

CHOCTAW AND CHICKASAW AGREEMENTS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

IN RESPONSE TO

A SENATE RESOLUTION OF APRIL 15, 1910, "REQUESTING THE PRESIDENT TO TRANSMIT TO THE SENATE CONTRACTS OR AGREEMENTS BETWEEN THE CHOCTAW AND CHICKASAW TRIBES OF INDIANS AND J. F. M'MURRAY AND OTHERS," TRANSMITTING COPIES OF TWO CONTRACTS AND ALL LETTERS, TELEGRAMS, DOCUMENTS, AND OTHER DATA ON FILE IN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF THE INTERIOR RELATIVE THERETO.

APRIL 22, 1910.—Read; referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate:

In compliance with the resolution of the Senate of April 15, 1910, requesting the President—

if not incompatible with public interest, to transmit to the Senate a copy of any contract or agreement now pending, or heretofore pending, either before him or his predecessor, between the Choctaw and Chickasaw tribes of Indians, or the authorities of said tribes, and J. F. McMurray and others, in relation to the sale of the segregated coal and other lands belonging to said tribes, together with any letters, telegrams, documents, and other data, if any, on file either in the Department of Justice or in the Department of the Interior, respecting such contract, together with the order of the former President, Theodore Roosevelt, rejecting and disallowing said contract or the legislative acts upon which it was predicated—

I transmit herewith copies of two contracts and all letters, telegrams, documents, and other data on file in the Department of Justice and the Department of the Interior relative thereto.

WM. H. TAFT.

THE WHITE HOUSE, April 22, 1910.

DEPARTMENT OF THE INTERIOR,
Washington, April 21, 1910.

The PRESIDENT,
The White House:

Under date of April 16, you referred to me Senate resolution adopted April 15, and reading as follows:

Resolved, That the President of the United States be requested, if not incompatible with public interest, to transmit to the Senate a copy of any contract or agreement now pending, or heretofore pending, either before him or his predecessor, between the Choctaw and Chickasaw tribes of Indians, or the authorities of said tribes, and J. F. McMurray and others, in relation to the sale of the segregated coal and other lands belonging to said tribes, together with any letters, telegrams, documents, and other data, if any, on file either in the Department of Justice or in the Department of the Interior, respecting such contract, together with the order of the former President, Theodore Roosevelt, rejecting and disallowing said contract or the legislative acts upon which it was predicated.

It is assumed that this resolution refers to two certain contracts (1) between Green McCurtain, principal chief of the Choctaw Nation, and George A. Mansfield, John F. McMurray, Melvin Cornish, and Cecil A. Lyon, dated October 21, 1905; and (2) between Douglas H. Johnston, governor of the Chickasaw Nation, and George A. Mansfield, John F. McMurray, Melvin Cornish, and Cecil A. Lyon, dated November 17, 1905, which were presented to you by John F. McMurray with his letter of March 14, 1910.

Copies of said contracts and all letters, telegrams, documents, and other data on file in this department relative thereto, have been prepared and are herewith. A schedule of the papers transmitted is attached hereto.

Very respectfully,

R. A. BALLINGER,
Secretary.

Schedule of inclosures to accompany letter of April 21, 1910, to the President.

- Letter of December 30, 1907, to D. C. McCurtain, from E. H. Wilson.
Letter of December 31, 1907, to J. G. Wright, from Green McCurtain, with the following inclosures: (a) Letter of December 24, 1907, to Green McCurtain, from T. J. Leahy; (b) letter of December 31, 1907, to T. J. Leahy, from Green McCurtain.
Letter of January 4, 1908, to the Secretary of the Interior, from J. G. Wright.
Letter of January 9, 1908, to Commissioner to the Five Civilized Tribes, from Secretary Garfield.
Letter of January 15, 1908, to the Secretary of the Interior, from J. G. Wright, with the following inclosure: (a) Letter of January 11, 1908, to J. G. Wright, from Green McCurtain.
Letter of January 10, 1908, to Secretary of the Interior, from Cecil A. Lyon.
Letter of January 15, 1908, to Cecil A. Lyon, from Secretary Garfield.
Proceedings of the segregated coal and asphalt commission at its session held at McAlester, Okla., on January 14, 1908, showing statements of John F. McMurray and Cecil A. Lyon.
Letter of January 24, 1908, to the Secretary of the Interior, from J. G. Wright, inclosing the following: (a) Letter of January 21, 1908, to J. G. Wright, from D. C. McCurtain.
Letter of February 5, 1908, to the Secretary of the Interior, from J. G. Wright, with the following inclosures: (a) Letter of February 1, 1908, to J. G. Wright, from Green McCurtain; (b) Choctaw act of July 3, 1905, entitled "Bill No. 6."
Letter of February 14, 1908, to the President, from Secretary Garfield, transmitting Choctaw act of July 3, 1905, recommending disapproval.
Letter of February 25, 1908, to the Commissioner to the Five Civilized Tribes, from C. F. Larrabee.
Letter of April 3, 1908, to the Secretary of the Interior, from Thomas Ryan.
Letter of April 24, 1908, to the Secretary of the Interior, from C. F. Larrabee.

- Letter of April 29, 1908, to the Commissioner to the Five Civilized Tribes, from C. F. Larrabee.
Letter of May 4, 1908, to Commissioner of Indian Affairs, from J. G. Wright.
Letter of June 29, 1908, to J. G. Wright, from D. C. McCurtain.
Letter of July 13, 1908, to the Commissioner of Indian Affairs, from J. G. Wright.
Letter of February 25, 1909, to President Roosevelt, from Green McCurtain.
Letter of February 27, 1909, to Secretary Garfield, from D. C. McCurtain.
Letter of April 20, 1909, to the Secretary of the Interior, from Green McCurtain.
Letter of April 23, 1909, to J. F. McMurray, from Secretary Ballinger.
Letter of November 18, 1909, to Commissioner of Indian Affairs, from J. G. Wright.
Letter of November 30, 1909, to J. G. Wright, from William R. Layne.
Letter of March 5, 1910, to the Secretary of the Interior, from President Taft, with the following attached papers: (a) Letter of March 3, 1910, to the President, from Rev. William H. Ketcham; (b) letter of February 12, 1910, to Rev. William H. Ketcham, from D. C. McCurtain, with "general letter" of Governor McCurtain, received therewith.
Letter of March 8, 1910, to Secretary Ballinger, from Fred W. Carpenter, Secretary to the President, with the following papers: (a) Letter of March 7, 1910, to the President, from Rev. Wm. H. Ketcham; (b) resolution of the Choctaw council, approved by Governor McCurtain October 11, 1909.
Letter of March 14, 1910, to the President, from J. F. McMurray, inclosing the following papers: (a) Contract executed October 21, 1905, by and between the principal chief of the Choctaw Nation and Messrs. Mansfield, McMurray, Cornish, and Lyon; (b) certificate of Judge William A. Falconer; (c) contract executed November 17, 1905, by and between the governor of the Chickasaw Nation and Messrs. Mansfield, McMurray, Cornish, and Lyon; (d) certificate of Judge William A. Falconer; (e) certificate of Judge B. L. Jones; (f) act of Chickasaw council, approved by Gov. D. H. Johnston November 16, 1905; (g) form of contract between J. F. McMurray and individual citizens of the Choctaw and Chickasaw nations.
Letter of March 28, 1910, to Secretary Ballinger, from Fred W. Carpenter, inclosing the following papers: (a) Letter of March 25, 1910, to Fred W. Carpenter, from Wm. H. Ketcham; (b) letter of March 17, 1910, to Rev. Wm. H. Ketcham, from D. C. McCurtain.
Letter of April 12, 1910, to Secretary Ballinger, from President Taft.
Letter of April 15, 1910, to J. F. McMurray, from Secretary Ballinger.
Letter of April 16, 1910, to the President, from Secretary Ballinger.
Telegram of April 14, 1910, to Hon. Wm. H. Taft, from G. E. Grammer.
Telegram of April 15, 1910, to the President, from Scott Ferris.
Letter of April 15, 1910, to Hon. William H. Taft, from Carl Eckhardt Grammer.
Telegram of April 16, 1910, to the President, from Ormsby McHarg.
Telegram of April 15, 1910, to President Wm. H. Taft, from C. E. Creager.
Telegram of April 18, 1910, to the President, from D. C. McCurtain.
Letter of April 14, 1910, to the President, from T. P. Gore.
Letter of April 15, 1910, to the President, from Robt. L. Owen.
Telegram of April 14, 1910, to the President, from T. P. Gore.

FORT TOWSON, OKLA., *December 30, 1907.*

DEAR SIR AND FRIEND: I am in receipt of a letter from Governor McCurtain wherein he requested me to send you bill No. 6, and approved by him July 3, 1905.

You are respectfully advised that I have just returned from Tuska-homa, where I have been searching the records of my office for the above-mentioned bill, but could not find it. I think that I let Lester (former private secretary to principal chief) or the governor have it over a year ago. I am sending you under separate cover a pamphlet that contains the above-mentioned bill.

I trust that this pamphlet will answer your purpose. If not advise me of the same and I will try to locate it. If the governor or Lester did not get it some council members must have it.

Very respectfully,

E. H. WILSON,
National Secretary Choctaw Nation.

Hon. D. C. McCURTAIN,
McAlester, Okla.

EXECUTIVE OFFICE CHOCTAW NATION,
Kinta, Okla., December 31, 1907.

SIR: I am in receipt of a letter from Mr. T. J. Leahy, chairman of the segregated coal and asphalt commission created by the constitutional convention of the State of Oklahoma, in which he states that his commission will meet at McAlester, Okla., January 13, and requests that some representative of the Choctaw and Chickasaw nations meet with the commission at that place for the purpose of giving such information as may seem proper under the circumstances.

I inclose you herewith copy of the said letter received from Mr. Leahy and also copy of my answer to the same. This correspondence is furnished you for the information of yourself and your department, as I do not desire to take any steps, or be understood as taking any steps, in this matter of which I do not fully advise the Government.

Very respectfully,

GREEN McCURTAIN,
Principal Chief Choctaw Nation.

Hon. J. G. WRIGHT,
Commissioner, Muskogee, Okla.

EXECUTIVE OFFICE CHOCTAW NATION,
December 24, 1907.

DEAR SIR: The segregated coal and asphalt commission will open headquarters at South McAlester on January 13, and it is requested that some representative of the Choctaw and Chickasaw nations may meet with the commission at that place for the purpose of giving the commission such information as may seem proper under the circumstances.

We would like at that time to have a meeting with yourself and Governor Johnson in order that we may get some idea of the feeling of the nations with reference to the sale of the segregated lands to the State; in other words, we desire to know the feeling of your people in this regard.

Very truly yours,

T. J. LEAHY, Chairman.

Mr. GREEN McCURTAIN,
Governor Chickasaw Nation, Vinita, Okla.

EXECUTIVE OFFICE CHOCTAW NATION,
Kinta, Okla., December 31, 1907.

DEAR SIR: I am in receipt of your letter of the 24th instant wherein you state that your committee or commission will meet at McAlester, Okla., January 13, and you ask that a representative of the Choctaw Nation meet with your commission at that time. In reply I desire to state, in order that I may be clearly and correctly understood, that under the law the Choctaw Nation has no representatives in the matter of the disposition of the coal and asphalt lands and deposits—the only representative we ever had was T. E. Sanguin, coal commissioner, and his office and authority terminated with the withdrawal of the coal lands (leased and unleased) from sale. Therefore we have no representatives in this particular matter.

You understand, of course, that under the law the disposition of the coal and asphalt lands and deposits is under the direction and control of Congress, and that the tribes as a power are without any authority at all in the matter, and can not, therefore, do anything of consequence, or take any steps looking to the sale of these properties without the authority of Congress, or at least its consent, and neither the authority nor the consent of Congress has been given up to this time.

In disclaiming authority to act in the premises I do not mean to say that we have no interest in the subject-matter, nor do I express or feel an unwillingness to consider the matter with your commission representing the State, as far as I can; but I think good faith, both toward yourselves as representatives of the State and to the Federal Government, requires that I state to you fully the position of the Choctaws and their lack of authority to take any action of consequence in the matter at this time.

However, you are advised that I shall be glad to confer with you and your committee informally, and will send a representative of the nation to this conference in the person of Hon. E. L. Hickman, the national delegate of the Choctaws, accompanied probably by Hon. P. J. Hudson who has been acting in the capacity of special delegate. I shall endeavor also to be present at this informal meeting, but, in the event that I am unable to attend, you will treat Mr. Hickman and Mr. Hudson as the representatives, and the only representatives, of the Choctaw Nation in any way authorized to confer with you concerning the disposition of the coal and asphalt properties belonging to the Choctaw tribe and Chickasaw tribe jointly. These delegates will give you any information you may desire which they are able to give, and should you wish to make any proposition to the tribes they will, on the part of the Choctaws and under my instructions, communicate the same to the authorities of the Federal Government with proper recommendations.

Very respectfully,

Principal Chief Choctaw Nation.

Hon. T. J. LEAHY,
Chairman Segregated Coal and Asphalt Commission,
Pawhuska, Okla.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla., January 4, 1908.

SIR: I have the honor to inclose herewith a communication from the principal chief of the Choctaw Nation, dated December 31, 1907, inclosing copy of a communication from Mr. T. J. Leahy, chairman of the segregated coal and asphalt commission, created by the constitutional convention of the State of Oklahoma, stating that his commission would meet at McAlester, Okla., January 13, 1908, and requesting that some representative of the Choctaw and Chickasaw nations meet with them at that place for the purpose of giving such information as might seem proper.

