lands. In one tract, the Shurzy tract, there is 4,000 acres of land. We run into a tremendous lot of lands like that, and the owner says he has made his home on that land and he does not want to sell it. How are you going to circumvent that? We run into Bob Nopher, and he won't sell, and he says, "No; I am located here; I do not want to sell. Everything I have saved is invested in that land, and it is my home and I am going to keep it." What is to be our procedure under that condition? I was just wondering when we run against that condition what we can do. We are going to run against it in every community established. I was just wondering, under those circumstances, how we are going to operate.

Mr. COLLIER. It is a real problem, and, before going further, may I say this: I have a perfect example of it right now in the Pueblos, where white holdings are interspersed in the Pueblo lands, right close up to the villages sometimes. Congress awarded compensation to the Indians. Now the Indians are going back and negotiating for the purchase of the land they want and they are facing the very

thing you have described, and the prices demanded are generally rather stiff.

Mr. YELLOWTAIL. That is the way we have found it.

These people are a highly developed community. We have established high schools, and this month a bill was introduced to provide for more money for schools for the Indian children. We have highly developed communities and we have these community schools dotted all over the reservation and we have many highly developed communities in which we have schools and in which the lands that have been sold are confined to the very choice tracts, interspersed every now and then about the Indian allotments. There is a real, living example.

Mr. COLLIER. As to the first question that your statement raises: I think your Crow Reservation illustrates it better than any other. It is difficult to see how it can be solved unless there could be given to the Indian community the power of condemnation to acquire the land necessary for consolidation. It raises that question. That power would go to the Pueblos under the Pueblo relief bill. It is given in this bill, insofar as State laws permit condemnation, but there we may be up against the limit. We cannot go beyond what the State laws permit.

Mr. YELLOWTAIL. They will not be adequate, because the land-owners will have sufficient evidence to show that their lands are worth more than they were in normal times.

There is one more feature, and then I am through. This whole new scheme is predicated upon the thought that the Indians will probably be more or less unanimous in their efforts to put this over, but they will not, because they are divided into groups that will not agree. For instance, the Indians on the Crow Reservation are divided into factions by many things.

First of all, the Indians on the Crow Reservation are divided into numerous factions on account of religious beliefs, and those factions will not agree to live on equality in a community. We have the Catholics, which are a faction to themselves, urged by the Catholic priests not to recognize the beliefs of others, and they sometimes even refuse to associate with the others on account of religious differences. We have the Baptists, in there with their churches, and they are another faction because of the Baptist belief. And we have the Four Square Gospel from Los Angeles, with their creed. And we have the Native American Church, with their creed. And we have other denominations coming in there. On top of that, we have the Republican Party and the Democratic Party, that factionalize the Indians because of their belief in different political creeds; and those operate to make the Indians always factionalized.

On top of that, we have the various superintendents that come on the Crow Reservation and create small factions that are stubborn and that will never submit to majority rule. They go off to one side and will not agree with the others and say that everybody else is wrong.

We have all of these influences in the background, and we form a community selected from one faction more than another.

Now, later on, those factional feelings come up, and everybody gets stubborn, and the community fails, and those that have patents want to give up their allotments and they come to the General Land Office and receive scrip and say: "I will turn in so many acres for

The CHAIRMAN. Mr. Commissioner, I would suggest that you instruct your attorneys to carefully investigate this problem of the right of eminent domain, so that we may be prepared to consider that.

Mr. COLLIER. We will ask the Solicitor of the Interior Department to brief that question.

The CHAIRMAN. Before we have the bill up?

Mr. COLLIER. We will do that.

Mr. PEAVEY. Mr. Commissioner, it is true, that while the statement of Mr. Yellow Tail to the committee shows many of the obstacles and problems to be overcome in the settlement of these various Indian situations under the terms of this bill, it also presents a very hopeful phase of it in the fact that everything that he has presented to this committee is what is typical of the ordinary white community; and we are expecting and trying by this bill to raise the Indian people up to the level of the white communities in their affairs.

Mr. DE PRIEST. It shows the problems they have, and especially the religious question.

The CHAIRMAN. Well, is there any other business to come before us?

Mr. DE PRIEST. I move we stand adjourned.

Mr. PEAVEY. Do I understand now that the Commissioner leaves tonight, to be gone for 2 or 3 weeks?

Mr. COLLIER. I will be gone for 3 weeks. I am going to the plains area, the Navajo country, and to Oklahoma and other points.

Mr. PEAVEY. I move you at this time that the committee adjourn to the call of the chairman, when the Commissioner has returned and is ready to make a report.

The CHAIRMAN. I call to the attention of the members of the committee and others concerned that the transcript of all the testimony so far taken will be here until noon tomorrow. Those of you who want to read or correct and revise your testimony or your interruptions or your argument may be privileged to do so, but we would like to have this ready for the printer by noon tomorrow.

Mr. ROGERS. I will second the motion and would like to amend it, that the committee adjourn subject to the call of the chairman.

The CHAIRMAN. It will be subject to the call of the chairman.

Do not forget that we have a regular meeting tomorrow morning at 10:30, our regular committee meeting. We have quite a number of bills for consideration tomorrow.

It is moved and seconded that the committee shall now adjourn, subject to the call of the chairman. The motion is carried.

(Thereupon, at 3:50 p.m., the committee adjourned subject to the call of the chairman.)