Principal Chief McCurtain also incloses copy of his reply to Mr. Leahy, advising him that the nation had no representative in this particular matter, and that under the law the disposition of coal and asphalt lands and deposits was under the direction and control of Congress, but that he would be glad to confer with such committee and would also have the delegates named, meet them for the purpose of giving any information on the subject, and that should they wish to submit a proposition to the tribe, said delegates would communicate the same to the department with proper recommendations.

In this connection I beg to state that the national attorney for the Choctaw Nation, D. C. McCurtain, also personally called at this office with reference to this matter, and I suggested to him, in view of the fact that the Choctaw council several years ago passed an act authorizing the principal chief to appoint representatives on behalf of the nation to dispose of these coal lands, such representatives to receive a commission of 10 per cent, which act had never been submitted to the department for executive action, and which act now appears to have been extracted from the files of the Choctaw Nation, that should the principal chief, or anyone representing him, meet this committee, that they be given to distinctly understand that they were not authorized to confer with them in any manner, but to simply see that any proposition they desired to submit was transmitted to the department.

National Attorney McCurtain also stated that he would be present at such meeting and report what transpired.

In connection with this matter it appears from the letter of Mr. Leahy that said commission would open headquarters at McAlester, thereby indicating that they would remain there for some length of time, and unless otherwise desired I suggest that the department give such commission no recognition at this time.

In view of the act of the Choctaw tribal council above referred to, a copy of which is inclosed herewith, and as it is my understanding that a similar act was passed by the Chickasaw legislature, although I have no information to such effect, I suggest the advisability of my being directed by wire to notify the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation, or that they be so advised direct by you, that the department would not recognize the authority of any person claiming to act as a representative of either the Choctaw or Chickasaw nations in meeting with this commission.

Very respectfully,

J. G. WRIGHT,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, January 9, 1908.

SIR: The department is in receipt of your communication of the 4th instant suggesting the advisability of notifying the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation that this department will not recognize the authority of any person claiming to act as representative of the Choctaw and Chickasaw nations in meeting with the Oklahoma segregated coal and asphalt commission to confer respecting the disposition of the Choctaw and Chickasaw segregated coal and asphalt lands.

It seems from the inclosures with your letter that the chairman of the Oklahoma state commission informed Governor McCurtain that the commission will open headquarters at South McAlester January 13, and requested that some representative of the Choctaw and Chickasaw nations meet them for the purpose of giving the commission information.

Governor McCurtain replying to this stated that the Choctaw Nation has no representatives in the matter of the disposition of the coal and asphalt lands and deposits, and that the disposition thereof is under the direction and control of Congress, but signified his willingness to be present at an informal meeting, or, if he is unable to attend, that Mr. Hickman, national delegate, or the special delegate, Mr. Hudson, would be present, saying:

These delegates will give you any information you may desire which they are able to give, and should you wish to make any proposition to the tribes they will, on the part of the Choctaws and under my instructions, communicate the same to the authorities of the Federal Government, with proper recommendations.

Governor McCurtain furnished you copies of this correspondence for the information of the department.

Neither the tribal authorities nor this department have any authority to negotiate a sale of the segregated coal and asphalt lands of the Choctaw and Chickasaw nations. That matter rests entirely with Congress. It is not believed, however, that there would be any

impropriety in the officers of these nations, or the officers of this department, giving to a commission of the State of Oklahoma, or to any other reliable commission, or party interested in the disposition of these lands and deposits, any information bearing upon the subject. For this reason I have decided against giving the chief executives of the nations instructions suggested by you, and so notified you by telegram, which is hereby confirmed, reading as follows:

It is not advisable to give formal notice as suggested in your letter of the 4th instant relative to negotiations concerning Choctaw segregated coal land. Letter follows.

You will report any further developments in this matter which you deem the department should be advised of.

Very respectfully,

J. R. GARFIELD, *Secretary.*

The COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla., January 15, 1908.

SIR: I have the honor to acknowledge receipt of departmental letter dated January 9, 1908, advising me, in reply to my communication of the 4th instant, that it was not deemed advisable, as suggested by me, to instruct the chief executives of the Choctaw and Chickasaw nations that the department would not recognize the authority of any persons claiming to act as a representative of said nations in meeting with the Oklahoma segregated coal and asphalt commission to confer regarding the disposition of segregated coal and asphalt lands. I am advised that neither the department nor the tribal authorities have any authority to negotiate the sale of said lands, as that matter rests entirely with Congress, but that it is not believed there will be any impropriety in the officers of said nations or the officers of the department giving to said commission or interested parties any information bearing upon the subject. I am directed, however, to report any further developments in this matter which I deem that the department should be advised of.

In this connection I beg to state that Mr. Peter Hudson, Choctaw delegate to Washington, this day called at this office and informed me that he had met such commission and furnished them a communication, a copy of which is inclosed herewith.

Mr. Hudson further informed me that Mr. McMurray, of the firm of Mansfield, McMurray & Cornish, and Mr. Cecil Lyon, of Texas, appeared before said commission and presented to them a contract executed by the principal chief of the Choctaw Nation October 21, 1905, and a similar contract executed by the governor of the Chickasaw Nation dated November 16, 1905, authorizing them to act as representatives of said nations in negotiating for the disposition of these lands, and that said contracts were executed, presumably, in accordance with an act of the Choctaw council, approved by the principal chief July 3, 1905, authorizing him to employ counsel or appoint commissioners to represent the nation in all matters connected with the sale of said lands, and to be paid not to exceed 10 per cent of the sum which may be received from the lands and deposits sold.

Although I have heretofore had no information relative to any such contracts, nor have they been submitted to the department so far as I have any knowledge, I have been led to believe that such contracts existed; that the firm above mentioned would appear for the nations and subsequently claim to have rendered valuable services, and present to the department or Congress claims against the nations therefor, as specified in their contract.

I inclose herewith copy of a communication from the principal chief of the Choctaw Nation relative to the act of the Choctaw council authorizing the appointment of such counsel or representatives, upon receipt of which the same will be forwarded to the department.

Very respectfully,

J. G. WRIGHT, *Commissioner.*

The SECRETARY OF THE INTERIOR.

EXECUTIVE OFFICE, CHOCTAW NATION,
Kinta, Okla., January 11, 1908.

SIR: I beg to acknowledge receipt of your letter of January 6, 1908, relative to the act of the Choctaw council approved July 3, 1905, authorizing the appointment of a commission to dispose of the segregated coal lands.

In reply, you are advised that some time ago I decided to submit said act of the council for executive action, and wrote Mr. Wilson, national secretary, requesting him to forward the original act to Mr. D. C. McCurtain, to be by him engrossed in proper form for submission. Mr. Wilson advised Mr. D. C. McCurtain, as you were informed, that he could not find the act among the records of his office, but thought he had let Lester, who was formerly my private secretary, or myself have the bill. Just here I desire to say that the bill was not given to me and that I never called for it until recently, when I asked that it be sent to D. C. McCurtain, to be engrossed by him. And I will say further if Lester got this bill it was on his own account and without any authority or direction from me.

However, you are advised that I will have this bill engrossed from the copy as it appears in the published laws (session acts) of the council and will submit the same, signed and attested by the proper officers of the council and myself. At the time I submit the bill I will furnish a full statement of its purposes, the circumstances under which it was passed and approved, etc., together with whatever recommendations I think proper to be made by me in the premises.

Very respectfully,

GREEN MCCURTAIN,
Principal Chief, Choctaw Nation.

Hon. J. G. WRIGHT, *Commissioner,*
Muskogee, Okla.

SHERMAN, TEX., January 10, 1908.

MY DEAR MR. SECRETARY: You will remember that prior to your assumption of your duties as Secretary of the Interior, that I called on you with relation to the Choctaw and Chickasaw coal lands and told you that, acting under a resolution of the Choctaw and Chickasaw legislatures, the governors of these two tribes had appointed me one of the commission of four to represent them in any proposed sale of the land. I told you at the time I had no desire to be thought what is popularly denominated in this State as a grafter, but I did have a desire to earn any sum of money that I honorably could, and it occurs to me that this might be an opportunity to earn some money honorably and also to serve these people who have been my neighbors (I

only live 10 miles from the Territory) and with whom I have done business practically all my life. The others on this commission are Messrs. Mansfield, McMurray, and Cornish, of South McAlester, Ind. T. When I was in Washington I did not know this matter was to come up on the 13th of January, but on my return to my office here to-day I find a letter from Governor Johnston, of the Chickasaws, notifying me to be in South McAlester on Monday, and it is my intention to be there on Monday the 13th to meet the commission appointed by the State of Oklahoma. Had I known this matter was coming up so soon, I would certainly have seen you while in Washington last month, and I called on you for the purpose of having a general talk, but I was so unfortunate as to find you out.

A short time ago I saw Mr. McMurray and he informed me that Messrs. Mansfield and Cornish had practically moved to California and would perhaps decline to serve on this commission on that account. I, of course, know that this firm made an active antagonist of Secretary Hitchcock, and not having asked you, I do not know how you regard them, but it has been intimated to me that your department would not consider permitting this firm to represent the Chickasaws in this proposed coal land trade. The governor of one of the tribes above referred to, intimated as much to me a couple of months ago when I saw him, and I want to ask you if you will do me the favor to write me as fully as you care to on this subject, and in order that I may receive your reply as shortly as possible, I ask that you do me the favor to write me in duplicate at Sherman and Houston, Tex., in order that I may receive your letter at the earliest moment. As I have not gone into this case with you, it is my purpose on Monday, when I am with the Oklahoma State committee, to merely see what they want to do and then defer any further action until I have had an opportunity to consult with you.

You perhaps know of my standing in this section. Pardon me if I say that I am at the head of the largest lumber concern in the State, both in the retail line and in the manufacturing line, and have four times been elected to the head of the Republican organization in this State, and no man has as yet had an opportunity to say a word derogatory to my character in any respect, and I do not care at this time of my life, to leave any such openings, but in this matter I believe that some one should represent these Indians, and I believe that some one should be conversant with larger business affairs, and I believe it is proper for me to represent them and if I can make money for them as well as myself, I think that is proper.

I shall be pleased to hear from you, but in the meantime I shall do nothing that will prove at all embarrassing to you, the administration, or myself. It is my idea that I shall be in Washington within the next three or four weeks, and if so, will be glad to take the matter up in detail with you.

With best wishes and with assurances of my personal esteem, I am,
Yours, very truly,

CECIL A. LYON,
National Committeeman and State Chairman.
Secretary JAS. R. GARFIELD,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, January 15, 1908.

MY DEAR COL. LYON: I have your letter of January 10. As I told Sloan Simpson, who talked to me about this matter, I feel that the Choctaws and Chickasaws do not at present require the services of anyone to aid them in the question of how best to dispose of their segregated coal lands. The Government acts as their guardian, and is having a careful examination made of the character and quality of the coal, and when this is finished we will have facts upon which can be based a proper determination of the value of the land and the best method for its use or disposition.

I am sorry I did not see you when you were here. So far as the firm of Mansfield, McMurray & Cornish is concerned, all the contracts for the Indians they had with the department have been closed and it is not my intention to approve any new ones. The difficulty that firm had regarding its fee was of such a character as to make us all feel that we did not care to approve their employment on any new matters. I will be glad to talk with you fully about this when next you are here.

Very truly, yours,

JAMES RUDOLPH GARFIELD,
Secretary.

Col. CECIL A. LYON,
Sherman, Tex.

Proceedings of the segregated coal and asphalt commission at its session held at McAlester, Okla., on January 14, 1908, showing statements of John F. McMurray and Cecil A. Lyon.

Present: T. J. Leahy, chairman; James Chambers, secretary; J. B. Tosh.

The CHAIRMAN. The commission at this time meets for the purpose of hearing from the representatives of the Choctaw and Chickasaw nations upon the question as to the extent and value of the coal and asphalt lands which have been segregated, and which belong to the tribes, and the attitude and feeling of said tribes with reference to the sale of the same to the State of Oklahoma, provided such sale can receive proper and legal sanction and can be made upon terms satisfactory to both parties.

(Mansfield, McMurray & Cornish and Cecil A. Lyon appeared on behalf of the Choctaw and Chickasaw tribes, and presented as their authority for doing so an act of the Choctaw council dated July 3, 1905, authorizing the governor of the Choctaw Nation to make such employment and a contract with the governor of the Chickasaw Nation, dated November 17, 1905, and authorized by the Chickasaw legislature by an act at its regular 1905 session, the contract with the governor of the Choctaw Nation being dated October 21, 1905.)

Mr. J. F. McMURRAY, being called to the witness stand, spoke as follows:

Mr. McMURRAY. I am here for the purpose of giving information rather than making a speech, and to give information along whatever lines you might want.

The CHAIRMAN. We desire especially to receive information along the lines of the coal and asphalt deposits, their extent, the extent of their operation, and the revenue that has been received, and such other information as occurs to you as might be proper for the commission to have.

Mr. McMURRAY. On the question of the leases, I believe it would be a good plan to take first the statement of Hampton Tucker, made before the United States Senate at its McAlester hearing. That statement gives detailed information as to the leases, the royalty, and other—

The CHAIRMAN. I will state that we have tried to arrange for Mr. Tucker to appear before the commission.

Mr. McMURRAY. I have here, Mr. Chairman, certain data referring to the segregated coal lands that we have prepared after painstaking investigation and much labor, and I think that it is perhaps in better shape than we could get it in any other way.

The CHAIRMAN. Do you desire to file this as an exhibit?

Mr. McMURRAY. Yes, sir. [Exhibit A.] I thought you would like to look over it and see if it is in the shape you desire it. We have been working on this exhibit for about two years, and after going over the ground and examining the openings referred to, and hence it is almost accurate as to the information given.

The CHAIRMAN. I notice that you have the royalties up to June 30, 1905. Are you able to tell what the royalties would be since that time?

Mr. McMURRAY. Yes, sir; I can get a statement of that. You will note that it covers the number of openings on each lease, the condition of the coal, the size of the lease, the condition of the surface of the land, the quality of the land, whether it is timbered or prairie, smooth or rough, in a general way.

By the CHAIRMAN:

Q. About how much of this land is under lease?—A. One hundred thousand acres.

Q. About how much of it is being operated or worked?—A. That is very difficult to say because they are working more every day.

Q. They are making new developments every day?—A. Either new developments or extending those already made, either extending them in the same leases or over into other leases.

Q. How much of the land is now exhausted as to coal?—A. I could not give the figures.

Q. Approximately?—A. I think I ought to give that more accurately; I think I had better take that up and give the exact figures.

Q. How long have these mining operations been carried on?—A. The first mining of coal was done in this field, by this field I mean the Choctaw Nation, in the year 1872. The coal was discovered out east of old McAlester by old David Mishamontubbi, an Indian, and brought to McAlester. He didn't know what it was; investigation showed it to be coal, and it was loaded in ox carts and carried into Kansas. That was in 1872. Just at that time the Missouri, Kansas and Texas was pointing in this direction, and the coal was used as an influence to get them to build along this line where the Missouri, Kansas and Texas now is. The first mining was done in 1872, but

it was done in a very limited way for several years. At this time they are mining in the Choctaw country about 3,000,000 tons per year.

Q. We have been informed that the vein of coal in some leases dips so much as to make it practically useless for mining purposes. What do you know about that?—A. These are all pitching veins. Most of them, however, are workable, and can be worked at a profit. The coal west of McAlester, on what is known as the McAlester vein, dips, some of it, as much as 55 degrees. But most of the veins are workable and can be worked at a great profit. The coal as a rule is not steep coal.

Q. Does that condition prevail generally throughout the district?—A. It is not steep coal as a rule, and can be worked at a profit. The steep coal is west of McAlester. A small field of it there is pretty steep.

Q. Do you know anything about what is now being done by the Government of the United States with reference to sinking or boring holes in this field?—A. They are using a diamond drill. However, we had better get that information from some one in touch with the work.

Q. Do you know anything about how much they have done?—A. Not a great deal.

Q. Are you able to tell what is the relative value of the coal in this field, as compared with the value of the coal in the southwestern part of Kansas and southwestern Missouri?—A. I think that this is the most valuable coal west of the Mississippi River and one of the best bituminous coals in this country. Perhaps there is no bituminous coal in the United States superior to this, unless it be a small field in Pennsylvania. I speak especially of the McAlester coal; that is of the highest quality; the other coals, known as the Hartshorne and Lehigh coal, are first-class steam coals.

Q. But they are not as good as the McAlester coal?—A. No, not as high grade as McAlester coal; that is for commercial purposes, for steam coal they are equally as good as the McAlester coal; McAlester coal is harder, is higher in fixed carbon, and stands transportation better and is better for stocking or storing; it keeps better.

Q. I notice here in your exhibit that you mention the persons or companies who have these leases, are you able to tell about how long these leases have yet to run?—A. An average of about twenty-three years, I should say. No leases have been made for the past three or four years and they were all made for thirty years. I should think that an average of six or seven years had expired on each lease. Most of them were made about the years 1899 or 1900.

Q. Do you know whether they all pay the same rate of royalty?—A. Yes, sir. They all pay 8 cents per ton on mine run.

Q. What do you mean by mine run?—A. Coal as it comes out of the mine without being screened. They used to pay 15 cents per ton on screened coal. But the change was made several years ago and they all now pay 8 cents per ton on mine run coal.

Q. The Choctaw and Chickasaw nations have a joint interest in these coal lands, as I understand it?—A. Yes, sir. It is held in common. Each Choctaw and each Chickasaw has an undivided interest in the land, the coal and asphalt land, and all the mineral thereon.

Q. Is it an equal division between the two nations or the members of the two tribes?—A. An equal division between all of the members of both tribes. The division has been made in the ratio of three parts to the Choctaws and one part to the Chickasaws, and that is about the ratio that would be maintained, but as a matter of law they belong to each Choctaw and Chickasaw equally.

Q. How long have you been interested in this coal and asphalt question on behalf of the tribes?—A. You mean how long have I been representing these people in reference to the coal and asphalt?

Q. Yes, sir.—A. Since October, 1905.

Q. Have your relations with the governors and leading men of these tribes by reason of your investigations under your contracts, or your relation with them in any other manner, put you in a position so that you are able to give us any information as to whether or not the tribes would be likely to go into a proposition looking to the sale of these lands to the State?—A. As to the Choctaws, their delegate, Mr. Hickman, is here. There may be some Choctaws here too. Mr. Hickman represents the tribe here and at Washington.

Q. What is your information along that line?—A. My information is that the Choctaw and Chickasaw people want to sell these coal and asphalt lands. They want to sell them to a person that will take them both mineral and surface together, and that will pay the money for them at the earliest possible date. I think that they would be very favorable to selling them to the State of Oklahoma, if the sale could be perfected without any unusual delay.

Q. So far as you know, have the tribes ever fixed a value on these lands?—A. Neither one has ever fixed a value upon them.

Q. In looking over the exhibit which you filed, I do not find anything which indicates the depth of the coal on any of these leases.—A. Let me have that and I will explain it to you. Take the first, this McAlester coal; it is a pitching vein, and if it goes far enough it is bound to come to the surface, or within a few feet of it, and has a cap rock. This rock is such that a person who understands the business can follow it along the ground as easily as an ordinary person can follow a row of trees. As the coal slopes away from the crop it gets deeper, depending upon the pitch of the vein. In making the segregation it was not the policy to segregate any deep coal. The segregated lands run along the crop of the coal generally, so that practically all of the coal segregated is shallow coal or of medium depth. Perhaps most of the coal, if followed down deep enough, would run into land that has not been segregated, but it would be at a considerable depth.

Q. All the development that has been carried on has been among this cap rock and most of the coal taken out has been shallow coal?—A. Most of it has been taken from near the surface, but a good many shafts have been sunk, some at a depth of 500 feet. But it has rather been the custom to start a slope down along the coal from the crop and when the slope has been put down several hundred feet to sink a shaft out in front and then take the balance of the coal out through that shaft.

Q. As a rule about how deep is the coal on these lands where it runs into the nonsegregated land?—A. No rule would work out that, as it would be different in most every lease.

Q. As much as 1,000 feet?—A. No; I do not think that the coal under any of the segregated land is as deep as 1,000 feet—that is, the coal in any of the veins being worked. A great many people believe—people who have made a study of conditions here—that there are veins under the veins being worked, and that they are heavier veins and better coal than the veins that they are now working, but most of the known veins on this segregated land will be shallow veins.

Q. These deeper veins are a matter of supposition, that is all?—A. A matter of supposition; that is, not only the result of theory, but the result of knowledge of other veins, as well as the condition existing in this field. You understand that not all of this coal here is a single vein. A good deal of the land has as many as two or three workable veins of coal in it. You take this McAlester vein that they are now working. It crops out about a mile and a half or a mile and three-quarters north of this point and runs from east to west. Then there is another crop of coal known as the Hartshorne vein, or the Hartshorne veins, there being two of them, that run along within 200 feet of each other, and they all dip under the same land and under the same leases, so there are three known veins of coal under this field and all workable and good coal. There are the McAlester veins and the two Hartshorne veins.

Q. In your judgment, from your knowledge of the segregated coal field, is there any great part of it that is not workable?—A. I do not think that there is any great part of it that is not workable. However, we have no definite knowledge of those leases that have not yet been opened.

Q. The mines that are being operated extend generally all over the field, do they not?—A. Yes, sir; almost the entire field. Take the district running from here to Fort Smith, you find coal mines all along the Choctaw road and a good many places along the Fort Smith and Western. In other words, you find mines all along this vein of coal on the south side of the ridge and on the other side also, and the people who understand coal reason from that that the coal is about the same in between as the coal taken from these places.

Q. It may be deeper, may it not?—A. No; it would be about the same. These mines are all along the crop, and a new mine would be opened on the crop, so that the depth would be about the same.

Q. What have you to say, Mr. McMurray, as to the surface of the segregated coal lands being good agricultural lands?—A. Much of it is good for agriculture.

Q. About what proportion, would you say?—A. I would not hazard a guess. Not very much of it, however, is land that could be used for some form of agricultural purposes, either for cultivation or for grass.

Q. Is any great part of it being farmed at this time?—A. I believe that a good many small farms are scattered over it.

Q. I believe, in your exhibit, you estimate the total of the segregated coal land at 433,038 acres?—A. That is not an estimate, it is the exact figure.

Q. Are there any town sites in the segregated land?—A. Yes, sir.

Q. Should not they be deducted from that amount?—A. No, sir. There may be some small patches that the Secretary has taken out since, but still the coal is there and belongs to the Indians and is subject to sale.

Q. But as to the surface of the land, that would have to be deducted?—A. Yes, sir; if any has been taken out since it would have to be deducted. But I think that just a very few pieces have been taken out since that time. And small pieces at that.

Q. Do you know about how many acres are included in these town sites?—A. No, sir; not very much, though.

Q. If this commission in its report to the governor and the legislature should recommend a continuation of the labor in the interest of the State seeking to secure these lands, do you believe as the representative of the Choctaw and Chickasaw nations that the nations would be willing to provide for a commission to confer with a commission appointed on behalf of the State?—A. I do not know what their disposition would be about appointing a commission. I have not heard the matter discussed, but I think that if it became necessary to do so, and there was a prospect of selling the property, they would so do.

Q. You don't think of anything more that you can add to what you have said, do you?—A. No; I do not know that I can add anything. This statement that I have filed has been very carefully gotten up, and if you would like to have it filed I will do so. I suppose if it were filed you would take occasion to verify the statements made therein.

Q. We would like to have it filed, but you can bring it down to date first, can't you?—A. Yes, sir; I will be glad to do that.

Q. We would like if, while the commission is here, you think of anything further, that you will give it to the commission.—A. I will be glad to do so.

(Witness excused.)

Mr. CECIL E. LYONS.

By the CHAIRMAN:

Q. You have been designated by the Choctaw and Chickasaw nations as one of their representatives?—A. Yes, sir.

Q. The commission will be very glad to hear from you as to your knowledge of the coal and asphalt lands.—A. I think, Mr. Chairman, that I can best sum it up by saying that Mr. McMurray's statement covers the ground. My knowledge is not so extensive as his, but so far as it goes, it is along the same lines as his statement.

Q. Have you been over these lands?—A. More or less; yes, sir. There are some that I have never been on in the northeastern part of the State.

Q. What, in your opinion, Mr. Lyons, would be the attitude of the Chickasaw people with reference to a deal with the State for these lands?—A. I think they would be ready, Mr. Chairman, to entertain a proposition from the State, perhaps more readily than they would from an outsider. But I think that one of the ideas they have is that a deal with the State would necessitate more delay than they would like to have. They desire, as I understand it, to get the matter wound up as speedily as possible.

Q. What about the asphalt lands, Mr. Lyons?—A. I have very little knowledge about them. I have made two or three trips to the asphalt lands in the vicinity of Ardmore. The ones I have

reference to lie immediately east of Ardmore. There are, I believe, asphalt deposits in other localities—such as east of Atoka.

Q. Is that segregated?—A. I do not think so.

Mr. CHAMBERS. It is segregated.

By the CHAIRMAN:

Q. Is that near Ardmore segregated?—A. It is nearer Dar-a-ty. I think they call it Daraty.

Q. Is the deposit there in such condition as to make it profitable for working?—A. I am not expert enough to know. I know they shipped quite a lot of asphalt from that mine, but whether it has been worked for the past three or four years I don't know. It has been that long since I was there. My visit then was in the interest of a projected line of railway to be built to it.

Mr. J. F. McMURRAY recalled.

By the CHAIRMAN:

Q. Mr. McMurray, I forgot to ask you about that.—A. The asphalt has been worked but very little. More at Daraty than anywhere else and a good deal has been taken out of the field just west of Ardmore. The streets of Ardmore have been recently paved with it.

Q. About how many acres have been segregated for asphalt?—A. I don't know; it is in the reports. Not a large quantity, however. There is a piece near Ardmore, a piece near Anthlers, and one near Daraty. The land just west of Ardmore I do not think is segregated.

Mr. LYON (continued).

By the CHAIRMAN:

Q. You spoke about the tribes having a feeling that there would be too much delay in dealing with the State. No matter who purchased these lands, would it not require a considerable investigation on the part of the purchaser that they might arrive at a fair price?—A. Yes, sir; that time would be taken up before the deal was made, the idea I tried to express that after the deal was closed they would have to wait for their money. Wait on a bond issue, or something like that, while private parties might have their financial plans all made before they went into the deal. Aside from this, I think that the tribes would sooner deal with the State, because of the advantage that would redound to them as being part owners of this land afterwards.

Q. At the present time there is no authority for the sale of the lands?—A. There might be some argument about that; but there is really no authority for the sale of the lands now.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla., January 24, 1908.

SIR: In connection with my communication dated January 15, 1908, relative to the commission on the part of the State of Oklahoma investigating the segregated coal lands with a view of purchasing the same by the State, I have the honor to inclose herewith a com-

munication dated January 21, 1908, from Mr. D. C. McCurtain, general attorney for the Choctaw Nation, concerning the matter.

I have no further information upon this subject at this time, and as stated in my former communication, as soon as the tribal act of the Choctaw council authorizing the principal chief to appoint a commission to represent the nation in connection with the disposition of these lands, is received, the same will be forwarded for the consideration of the department.

Very respectfully,

J. G. WRIGHT,
Commissioner.

The SECRETARY OF THE INTERIOR.

McALESTER, OKLA., *January 21, 1908.*

SIR: The committee or commission on the part of the State, created by the constitutional convention of Oklahoma to investigate and report to the legislature upon the proposition of the State buying the segregated coal lands and deposits belonging to the Choctaws and Chickasaws (I do not know its official designation), met in open session at this place January 14.

Governor McCurtain, as I am informed, was requested to meet the state committee, as the committee desired to meet a representative of the tribes (Choctaw and Chickasaw, I presume) for the purpose of ascertaining the feeling of the Indians toward selling the coal properties to the State. To this request I understand the governor replied, disclaiming any legal authority to represent the tribe in the matter of the sale of the coal and asphalt lands and deposits on account of the fact that at present the disposition of said properties is committed by law to the exclusive control of the Federal Government; but he indicated a willingness to meet the state committee informally, designating Mr. E. L. Hickman, Choctaw delegate, and Mr. Peter J. Hudson, special Choctaw delegate to Washington, D. C., to represent the Choctaw Nation in this informal and unofficial meeting.

On the 12th day of January I received a telegram, as follows:

D. C. McCURTAIN,
McAlester, Okla.

KINTA, OKLA., *January 12.*

Please give such instructions to Hickman and Hudson as you wish. Have stenographer take down proceedings of the conference. Have Hudson come by on his way back.

GREEN McCURTAIN.

Messrs. Hickman, Hudson, and I went into conference soon after their arrival here and after mature consideration our unanimous conclusion was that the Choctaw delegates should reduce their views to writing and file the same with the state committee. The following statement was filed:

McALESTER, OKLA., *January 14, 1908.*

Before the Segregated Coal and Asphalt Lands Commissions created by the Constitutional Convention of the State of Oklahoma.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: We have prepared and agreed upon the following statement which we desire to file with your commission as defining our position before you and expressing our views upon the subject-matter of this conference or meeting:

1. We do not come before you as representatives of the Choctaw Nation with any authority in the matter of the disposition of the coal and asphalt lands belonging to the Choctaw and Chickasaw tribes, for the good and sufficient reason that the disposition of such lands is within the exclusive control of the Federal Government and no one is authorized on the part of the tribes to take any action whatever at this time.

For the ready information of your commission, and for the purpose of explaining fully and satisfactorily to you our position, we respectfully quote the only authority that ever existed for the appointment of representatives on the part of the tribes in the matter of the sale of the coal and asphalt lands and deposits. The supplementary agreement, which first authorized the sale of said lands and deposits, provided, as to representatives on the part of the tribes, that:

"All lands (coal and asphalt) segregated and reserved * * * shall * * * be sold by a commission composed of three persons, which shall be appointed by the Pres-

ident, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one upon the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood. * * *"

By the act of April 21, 1904, the manner of sale of the coal lands was changed so as to sell the unleased lands upon sealed proposals instead of at public auction, and all leased lands were withdrawn from sale. As to representatives on the part of the tribes, however, practically the same provision contained in the supplementary agreement was carried into said act of April 21, 1904, as follows:

"*Provided*, That the President shall appoint a commission of three persons, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one upon the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood, which commission shall have a right to be present at the time of the opening of bids and be heard in relation to the acceptance or rejection thereof."

Under the acts of Congress above referred to, Thos. E. Sanguin was appointed on the part of the Choctaw Nation, and Walter Colbert was appointed on the part of the Chickasaw Nation, as we are informed. Sanguin and Colbert are the only persons who ever represented the Choctaw and Chickasaw nations in the matter of the sale of the coal and asphalt lands and deposits, and their authority terminated upon the withdrawal of the coal lands from sale by the act of Congress of April 26, 1906, as follows:

"That all coal and asphalt lands, whether leased or unleased, shall be reserved from sale under this act until the existing leases for coal and asphalt lands shall have expired or until such time as may be provided by law."

Hence, our conclusion, as above stated, that no one is authorized on the part of the tribes to take any action whatever at this time in relation to the disposition of the coal and asphalt lands and deposits belonging to the Choctaws and Chickasaws. And our appearance before you here and now must be in our capacity as private individuals, members of the Choctaw tribe of Indians, and it is in this capacity that we greet you.

2. We understand it to be your duty, under your appointment by authority of the constitutional convention of the State of Oklahoma, to investigate the extent and value of the coal and asphalt lands belonging to the Choctaw and Chickasaw tribes and to report the result of your investigation back to the State with your recommendation as to the purchase of said lands by the State. Proceeding upon this understanding of your mission here, we would respectfully invite your attention to the statements of Mine Inspector Cameron and Coal Trustee Tucker, as contained in Volume I of the report of the Senate committee that visited the Indian Territory in the latter part of the year 1906. These statements are made by officials of the Government who are charged with the duty of looking after the mining interests of the tribes and of keeping a correct record thereof, and while their idea as to the extent of the unleased mineral land is more or less conjectural, as are also their estimates of the value of the entire field, yet it is more than probable that their judgment of these matters is better warranted than that of any other disinterested parties having a knowledge of the coal and asphalt lands of this country. We, therefore, commend to your investigation and consideration the statements of Mr. Cameron and Mr. Tucker.

3. As to the feeling of the Indians toward the matter of the State buying these coal lands, we do not profess to know that, nor do we think anyone else is prepared to speak for the tribes on this question, for that sentiment has never been polled. But speaking our judgment, based upon the nature of the probable transaction, we should say that it is not a matter of sentiment with the Indians but a matter of business, and they would, as we think they should, favor that purchaser which will pay them the most for their property.

4. As to whether the Indians would be willing to join the State in an effort to induce Congress to permit the sale of the coal and asphalt lands to the State, we must give a qualified answer. If it is expected to ask that the State be permitted to buy these lands exclusive of any other bidders, then the very interest the tribes have in getting as many bidders as possible for these lands makes it our plain duty to answer, "No." If it is expected to ask that the State may enter the field as a competitive bidder, then we answer, "Yes, and welcome."

In conclusion, we desire to state that if your commission wishes to submit any propositions affecting the Choctaws we will receive them and communicate the same to our principal chief, and under his directions present the same to the proper authorities of the Federal Government with proper recommendations.

Respectfully submitted,

E. L. HICKMAN,
Choctaw Delegate to Washington, D. C.

PETER J. HUDSON,
Special Choctaw Delegate to Washington, D. C.

Mr. J. F. McMurray, of the firm of Mansfield, McMurray & Cornish, and Cecil A. Lyon, of Texas, went before the state committee, and upon being asked how long they had represented the tribes in the sale of the coal lands, Mr. McMurray replied that they had been representing the tribes since 1905, and he gave dates as to contracts he had with both the Choctaw and Chickasaw tribes and also dates of the acts of the council and legislature of the Choctaw and Chickasaw nations, respectively, authorizing said contracts. Whether Mr. McMurray filed these contracts and council acts with the state committee or not, I do not know. But I presume that he presented the contracts and the council acts authorizing the same as a basis of his claim that he represented the tribes in the matter of the disposition of the coal and asphalt interests belonging to the Choctaws and Chickasaws. If this be the basis of his right or claim of right to represent the tribes, I want to take issue with that on behalf of the Choctaws, and would state:

First. That the act of the council under which he claims a contract with the Choctaws is of no validity for the reason that said act of the council has never been approved by the President of the United States as required by section 29 of the act of Congress approved June 28, 1898 (30 Stats., 495), as follows:

"It is further agreed that no act, ordinance, or resolution of the council of either the Choctaw or Chickasaw tribes, in any manner affecting the land of the tribe, or of the individuals, after allotment, or the moneys or other property of the tribe or citizens thereof (except appropriations for the regular and necessary expenses of the government of the respective tribes), * * * shall be of any validity until approved by the President of the United States."

Second. At the time said contract was made with Mansfield, McMurray & Cornish and Cecil Lyon to represent the tribes in the disposition of the coal and asphalt lands, the Choctaws and Chickasaws had representatives for that purpose appointed by the President of the United States under the acts of Congress approved July 1, 1902, and April 21, 1904, as follows:

"All lands (coal and asphalt) segregated and reserved * * * shall * * * be sold by a commission composed of three persons, which shall be appointed by the President, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one upon the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood. * * *." (Act of 1902.)

"*Provided*, That the President shall appoint a commission of three persons, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one upon the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood, which commission shall have a right to be present at the time of the opening of bids and be heard in relation to the acceptance or rejection thereof." (Act of 1904.)

T. E. Sanguin and Walter Colbert were nominated, respectively, by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, and were appointed by the President under the acts of Congress above quoted, and they were the only representatives the tribes ever had in the matter of the sale of their coal and asphalt lands; they continued as such representatives of the tribes until the passage of the act of Congress of April 26, 1906, withdrawing said coal lands from sale, as follows:

"That all coal and asphalt lands, whether leased or unleased, shall be reserved from sale under this act until the existing leases for coal and asphalt lands shall have expired or until such time as may be provided by law."

With the passage of the act of April 26, 1906, supra, all authority for the sale of the coal and asphalt lands of the tribes ceased to exist, and with it, of course, ceased the legal existence of tribal representatives in the matter.

Furthermore, I am informed by Governor McCurtain himself that he declined to give Mr. McMurray written authority to represent the Choctaws before the state committee. Governor McCurtain also advised the chairman of the state committee that Hickman and Hudson were the representatives and the only representatives with any authority at all to represent the Choctaws in the meeting with the state committee. Governor McCurtain further informs me that he has directed that the act of the council authorizing the contract with Mansfield, McMurray & Cornish and Cecil Lyon be submitted for executive action. When the governor submits said act he will accompany same by a statement in full giving the history of the passage of the act, the making of the contract, etc., for the information of the department. While the governor signed the act of the council and made the illegal contract in pursuance thereof, his conduct in refusing to recognize said act and contract as being of any validity until approved by the President, and his submitting the same for the President's approval, are entirely consistent with the very best of faith and good intentions on his part. I

do not make this statement as a necessary defense of the governor, for he needs no defense at the hands of anyone—his letter transmitting the act for executive action will fully justify his course.

Objection to this contract does not rest solely upon its illegality or invalidity, but the contract itself is opposed to all the principles and considerations of equity and good conscience. In the first place, it is not right that these Indians should be required or even permitted to give away 10 per cent or any other amount of their substance to sell it; nor is it necessary that they should do so. It is inconceivable that the United States Government would allow anyone to make a commission out of a sale of the property of its Indian wards, and especially in a sale that is to be under the direction of the Government itself. The contract which Mansfield, McMurray & Cornish and Cecil Lyon claim to have with the Choctaw and Chickasaw nations for the sale of the coal properties belonging to the tribes is, as I understand, for 10 per cent of the proceeds of the sale. When it is considered that these properties of the tribes are estimated to be worth from ten to one hundred million dollars, the very amount agreed upon as compensation to Mansfield, McMurray & Cornish and Cecil Lyon makes the contract unconscionable.

The contingent character of the contract made with the tribes by Mansfield, McMurray & Cornish and Cecil Lyon brings it under the ban pronounced by the courts against such contracts. The Supreme Court of the United States, speaking to this question, said:

"Agreements for compensation contingent upon success, suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil and strikes down the contract from its inception."

The fact, too, that this contract affects property of the tribes which is under the administrative control of the Government and is subject to legislation by Congress, makes it repugnant to the principles of public policy. And concerning contracts that involve the procuring of legislation the same high court says:

"It has been asserted in cases relating to agreements for compensation for procuring legislation. These have been uniformly declared invalid, and the decisions have not turned upon the question whether improper influences were contemplated or used, but upon the corrupting tendency of the agreements. Legislation should be prompted solely from considerations of the public good, and the best means of advancing it."

As bearing on the action of J. F. McMurray and Cecil Lyon in appearing before the state committee, I inclose herewith a few clippings which are of interest as showing an effort to create the impression that McMurray and Lyon are the representatives of the tribes in the sale of the coal and asphalt properties belonging to the tribes.

In conclusion, I desire to record my opposition to the Mansfield, McMurray & Cornish-Cecil Lyon contract, and I do so both as a member by blood of the Choctaw tribe of Indians and as their legal representative. I believe the Government should by proper proceeding require the surrender and cancellation of this contract in order that it may never be used to harass the Indian people or their property.

Very respectfully,

D. C. McCURTAIN,
General Attorney, Choctaw Nation.

Hon. J. G. WRIGHT, Commissioner,
Muskogee, Okla.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla., February 5, 1908.

SIR: I have the honor to transmit herewith for executive action an act of the national council of the Choctaw Nation approved by the principal chief July 3, 1905, entitled "Bill No. 6. An act in relation to the sale of the segregated coal and asphalt lands in the Choctaw and Chickasaw nations."

This act sets up the fact that the coal and asphalt lands were not disposed of within three years from the ratification of the supplemental agreement with the Choctaw and Chickasaw tribes as provided by the act of Congress approved July 1, 1902 (32 Stat., 641), and the Indian appropriation act of April 21, 1904, and as it was the belief

of the Choctaw people that such lands should be sold and payment therefor made before the expiration of the tribal governments, it is therefore provided that the principal chief of the Choctaw Nation, with the concurrence of the Chickasaw Nation, shall take the necessary steps to bring about the sale of these lands and deposits for the highest price obtainable, and to that end he was empowered to employ counsel or appoint commissioners, which counsel or commission should receive as compensation for their services not to exceed 10 per cent of the sum received from the sale of the land and deposits, such compensation to be contingent upon a sale being effected and payable wholly out of the moneys received therefrom.

I also inclose herewith a communication from Hon. Green McCurtain, principal chief of the Choctaw Nation, dated February 1, 1908, giving the reasons this act has not heretofore been submitted for approval, and stating that under this act he made a contract with Messrs. Mansfield, McMurray & Cornish and Mr. Cecil A. Lyon, which contract he now believes should not be allowed to stand inasmuch as it is his opinion the Choctaw Nation will be allowed to be heard in matters affecting its interests and it will not be necessary to contract or barter away any portion of the proceeds of the sale in order to protect the remainder. He also states that there is no service that such attorneys could render under such contract, inasmuch as the sale of the coal lands is a matter exclusively within the jurisdiction of the Government. In view of such facts he suggests that the act be disapproved.

I have no record of a similar act having been passed by the Chickasaw legislature.

For the reasons stated by the principal chief, I respectfully recommend that the act transmitted be disapproved.

Very respectfully,

J. G. WRIGHT, Commissioner.

THE SECRETARY OF THE INTERIOR.
(Through the Commissioner of Indian Affairs.)

KINTA, OKLA., February 1, 1908.

SIR: I have instructed that bill No. 6 passed by the Choctaw council at a special session thereof held in July, 1905, entitled "An act in relation to the sale of the segregated coal and asphalt lands in the Choctaw and Chickasaw nations," be submitted for executive action, and said bill is herewith inclosed.

I desire in submitting said bill to furnish an accompanying statement explaining the circumstances under which the same was passed, why it was approved, etc.

In the first place, it was agreed and provided in the supplementary agreement (act of Congress approved July 1, 1902) between the United States Government and the Choctaw and Chickasaw tribes that all the lands belonging to said tribes which were principally valuable for their coal and asphalt deposits should be segregated and sold. Said supplementary agreement provided that such coal and asphalt lands and deposits should be sold at public auction for cash, under the direction of the President, by a commission composed of three persons, which should be appointed by the President, one on the recommendation of the principal chief of the Choctaw Nation, who should be a Choctaw by blood, and one on the recommendation of the governor of the Chickasaw Nation, who should be a Chickasaw by blood. It was further provided in said agreement that said lands and deposits should be sold within three years from the date of the final ratification of said agreement. Notwithstanding the plain terms and requirements of this agreement with the tribes, and notwithstanding that said provision for the segregation and sale of the coal lands was inserted at the special instance of the tribes, the Secretary of the Interior, Mr. Hitchcock, refused to carry out said terms and provisions of said agreement further than to segregate the lands from allotment. Mr. Hitchcock was strongly inclined to the belief

that the coal and asphalt lands of the tribes could be sold to a better advantage if sold upon sealed proposals rather than at public auction; and for his convictions in this his honest belief and good intentions were not doubted, nor have they ever been by me or any of the members of my tribe, but there was an opinion, and an honest one, prevailing among the Choctaw people, who were represented as one of the parties to that agreement, that although Mr. Hitchcock's opinion was at variance with the law and its provisions, yet it was his plain duty to carry out that law in its every requirement, so far as he could. Thus the matter stood for two years.

April 21, 1904, at the solicitation of the Secretary and upon his recommendation, Congress so amended the law or agreement of 1902 as to authorize the sale of the unleased lands upon sealed proposals instead of at public auction. Congress went further, however, than was asked or recommended by the Secretary, and withdrew the leased lands from sale; and just here I will state, if permitted the expression, that the withdrawal of our leased lands from sale, and over our protest, too, was the "straw that broke the camel's back." We knew that the coal companies and operators were maintaining a strong lobby at Washington for the purpose of resisting the sale of the coal lands and especially the leased coal lands, for reasons subserving their own special interests; and when the act of April 21, 1904, was passed containing the provision withdrawing our leased coal lands from sale—a provision so strongly opposed by the tribes and at the same time so much desired by the coal companies—the Indian people lost heart; they felt and feared that if it was to be a contest between themselves on the one side and the coal companies on the other, then the cause of the Indians, though right, was lost to their more powerful but unrighteous adversary. This condition of their affairs, as the Indian saw it and understood it, created quite an agitation in the public mind; hence, when the council met the feeling that the tribes should take or attempt to take the initiative in the matter of the sale of their coal and asphalt lands and deposits was so strong that the bill which is now submitted resulted almost spontaneously. I confess that I shared the popular belief that it was necessary for the tribes to take some action in their own behalf in this matter, and consequently I approved the bill, and subsequently entered into a contract with a firm of lawyers, Mansfield, McMurray & Cornish, who had associated with them Cecil A. Lyon, of Texas, who agreed to undertake to negotiate a sale of these properties belonging to the tribes for a compensation of 10 per cent of the proceeds of the sale.

I was impelled to take this action, as above stated, on account of the feeling, which was shared by me, that it was necessary for the tribes to move in the matter. I was influenced also by the recent experience we had had in the settlement of our citizenship matters. And to fully explain, it is necessary that I refer briefly to citizenship matters. Under the act of June 10, 1896, the Dawes Commission was clothed with power and authority to determine rights to citizenship in the Five Civilized Tribes with right of appeal to the United States courts then existing in the Indian Territory. As soon as it was known that the tribes had lost jurisdiction in the matter of their own citizenship rights people all over the country and in surrounding States began to claim citizenship rights—it was known that the lands and other property of the tribes were to be divided—and a citizenship right established carried with it a right to land and other property of the tribes.

Consequently the Dawes Commission was overrun with applications of people who had never theretofore claimed or pretended to be Indians. The Dawes Commission denied most of these applications, but admitted many. Appeals were taken to the courts and a great majority of the applicants were admitted. The Indians were unequal to this contest because of their unacquaintance with court procedure and their sheer inability to meet the great mass of testimony, much of which was fraudulent, that was introduced by the citizenship claimants. Thus the condition was that these people, 3,500 or 4,000 of them, were demanding enrollment and a considerable part of our property upon judgments of the United States courts. The tribes turned in vain to their guardian Government to save them from the fraud and injustice of these "court-adjudged citizens." We were scolded by our guardian and told that these people had judgments which could not be disturbed by either the executive or legislative branch of the Government, and that we were guilty of laches, etc., in not properly defending against these claims—that we were trying "to lock the stable after the horse was stolen." This was pretty cold comfort.

Forced to the alternative of trying to protect ourselves, our council authorized the principal chief to enter into a contract with an attorney or attorneys to defeat the fraudulent citizenship claimants and to allow such attorneys a compensation not to exceed 10 per cent of the amount involved. A contract was made pursuant to this act with Mansfield, McMurray & Cornish to defeat the claimants. Their undertaking involved the promoting of legislation authorizing a review of the citizenship cases.

The result was the creation of what was known as the "citizenship court." This court held that all the judgments theretofore rendered by the United States district courts admitting the claimants were void on the ground of a lack of notice and sufficient parties to the original suits, and upon a trial upon the merits of the cases nearly all the claimants were denied.

The Secretary of the Interior refused to recognize the contract we had with Mansfield, McMurray & Cornish upon the ground that the acts of the councils of the Choctaw and Chickasaw nations had never been approved by the President, and for the further reason that the compensation agreed upon was excessive and "unconscionable." Congress, however, provided that the citizenship court should fix the fee of the attorneys, and the court fixed it at \$750,000, which was finally paid. Thus the action which it was necessary that we take in our own behalf in citizenship matters cost us right at a round million dollars.

With our experience in citizenship fresh to memory, though costly, and regarding the situation as to the likelihood of disposing of our coal as all but encouraging, we felt that we would again have to take some similar action as to that taken in the citizenship matters. Accordingly the bill, which is now submitted, was passed. In pursuance thereof, we entered into a contract with Mansfield, McMurray & Cornish, and Cecil A. Lyon, whom they have in this undertaking associated with them upon the impression given us that he is influential with the President.

Now, a few words as to why this bill has not been submitted before this, then I conclude with my recommendations as to this bill. At the time this bill passed the Choctaw council and the contract was made, the policy of the department, which had recently prevailed over our protest in the matter of the sale of our coal, was then on trial; and though we never at any time had any faith in it, it was only natural that the Secretary would be partial to the plan of his own making; and to have tried to go over his head, as this act of the council contemplated, would have meant certain defeat of the plan, and we were not ready to give up our plan, though unexpected and not yet started, until at least we could feel that justice would be done us without resort to this extraordinary course.

We have never thought it right at any time or under any circumstances that we should have to give up 10 per cent or any other part of our coal to sell it, but have rather regarded it as a necessary evil. However, I do not now regard it necessary that we contract away a part of our property in order to dispose of or sell it. I look upon the present Secretary of the Interior as being more respectful of the judgment and wishes of the tribes in matters affecting their interests than probably any other Secretary that has preceded him in recent time; and I say this in no spirit of flattery to the one nor out of any feeling of pique to any others, but attribute it to a change of policy toward the Indian people—a delayed recognition of their ability to advise in their own matters. It is only when the Indian people's judgment is ignored and totally disregarded that they are forced to extreme and unusual measures to protect their own interests, and only then in obedience to the law of self-preservation. Had our protest against the passage of the act of Congress of June 10, 1896, depriving us of citizenship jurisdiction, been heeded and our right to determine those matters for ourselves been left undisturbed, the "court citizen" and the "\$750,000 fee" would never have happened. We believe now, however, that we will be taken into the counsel of the Government in matters affecting us and our interests henceforward, and that it will not be necessary to contract or barter away any portion of our property in order to protect the balance of it. Therefore, I do not now believe that this bill should be approved.

I will state further for your information and the information of your department that I have declined specifically to recognize Mansfield, McMurray & Cornish and Cecil Lyon as having any right or authority to represent the Choctaws under this contract, as I do not consider that the contract is of any validity or effect until the act of the council has been submitted to and approved by the President. Besides, there is no service that Mansfield, McMurray & Cornish and Cecil Lyon could render the tribes under this contract, or otherwise, for the sale of the coal lands is a matter exclusively within the jurisdiction of the Federal Government, and nothing can be done legitimately affecting the coal lands or a sale thereof except by authority of the Federal Government.

I submit the bill to you and suggest that it be disapproved.

Very respectfully,

GREEN McCURTAIN,
Principal Chief, Choctaw Nation.

Hon. J. G. WRIGHT, Commissioner,
Muskogee, Okla.

[Bill No. 6.]

AN ACT In relation to the sale of the segregated coal and asphalt lands in the Choctaw and Chickasaw nations.

Whereas coal and asphalt lands and coal and asphalt deposits in the Choctaw and Chickasaw nations aggregating not to exceed five hundred thousand acres were segregated and provision made for the sale thereof at public auction under the provisions of sections fifty-eight and fifty-nine of the act of Congress approved July first, nineteen hundred and two, entitled: "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," as follows:

"Within six months after the final ratification of this agreement the Secretary of the Interior shall ascertain, so far as may be practicable, what lands are principally valuable because of their deposits of coal or asphalt, including therein all lands which at the time of the final ratification of this agreement shall be covered by then existing coal or asphalt leases, and within that time he shall by written order segregate and reserve from allotment all of said lands. Such segregation and reservation shall conform to the subdivisions of the government survey as nearly as may be, and the total segregation and reservation shall not exceed five hundred thousand acres. No lands so reserved shall be allotted to any member or freedman, and the improvements of any member or freedman existing upon any of the lands so segregated and reserved at the time of their segregation and reservation shall be appraised under the direction of the Secretary of the Interior, and shall be paid for out of any common funds of the two tribes in the Treasury of the United States, upon the order of the Secretary of the Interior. All coal and asphalt deposits, as well as other minerals which may be found in any lands not so segregated and reserved, shall be deemed a part of the land and shall pass to the allottee, or other person who may lawfully acquire title to such lands.

"All lands segregated and reserved under the last preceding section, excepting those embraced within the limits of a town site, established as hereinbefore provided, shall, within three years from the final ratification of this agreement and before the dissolution of the tribal governments, be sold at public auction for cash, under the direction of the President, by a commission composed of three persons, which shall be appointed by the President, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one on the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood. Either of said commissioners may, at any time, be removed by the President for good cause shown. Each of said commissioners shall be paid at the rate of four thousand dollars per annum, the Choctaw commissioner to be paid by the Choctaw Nation, the Chickasaw commissioner to be paid by the Chickasaw Nation, and the third commissioner to be paid by the United States. In the sale of coal and asphalt lands and coal and asphalt deposits hereunder, the commission shall have the right to reject any or all bids which it considers below the value of any such land or deposit. The proceeds arising from the sale of coal and asphalt lands and coal and asphalt deposits shall be deposited in the Treasury of the United States to the credit of said tribes (freedmen excepted) with the other moneys belonging to said tribes in the manner provided by law. The lands embraced within any coal or asphalt lease shall be separately sold, subject to such lease, and the purchaser shall succeed to all the rights of the two tribes of every kind and character, under the lease, but all advanced royalties received by the tribes shall be retained by them. The lands so segregated and reserved, and not included within any existing coal or asphalt lease, shall be sold in tracts not exceeding in area a section under the government survey;" and,

Whereas, by the act of Congress, approved April twenty-first, nineteen hundred and four, it was provided that such lands and such deposits should be sold, not at public auction as provided in the former act, but under the direction of the Secretary of the Interior, upon sealed proposals or bids, such provisions of law being as follows:

"All unleased lands which are by section fifty-nine of an act entitled 'An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians and for other purposes,' approved July first, nineteen hundred and two, directed to be sold at public auction for each, and all other unleased lands and deposits of like character in said nations segregated under any act of Congress, shall, instead, be sold under direction of the Secretary of the Interior in tracts not exceeding nine hundred and sixty acres to each person, after due advertisement, upon sealed proposals under regulations to be prescribed by the Secretary of the Interior and approved by the President, with authority to reject any or all proposals: *Provided*, That the President shall appoint a commission of three persons, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one upon the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw

by blood, which commission shall have a right to be present at the time of the opening of bids and be heard in relation to the acceptance or rejection thereof.

"All expenses inclusive of necessary clerical help in the Department of the Interior connected with and incident with such sale shall be paid from the funds of the Choctaw and Chickasaw tribes, on deposit in the Treasury of the United States: *Provided*, That all leased lands shall be held from sale until the further direction of Congress:" and,

Whereas notwithstanding the offering of such sale, under sealed proposals or bids as provided in said act, none have been sold, such proposals or bids thus made not having represented the fair value of the lands to which they applied; and such plan has, therefore, proven a failure; and

Whereas while it is realized that congressional action is necessary to repeal existing law and make effective any new plan of sale, yet it is proper that the initiative in the formation of a new plan should be taken by the Choctaws and Chickasaws, the interested parties; and

Whereas it is of the highest importance that such land should be sold and payment therefor made before the expiration of the tribal governments of the Choctaw and Chickasaw nations, to the end that our people may have a voice in the disposition of affairs of such vital importance to them; therefore,

Be it enacted by the general council of the Choctaw Nation in extraordinary session assembled (The Legislature of the Chickasaw Nation concurring):

SECTION 1. That the principal chief of the Choctaw Nation be and he is empowered and directed to take necessary steps on the part of the Choctaw Nation, the Chickasaw Nation concurring, to bring about the sale of coal and asphalt lands, and coal and asphalt deposits in the Choctaw and Chickasaw nations segregated as above set out, for the highest price obtainable, either to private purchasers or to the Government of the United States; and to that end he is hereby empowered to employ counsel or appoint commissioners to represent the Choctaw Nation in all matters connected therewith and agree, on behalf of the Choctaw Nation, that the counsel or commission so employed or appointed shall be paid as compensation for their services not to exceed ten per centum of the sum which may be received from the lands and deposits sold, such compensation to be wholly contingent upon a sale being effected and payable wholly out of the moneys received therefrom.

SEC. 2. That this act shall take effect and be in force from and after its passage and approval.

Proposed by Daniel Webster, chairman committee on chief's message.

Read, interpreted, passed the senate, and referred to the house this the 3d day of July, 1905.

G. W. CHOATE,
President of the Senate.

Attest:

JOE W. CONSER,
Clerk of the Senate.

Read, interpreted, passed the house, and referred to the principal chief this the 3d day of July, 1905.

ISAAC J. IMPSON,
Speaker of the House.

Attest:

SIMON PULSEY,
Clerk of the House.

Approved this the 3d day of July, 1905.

GREEN McCURTAIN,
Principal Chief, Choctaw Nation.

The WHITE HOUSE, February 17, 1908.

Disapproved:

THEODORE ROOSEVELT.

DEPARTMENT OF THE INTERIOR,
Washington, February 14, 1908.

The PRESIDENT.

I have the honor to inclose a report from the Commissioner to the Five Civilized Tribes, dated February 5, 1908, transmitting an act of the national council of the Choctaw Nation, approved by the prin-

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 29, 1908.

SIR: On April 24, 1908, the office submitted to the Secretary of the Interior a letter of April 3, 1908, from Acting Commissioner Ryan, regarding the return of disapproved tribal acts for the files of the Choctaw authorities. The office recommended that the disapproved acts be not returned, and on April 25, 1908, the department approved this recommendation.

A copy of office letter of April 24, showing departmental action thereon, is inclosed for your information.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

The COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla., May 4, 1908.

SIR: I respectfully acknowledge receipt of your office letter of April 29, 1908, in reference to the request of this office, dated April 24, 1908, that certain disapproved acts of the Choctaw council be returned for delivery to the tribal authorities, with which letter you inclose a copy of your office letter of April 24, 1908, approved by the department April 25, 1908, in which it is stated that it has never been the policy of your office to surrender to the tribal authorities disapproved acts, but it is believed the same should be retained within the control of the department, and I am advised that it is not the intention of the department to return disapproved acts for delivery to the tribal authorities.

Concerning this matter, I have the honor to state that heretofore all acts of the tribal councils of the Five Civilized Tribes, whether approved or disapproved, were returned to the United States Indian inspector for proper disposition and it has only been within the last year or so that the disapproved acts have been retained in the files of your office.

The law provides that no act of the tribal council or legislature shall be of any validity until approved by the President of the United States. It would appear that these original acts should, in due course of time, be returned to the tribal authorities, showing thereon the action taken, whether approved or disapproved. The original acts are a part of the records of the Indian tribe, and unless they are returned to the tribal authorities there will be nothing to show the action taken except a letter from this office.

No warrants can be legally drawn under a disapproved act, and in any event the tribal authorities do not now handle the funds of the tribe, and payment of all warrants is made by the United States Indian agent after the same are approved by the Commissioner to the Five Civilized Tribes. All warrants drawn by the tribal authorities are carefully checked in this office, and before approving the same it is ascertained that they are correctly drawn under an approved act. There is no possibility of any funds being disbursed under an act which has been disapproved.

It is just as necessary for the disapproved acts to be returned for the files of the tribal authorities as it is for them to have the approved acts. These acts are forwarded as provided by law, not to be retained in the files of any office, but for executive action, and to be returned to the proper tribe showing such action. So far as the control of the department over disapproved acts is concerned, under existing law the department has full control of the funds of the tribe and, as stated above, there is no possibility of any improper action being taken by the tribal authorities or payment made under any disapproved act.

I respectfully ask that the action taken in this matter be reconsidered and that the act of the Choctaw council approved by the principal chief July 3, 1905, and entitled "An act in relation to the sale of segregated coal and asphalt land in the Choctaw and Chickasaw nations," which was disapproved by the President February 17, 1908, be returned to this office for appropriate disposition.

Very respectfully,

J. G. WRIGHT,
Commissioner.

The COMMISSIONER OF INDIAN AFFAIRS.

NORDRACH RANCH,
Colorado Springs, Colo., June 29, 1908.

DEAR SIR: I am in receipt of a letter from Governor McCurtain, dated June 25, 1908, in which he states that Mr. E. H. Wilson, national secretary of the Choctaw Nation, informed him that Choctaw council bill No. 6, relating to the disposition of the coal lands, which was disapproved by the President February 17, 1908, has not yet been returned to the tribe as required by section 29 of the act of Congress approved June 28, 1898 (30 Stats., 495), and the governor requests that I take the matter up with you and inform you of this fact.

Some time ago Governor McCurtain addressed a letter to Mr. Wilson, the national secretary, and instructed him not to permit anyone to take this bill, which had been disapproved by the President, from the files of his office. These instructions were given by Governor McCurtain to the national secretary because of the fact that some time ago the unengrossed copy of said bill disappeared from the files of the secretary's office, though by no fault of the secretary, and Governor McCurtain did not want that trick repeated on the bill bearing the official disapproval of the President. The national secretary informed the governor at that time that the bill had not been returned to him, but that he had written to the department concerning the matter; that was about two months ago. The governor saw the national secretary very recently, the 23d instant, and was informed by him that the bill had not yet been returned.

Your attention is called to the matter with the request that you investigate the cause of the delay in returning the bill, and with the further respectful request that you locate said bill and cause its return to be made to the tribe.

Very respectfully,

D. C. McCURTAIN,
General Attorney, Choctaw Nation.

Hon. J. GEO. WRIGHT,
*Commissioner Five Civilized Tribes,
Muskogee, Okla.*

DEPARTMENT OF THE INTERIOR,
 COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla., July 13, 1908.

SIR: On May 4, 1908, I addressed a communication to your office with reference to the matter of retaining in your files disapproved acts of the tribal councils of the Five Civilized Tribes, in which I stated it was my opinion that the original acts, whether approved or disapproved, belonged to the tribal authorities and should be returned for their files, and requested that the act of the Choctaw council approved by the principal chief July 3, 1905, and entitled "An act in relation to the sale of segregated coal and asphalt lands in the Choctaw and Chickasaw nations," which was disapproved by the President February 17, 1908, be returned to this office for appropriate disposition. No reply to such communication has been received.

I now have the honor to transmit herewith a communication from Mr. D. C. McCurtain, attorney for the Choctaw Nation, dated June 29, 1908, stating that the act referred to has not been received by the tribal authorities and asking that the same be located and, in due time, returned to the tribe.

Inasmuch as the matter may have been overlooked, I again invite attention to the same and renew my request that the disapproved act be returned. This matter was brought to the attention of Assistant Secretary Wilson during his recent visit here.

Very respectfully,

J. G. WRIGHT, *Commissioner.*

The COMMISSIONER OF INDIAN AFFAIRS.

EXECUTIVE OFFICE, CHOCTAW NATION,
Kinta, Okla., February 25, 1909.

SIR: It is my information that a resolution will probably pass Congress providing for a committee to visit Oklahoma for the purpose of investigating the value of the Indian tribal property to be disposed of, with a probable view to purchasing some of the public property by the Government.

I write to advise you that there is an organized effort being made by a man by the name of J. F. McMurray and his associates to get a fee out of the disposition of the tribal property. This man McMurray stands repudiated by both the Department of the Interior and the Choctaw tribal authorities. He has attempted to evade both these authorities by procuring contracts from individual Choctaws and Chickasaws. The contracts which McMurray and his associates or agents have procured are void in their effect and unconscionable in their terms; and this, McMurray well knows, but he hopes to have his unlawful contracts given effect in some way, by recognition directly or indirectly.

Therefore, Mr. President, on behalf of the Choctaw people, and in the interest of the public service, I appeal to you to see that the law or resolution be such as to prevent any person or persons holding unlawful contracts from representing or pretending to represent the Indians before the committee.

Very respectfully,

GREEN McCURTAIN,
Principal Chief, Choctaw Nation.

President ROOSEVELT,
Washington, D. C.

737 EAST BOULDER STREET,
Colorado Springs, Colo., February 27, 1909.

DEAR SIR: I want to personally thank you for the invaluable service you rendered the Choctaws and Chickasaws in defeating the provision to send a committee to Oklahoma to inquire into values of the public property of the tribes, for I firmly believe such action would have been taken advantage of by parties holding unlawful contracts from individual Choctaws and Chickasaws.

I understand that it is the boast of that crowd that while they failed this time they have "everything in good shape for the next session." Whether this is an idle boast, or whether it is true that they are not "reckoning without their hosts," I do not know. It is my sincere hope that they may never succeed, for if the plan should be carried out as laid in those McMurray contracts, it would be little, if any, less than a crime against the Indians and a disgrace to the National Government.

What I fear most are political combinations, real or supposed, in aid of the scheme. And while it is asking a great deal, perhaps, yet I feel that an exigency exists of sufficient importance to the Indians, of whom you are about to relinquish control, to justify the request that you inform the succeeding administration of the true and exact situation with respect to the plans and schemes formed and in process of formation to rob the Choctaws and Chickasaws of a part of their patrimony. I hope, therefore, you may see your way clear to fully acquaint the incoming President and Secretary of the situation, both as respects the parties and their schemes, as it affects these wards of the Government.

With feelings of high regard for you, I am,

Yours, very respectfully,

D. C. McCURTAIN.

HON. JAMES R. GARFIELD,
Secretary of the Interior, Washington, D. C.

KINTA, OKLA., *April 20, 1909.*

The SECRETARY OF THE INTERIOR:

I desire to call attention to the fact that a man by the name of J. F. McMurray, of McAlester, Okla., is taking contracts from a great number of individual Choctaws and Chickasaws, purporting to make him their agent and representative in the final disposition of the undivided property of the Choctaw and Chickasaw tribes at a fee of 10 per centum of the value of all such undivided property; and on behalf of the Choctaw tribe of Indians, and in the interest of common justice, I protest against any recognition being given to McMurray and his unlawful contracts.

In the first place, it is the duty of the United States Government by virtue of the relationship it sustains to the Indian tribes, that of guardian to ward, to protect the Indians and their property against extortion and speculation of any character whatsoever. The Government has the duty of administering Indian affairs, which includes the final disposition of all tribal property, and it is inconceivable that the Government would allow McMurray, or any one else, to specu-

NOVEMBER 30, 1909.

SIR: The office is in receipt of your letter of November 18, 1909 in which you request a copy of the act of the Choctaw council approved by the principal chief July 3, 1905, and disapproved by the President February 17, 1908, entitled "An act in relation to the sale of segregated coal and asphalt lands in the Choctaw and Chickasaw nations."

A copy of the act is inclosed herewith in accordance with your request.

Very respectfully,

J. G. WRIGHT, Esq.,
Commissioner to the Five Civilized Tribes,
Muskogee, Okla.

WM. R. LAYNE,
Acting Chief Land Division.

THE WHITE HOUSE,
Washington, March 5, 1910]

MY DEAR MR. SECRETARY: I send you herewith papers which have been handed to me by Father Ketcham. A perusal of them indicates that you know a good deal about the matter. Whatever steps can be taken to prevent an abuse of the confidence of these people ought of course, to be taken.

Very sincerely, yours,

HON. R. A. BALLINGER,
Secretary of the Interior.

WM. H. TAFT.

THE BUREAU OF CATHOLIC INDIAN MISSIONS,
1326 NEW YORK AVENUE,
Washington, D. C., March 3, 1910.

SIR: I beg to submit the inclosures for your consideration. The writer of the letter D. C. McCurtain, a Choctaw by blood, is a very capable attorney, and, I believe, is devoted to the best interests of his people.

Very respectfully,

The PRESIDENT.

WM. H. KETCHAM, Director.

MCALISTER, OKLA., February 12, 1910.

DEAR SIR: I take the liberty of writing to you and calling your attention to a matter of very great importance to the Choctaw and Chickasaw Indians, and to ask your assistance in preventing the consummation of a scheme which, if successful, would mean a great loss to the Indian people.

A studied and persistent effort is being made by certain parties, headed by J. F. McMurray, to make a lot of money out of the Choctaw and Chickasaw Indians in the final settlement of their affairs by the Government of the United States. I inclose you herewith copy of a general letter that Governor McCurtain sent broadcast among his people, warning them against this man McMurray and his agents. I send also copy of resolutions passed by the Choctaw council at its last regular session, addressed to the President, the Congress of the United States, and the Secretary of the Interior protesting against any recognition being given to McMurray as the alleged representative of the Choctaw and Chickasaw Indians under certain void and illegal contracts which he has procured from them.

It should be stated further that in the year 1905 the Choctaw council and the Chickasaw legislature passed bills or acts authorizing the chief executive of the two tribes to appoint commissions or employ counsel to represent the tribes in the sale of the coal and asphalt lands and deposits on a per cent commission basis, and in pursuance of said council acts contracts were made by the tribal executives with Mansfield

McMurray & Cornish at a fee of ten per centum of the amount to be derived from the sale of said coal and asphalt lands and deposits.

The Atoka agreement, section 29 of the act of Congress approved June 28, 1898 (30 Stat., 495), provides that: "No act, ordinance, or resolution of the council of either the Choctaw or Chickasaw tribes, in any manner affecting the land of the tribe, or of the individuals, after allotment, or the moneys or other property of the tribes or citizens thereof (except appropriations for the regular and necessary expenses of the government of the respective tribes), or the rights of any persons who have taken or may take the oath of allegiance to the United States, shall be of any validity until approved by the President of the United States."

Governor McCurtain accordingly submitted the act of the Choctaw Council authorizing the contract which was made with Mansfield, McMurray & Cornish to the President of the United States for approval, and said act of the council was by the President disapproved on or about February 17, 1908, thereby forever rendering said contract a nullity, for the act under which the contract was made was never of any validity and could be of none until approved by the President, and that was never done. Whether or not the act of the Chickasaw legislature authorizing the contract with Mansfield, McMurray & Cornish was ever submitted to the President for approval I do not know, but I think not. However, under the law above quoted and referred to, the act of the Chickasaw legislature, whether submitted or not, is without any validity until approved by the President; and, of course, any contract which the executive of the Chickasaw Nation may have made with Mansfield, McMurray & Cornish, or any one else, under an act of the legislature requiring approval by the President, and which was never approved, is of no more validity than the act itself.

Evidently McMurray and his associates are not relying very strongly upon the contracts which they have with the tribal executives, since the acts of the tribal councils are without the approval of the President. So they try another dodge on it; they are procuring contracts from individual Indians. But these are of no more standing than their contracts with the tribal executives, for reasons that are fully discussed in Governor McCurtain's letter, copy of which is herewith inclosed.

The one danger to be feared and averted is the gathering of influence in support of the scheme to make money out of the final settlement of the tribal estates. The Government should protect us against such practices and schemes, and I believe will do so if they are properly brought to the attention of the authorities.

If the plans as laid in those contracts should be successful, the Choctaw and Chickasaw Indians would lose millions of dollars, and there would be a scandal come out of it that would shock the public.

Please look into this matter, and if you will we would like to have you call this matter to the personal attention of the President and your friends in Congress. Secretary Ballinger has refused to approve McMurray's contracts, as will be seen from the inclosed papers.

Very respectfully,

D. C. McCURTAIN.

Rev. Father WM. H. KETCHAM,
1326 New York Avenue, Washington, D. C.

The following is a general letter of Principal Chief McCurtain, of the Choctaws, to his people, warning them against J. F. McMurray and his agents, and contains some correspondence between Secretary Ballinger and Chief McCurtain relating to certain contracts procured by J. F. McMurray and his agents from Choctaw and Chickasaw Indians:

EXECUTIVE OFFICE, CHOCTAW NATION,
Kinta, Okla.

MY DEAR SIR: Some time ago it came to my knowledge that J. F. McMurray, of McAlester, Okla., has a number of agents and representatives going about over the country procuring contracts for him from Choctaw citizens purporting to employ McMurray as the attorney and representative of such Choctaws in the final settlement of the Choctaw and Chickasaw affairs by the Government at a compensation of 10 per cent of their undivided property.

On the 20th day of April last, I addressed the following letter to the Secretary of the Interior in relation to the McMurray contracts:

KINTA, OKLA., April 20, 1909.

I desire to call attention to the fact that a man by the name of J. F. McMurray, of McAlester, Okla., is taking contracts from a great number of individual Choctaws and Chickasaws, purporting to make him their agent and representative in the final

disposition of the undivided property of the Choctaw and Chickasaw tribes at a fee of 10 per cent of the value of all such undivided property; and on behalf of the Choctaw tribe of Indians, and in the interest of common justice, I protest against any recognition being given to McMurray and his unlawful contracts.

In the first place, it is the duty of the United States Government, by virtue of the relationship it sustains to the Indian tribes, that of guardian to ward, to protect the Indians and their property against extortion and speculation of any character whatsoever. The Government has the duty of administering Indian affairs, which includes the final disposition of all tribal property, and it is inconceivable that the Government would allow McMurray, or anyone else, to speculate in the interests of the Indians or in the disposition of their property now in the hands of the Government for final settlement.

McMurray has no connection whatever with the legally constituted authorities of the tribes, neither is he in the employment of the Government of the United States in any way, and he is not, therefore, in a position to render legal services, or service of any kind, to the tribes. His is simply the position of an outsider endeavoring to get a fee out of the disposition of Indian property by the Government.

* * * * *
It is my information that McMurray has a number of agents throughout the Choctaw and Chickasaw nations procuring contracts from individual Indians employing or purporting to employ him as their agent and representative in the final disposition of the undivided tribal property by the Government. Some of these agents, I am informed, he pays a regular compensation for getting the contracts for him, and others are interested with him, by private arrangement, in the contracts. In all events, the action of the Indians in making contracts with McMurray is by no means spontaneous on the part of the Indians, but is induced by interested parties.

McMurray, I understand, will claim that his contracts are with individual Indians, and that they are perfectly competent to make such contracts.

We deny that the members of the Choctaw and Chickasaw tribes have a right to make individual contracts affecting the undivided tribal property. The title to the undivided tribal property is in the tribes, and not in the individual members of said tribes, and is not, therefore, subject to control by individual members of said tribes, for that is a function of government. The Supreme Court of the United States, speaking to this question, says:

"Whatever title the Indians have is in the tribes and not in the individuals, although held by the tribe for the common use and equal benefit of all the members. The control and development of the tribal property * * * still remains subject to the administrative control of the Government, even though the members of the tribe have been invested with the status of citizenship under recent legislation." (Cherokee Nation v. Hitchcock, 187 U. S., 183.)

The fact of the removal of restrictions upon the alienation of lands of allottees, or any of them, can not be construed to have the effect to enable such allottees to make contracts with respect to the interest of such allottees in the undivided tribal property, for in all such cases the removal of restrictions, as authorized by law, is with respect to the allotted lands and has no reference to the undivided tribal property.

The Assistant Attorney-General of the United States for the Interior Department, in an opinion rendered by him June 8, 1904, held that the restrictions attached to the lands of the allottees. It follows, therefore, that when the restrictions are removed they are removed from the allotted lands of the allottees, and not from the unallotted lands of the tribes.

View the McMurray contracts in any light, and they are bad. They are bad as a matter of policy and bad in law.

I therefore record a protest on behalf of the Choctaws against recognition of any kind being given McMurray under his claims to represent the Choctaw Indians, or any of them, in the final settlement of their affairs by the Government of the United States.

Very respectfully,

GREEN McCURTAIN,
Principal Chief Choctaw Nation.

The SECRETARY OF THE INTERIOR.

In reply to the foregoing I received the following letter from the Secretary of the Interior, under date of April 22, 1909:

DEPARTMENT OF THE INTERIOR.
Washington, April 22, 1909.

DEAR SIR: I herewith acknowledge receipt of your letter of the 20th instant, in reference to proposed contracts with Chickasaw Indians sought to be entered into by J. F. McMurray.

I have handed your letter to the Assistant Attorney-General for the Interior Department and directed that the matter should be given full and careful consideration with the view of protecting the Indians of your nation against any improper or burdensome contracts.

Very truly, yours,

R. A. BALLINGER, Secretary.

GREEN McCURTAIN,
Principal Chief Choctaw Nation, Kinta, Okla.

I received another letter from the Secretary of the Interior, under date of May 28, 1909, inclosing copies of two letters he had addressed to McMurray in which the Secretary refused to approve McMurray's contracts. Said letter of the Secretary to me and his letters to McMurray are as follows:

WASHINGTON, May 28, 1909.

MY DEAR SIR: I inclose herewith copies of two letters addressed to an attorney by the name of J. F. McMurray, under date of April 23.

I understand that it has been stated that a copy of your letter of April 20 was given by me to Mr. McMurray. There is no truth in this statement, as no copy was furnished to him by me, and your letters and correspondence with the department are properly protected.

Very truly, yours,

R. A. BALLINGER,
Secretary.

HON. GREEN McCURTAIN,
Principal Chief Choctaw Nation, Kinta, Okla.

WASHINGTON, April 23, 1909.

SIR: With reference to contract submitted between yourself and certain individual members of the Choctaw and Chickasaw nations providing for the prosecution, by yourself, as attorney, before the courts or elsewhere, of all unsettled claims of the Choctaw and Chickasaw people against the United States and in procuring the sale of all the undivided property of said people, I have to state that, in my opinion, said contract relates to interests which are tribal in character, and as to which it is not appropriate for the individual members of said tribes to negotiate or contract.

Very respectfully,

R. A. BALLINGER, Secretary.

J. F. McMURRAY,
Attorney at Law, McAlester, Okla.

WASHINGTON, April 23, 1909.

SIR: Referring to contract and memoranda submitted by you concerning assessment and taxation by the Oklahoma authorities of lands and property of the Choctaw and Chickasaw Indians, who are included within the terms of the act of Congress approved May 27, 1908 (38 Stat., 312), removing restrictions against taxation and alienation as to certain Indians of the Choctaw and Chickasaw nations, I have to state the contract is one of which, in my opinion, this office should not take official cognizance by either approving or disapproving the same.

Very respectfully,

R. A. BALLINGER, Secretary.

J. F. McMURRAY,
Attorney at Law, McAlester, Okla.

I want the Choctaw people to know that I do not indorse McMurray's contracts; neither do I indorse the actions of McMurray's agents in procuring such contracts for him from the Choctaw people.

I am opposed to McMurray's contracts for many reasons. It is not right, nor is it necessary, for our people to contract away a part of their property, and the property of their children, to get what is already their own, now in the hands of the Government of the United States for final division among the members of the Choctaw and Chickasaw tribes. All that remains to be done by the Government is the plain and simple duty of dividing our property so that each Choctaw and Chickasaw will get an equal share thereof; it is not a matter or question of getting something for us, the property is already our own, and it is a mere matter of dividing it; and surely the Government of the United States will not do anything that would require or cause us to pay some one a big fee to have our property divided. Moreover, I do not believe the Government will even permit such a thing. Of course the Government can not prevent the making of contracts, but I very much fear that if such contracts are made in any great numbers the effect will be to delay the final settlement of our affairs, for the government authorities will never consent to divide our property or the proceeds thereof while there are any void and unjust contracts outstanding against it.

We have a regular delegate and a special delegate at Washington to represent us in the final settlement of our affairs, and there is no necessity, reason, or excuse for bargaining away a part of our lands and moneys and other interests to some one to do, or try to do, what our delegates are already commissioned and paid to do. What we should do, and continue to do, is to aid and encourage our delegates and attorneys in their efforts to get a final settlement of our affairs. But whatever we do, let's not contract away our birthrights and the birthrights of our children, and thereby bring reproach and everlasting shame upon our names and do injustice to our children.

McMurray can not do anything at Washington for the Choctaw people anyway. The Secretary of the Interior has positively and expressly refused to approve his contracts, or to recommend their approval. If McMurray is not able to get his contracts approved at Washington, then he is not able to do anything there for the Choctaw people under such contracts. That proposition proves itself, and is so plain that it will not admit of argument to the contrary.

In addition to the fact that McMurray can not do anything under his contracts that would be of the slightest benefit to the Choctaw people, or by which he could possibly earn any part of the enormous fee which the contracts agree to give him, the contracts themselves are subject to the further serious objection that they do not bind McMurray to do any specific thing. All that McMurray is required to do under the contracts is to represent the citizens signing said contracts.

"In the prosecution before the courts or elsewhere of all the unsettled claims of the Choctaw and Chickasaw people against the United States and for compensation therefor; to prosecute said claims before the courts of the United States or before the Congress of the United States as in his judgment may be necessary; to represent such members of the Choctaw and Chickasaw nations as their representative and attorney in the sale of all their undivided property of whatsoever character."

Mark you, McMurray nowhere in the contract binds himself to accomplish anything for the people who sign the contracts with him. Remember that. But the people who sign the contracts with McMurray are bound to pay him 10 per cent of their property whenever it is sold, whether McMurray has anything to do with the sale of it or not. Observe the following language of the contract wherein it provides for McMurray's compensation:

"Said J. F. McMurray to receive as his compensation therefor 10 per cent of all funds derived by us from the United States Government in settlement of the various claims due by the United States to the Choctaw and Chickasaw people, and also 10 per cent of the amount received by the said Choctaw and Chickasaw people for all property of whatsoever kind, held in common by them, when said property shall be sold."

So far as relates to the "payment of unsettled claims," that is a mere contingency, for if nothing is collected McMurray would get nothing. But not so as to the 10 per cent "of all property of whatsoever kind when sold." That included the coal and asphalt lands and deposits and the unallotted lands and town-site funds, and those will be sold and distributed anyway, regardless of McMurray; so it will be seen that McMurray need not turn a hand, as probably he would not be permitted to, in the sale of the coal and asphalt lands and deposits and the unallotted lands, yet he would get 10 per cent of such property under his contracts. Inasmuch as the United States Government, and not McMurray, will sell the coal and asphalt lands and deposits, as well as the unallotted lands, and will sell them without McMurray having anything to do with it, I see no reason or excuse for making McMurray and his agents a present of 10 per cent, or any other amount, of our property when it is sold by the Government.

About the contracts McMurray and his agents are procuring from the Choctaw people, employing McMurray to represent the Choctaws in the tax matters, will say that it is not necessary to employ McMurray or to pay him any money on account of that, as it is my purpose to have the Choctaw Nation bring that suit for the Choctaw people. Already I have that matter up with the Interior Department and expect to have the suit instituted in a short while.

In conclusion, I will say that while it is reasonably certain that McMurray will not be able to render a particle of service to the Choctaw people, since his contracts have been turned down by the Secretary of the Interior, yet if the people go on making contracts with him and his agents, such contracts will not only complicate and delay the final settlement of our affairs, but will form a basis for a suit against the Choctaws in the future on account of such contracts.

Trusting that I may have the able and hearty cooperation of yourself and all other citizens of the Choctaw Nation in defeating the schemes of McMurray and his agents to make a lot of money out of our people, I am writing this letter to our citizens wherever I can reach them. It will be difficult for me to communicate with each and every citizen by letter, and I am going to ask you to advise our citizens wherever you come in contact with them not to enter into contracts with McMurray or any of his agents.

Feeling my responsibility as principal chief of the Choctaws, I shall not fail to oppose this or any other scheme to rob our people, and I want you and all other good citizens of our tribe behind me.

Yours, very truly,

GREEN McCURTAIN,
Principal Chief Choctaw Nation.

THE WHITE HOUSE,
Washington, March 8, 1910.

MY DEAR MR. SECRETARY: I inclose herewith, for consideration in connection with the President's letter to you under date of March 5, a communication from Rev. Wm. H. Ketcham, and inclosure.

Very truly, yours,

FRED W. CARPENTER,
Secretary to the President.

HON. R. A. BALLINGER,
Secretary of the Interior.

THE BUREAU OF CATHOLIC INDIAN MISSIONS,
1326 NEW YORK AVENUE,
Washington, D. C., March 7, 1910.

SIR: The other day I placed in your hands a letter from D. C. McCurtain, of McAlester, Okla., protesting against certain contracts that have been secured with individual Choctaws by J. F. McMurray, also an attorney, of McAlester.

I beg to submit herewith further information bearing on this subject.

Very respectfully,

WM. H. KETCHAM, *Director.*

The PRESIDENT.

A resolution of the Choctaw Indian council protesting against recognition of J. F. McMurray, an attorney, claiming to represent the Choctaw and Chickasaw Indians under certain contracts procured by him and his agents.

Whereas J. F. McMurray, of McAlester, Okla., has procured contracts from a number of Choctaw and Chickasaw Indians, employing, or purporting to employ, him as the attorney and agent of said citizens to represent them in the final settlement and division of the property of the Choctaw and Chickasaw tribes, and agreeing to give the said McMurray a fee of ten per centum of said property, which is of the value of millions of dollars; and

Whereas said property of the Choctaw and Chickasaw tribes of Indians is the common property of all the members of said tribes, and is not subject to control by the individual members, or any of them, by contract or otherwise; and

Whereas the Government of the United States has the exclusive authority and control of the common or undivided property of the Indians, and with it the duty of protecting the same against manipulation for private gain and against injustice and imposition of every character; and

Whereas our property will be divided by the United States Government anyway, we see no use in employing McMurray or anyone else and giving him or them a part of our property for that purpose; and

Whereas it is not right or proper that McMurray should be allowed to represent, or pretend to represent, the Choctaw and Chickasaw Indians, or any of them, before the Congress of the United States or the committees thereof, or before the Department of the Interior, the Indian Office, or any authority of the Government under said void, unjust, and unreasonable contracts, or under any contract or contracts which have not been approved by the proper authority of the United States Government, and thereby lay a basis for a claim against the Indians on account of said void, unjust, and unreasonable contracts: Therefore,

Be it resolved by the general council of the Choctaw Nation assembled: SECTION 1. That the President, the Secretary of the United States, and the Secretary of the Interior be, and they are hereby, respectfully memorialized and requested to protect the property

of the Choctaw and Chickasaw tribes against the operation of any and all contracts entered into with J. F. McMurray by the members of the Choctaw and Chickasaw tribes, or any of them, affecting, or designed to affect, the undivided property of said tribes.

SEC. 2. To avoid any claim being made against the Choctaw and Chickasaw tribes on account of said contracts procured by J. F. McMurray, or any alleged services thereunder, the President, the Congress of the United States, and the Secretary of the Interior are hereby respectfully memorialized and requested not to recognize J. F. McMurray, or anyone else, to represent the Choctaw and Chickasaw Indians, or any of them, except upon lawful appointment, or under contracts duly authorized by law and approved by the proper authority of the United States.

SEC. 3. That this resolution take effect upon its passage and approval. Read, interpreted, passed the house, and referred to the senate this the 11th day of October, 1909.

W. A. DURANT,
Speaker of the House.

Read, interpreted, passed the senate, and referred to the principal chief this the 11th day of October, 1909.

G. W. CHOATE,
President of the Senate.

Approved this the 11th day of October, 1909.

GREEN McCURTAIN,
Principal Chief Choctaw Nation.

WASHINGTON, D. C., March 14, 1910.

To the PRESIDENT:

I hereby submit to you certain contracts entered into with the Choctaw and Chickasaw Indians in Oklahoma. The first contract referred to is with the Choctaw Nation which is hereto attached marked "Exhibit A;" the second contract is with the Chickasaw Nation, which is hereto attached marked "Exhibit B;" the third is a form of contract made with certain individual members of said nations, which is hereunto attached and marked "Exhibit C."

The contracts referred to as Exhibits A and B were made with George A. Mansfield, John F. McMurray, Melven Cornish, and Cecil A. Lyon, as parties of the second part. Since the execution of said contracts, I have acquired, by assignment, all the rights and interests of George A. Mansfield and Melven Cornish in said contracts, and written assignments of their interests will be filed with you in the near future.

Section 28 of the act of April 26, 1906, 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," reads as follows:

"That no contract involving the payment or expenditure of any money or affecting any property belonging to said tribes or nations, made by them or any of them, or by any officer thereof, shall be of any validity until approved by the President of the United States."

The reason these contracts have not been submitted to the President of the United States before this time is that said act of April 26, 1906, provided in section 13 as follows:

"That all coal and asphalt lands, whether leased or unleased, shall be reserved from sale under this act until the existing leases for coal and asphalt lands shall have expired, or until such time as may be otherwise provided by law."

Soon after the act above referred to was passed, Congress directed (Indian appropriation bill, June 21, 1906) an investigation to be made of the extent and value of the segregated coal lands in the Choctaw and Chickasaw nations. Said provision is as follows:

"That the Secretary of the Interior is hereby authorized and directed to make practical and exhaustive investigation of the character, extent, and value of the coal deposits in and under the segregated coal lands of the Choctaw and Chickasaw nations, Indian Territory; and the expenses thereof, not exceeding the sum of fifty thousand dollars, shall be paid out of the funds of the Choctaw and Chickasaw nations in the Treasury of the United States: *Provided*, That any and all information obtained under the provisions of this act shall be available at all times for the use of the Congress and its committees."

The investigation above provided for has been in progress since said act was passed, and has only recently been completed. On February 28, 1910, you sent to Congress

a message containing the report of the Secretary of the Interior giving the results of his investigation, which report has not yet been printed. A bill has recently been introduced in the House of Representatives (H. R. 22484) by Mr. Creager, a Representative from Oklahoma, and has been referred to the Committee on Indian Affairs.

Since the investigation of the Secretary of the Interior has been completed, it is evidently the purpose of Congress to provide for the sale of said coal and asphalt lands, as well as to provide for the final disposition of the affairs of the Choctaw and Chickasaw nations of Indians. That it is the desire of the members of these nations that said coal and asphalt lands be sold and the proceeds divided among the members of said nations is shown by the contracts referred to as Exhibits A and B, and also by the contract referred to as Exhibit C.

I have received contracts bearing the signatures of more than three-fourths of the individual members of said nations, identical in form with said Exhibit C. It was not at my solicitation that said individual contracts were made. In the summer of 1908 there was held at Tishomingo, Okla., a convention of three to four hundred of the leading members of said nations, to consider the question of the disposal of their undivided property. I was requested to come to Tishomingo and go before said convention. The proposition was then made to me that I represent the members of said nations in the disposal of their undivided property. I informed the convention that it would be necessary for me to take their proposition under consideration, and suggested that the convention adjourn for one month. A month later the convention again assembled at Sulphur, Okla., and I then consented to represent the members of said nations in the manner in which they had suggested, provided they would secure the assent of the individual members of said nations to contracts giving me the necessary authority to represent them in these matters. The convention selected a committee of fifteen to circulate the contracts and secure the signatures of the individual members of the nations to them.

The executed contracts were transmitted to the different members of the committee, and by said members were transmitted to me, and they are now in my possession.

Reference is made to the contracts of which Exhibit C is a form, to show the sentiment and wishes of the members of said nations relative to the disposal of their undivided property and their desire that I represent them in these matters. You will observe that while the contracts referred to in Exhibits A and B are confined to the coal and asphalt lands, the contracts of which Exhibit C is a form comprise not only the coal and asphalt lands, but all of their undivided property.

Reference is also made to the contracts of which Exhibit C is a form, in order that you may determine the question as to whether said contracts require your approval, and so that you may be in full possession of all the facts connected with these matters.

In representing the Choctaw and Chickasaw people in the sale and disposition of their undivided property under the legislation enacted by Congress, in addition to the legal work incident thereto and the presentation to the courts of the claims of the nations against the United States, it is my purpose to thoroughly advertise and exploit such undivided property in a way and manner that will fully acquaint the public with the extent and value of said property, and do everything in my power to secure the highest possible price for the same. I will do this at my own expense, as provided for in said contracts, expecting to be reimbursed from the compensation that I am to receive.

Very respectfully,

J. F. McMURRAY.

EXHIBIT A.

CONTRACT.

This memorandum witnesseth that the parties in interest to this contract are Green McCurtain, of Kinta, Choctaw Nation, Ind. T., principal chief of the Choctaw Nation, on behalf of said Choctaw Nation, party of the first part, and George A. Mansfield, John F. McMurray, and Melven Cornish, of South McAlester, Ind. T., and Cecil A. Lyon, of Sherman, Tex., parties of the second part:

That the authority under which this contract is entered into, the scope of such authority, and the reason for exercising the same will appear from an act of the general council of the Choctaw Nation approved July 3, 1905, and entitled "An act in relation to the sale of the segregated coal and asphalt lands in the Choctaw and Chickasaw nations," as follows (omitting the preamble):

Be it enacted by the general council of the Choctaw Nation in extraordinary session assembled (the legislature of the Chickasaw Nation concurring), That the principal chief of the Choctaw Nation be, and he is hereby, empowered and directed to take necessary

steps upon the part of the Choctaw Nation to bring about the sale of the coal and asphalt lands and coal and asphalt deposits in the Choctaw and Chickasaw nations segregated as above set out (under the act of Congress approved July 1, 1902, entitled 'An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes') for the highest price obtainable, either to private purchasers or to the Government of the United States; and to that end he is hereby empowered to employ counsel or appoint commissioners to represent the Choctaw Nation in all matters connected therewith, and agree on behalf of the Choctaw Nation that the counsel or commission so employed or appointed shall be paid as compensation for their services not to exceed ten (10) per centum of the sum which may be received from the lands and deposits sold, such compensation to be wholly contingent upon a sale being effected and payable wholly out of the moneys received therefrom."

That the purpose for which this contract is entered into is to secure the services of the said George A. Mansfield, John F. McMurray, Melven Cornish, and Cecil A. Lyon, parties of the second part, on behalf of the Choctaw Nation "* * *" to bring about the sale of the coal and asphalt lands and coal and asphalt deposits in the Choctaw and Chickasaw nations "* * *" for the highest price obtainable either to private purchasers or to the Government of the United States" as provided in said act of the general council of the Choctaw Nation.

That the special thing to be done under this contract by the said parties of the second part is to render their services to the said Choctaw Nation, to the end that the said segregated coal and asphalt lands and coal and asphalt deposits in the Choctaw and Chickasaw Nations may be sold for the highest price obtainable, as provided in said act of the general council of the Choctaw Nation.

That the basis for the services to be rendered, on behalf of the Choctaw Nation by the said parties of the second part, and which they hereby agree to perform, is the failure of the plan of sale provided by existing law to bring about an advantageous sale of said coal and asphalt lands and coal and asphalt deposits, and the wish of the Choctaw Nation and people that steps be taken looking to the formation of a new and effective plan of sale, before the expiration of the tribal governments of the Choctaw and Chickasaw Nations.

That the compensation of the said George A. Mansfield, John F. McMurray, Melven Cornish, and Cecil A. Lyon, parties of the second part, shall be 10 per cent of the proportionate interest of the Choctaws in the sum of money which may be received from the sale of the said segregated coal and asphalt lands and coal and asphalt deposits, such compensation to be wholly contingent upon a sale being effected, and payable at the Treasury of the United States, wholly out of the moneys received from such sale.

That the fixed time for which this contract is to run is five years from this date.

In witness whereof we have hereunto set our hands at Fort Smith Ark., on this 21st day of October, 1905.

GREEN McCURTAIN,
*Principal Chief of the Choctaw Nation, on behalf of the Choctaw Nation,
party of the first part.*

GEORGE A. MANSFIELD,
JOHN F. McMURRAY,
MELVEN CORNISH,
CECIL A. LYON,
Parties of the second part.

CERTIFICATE.

I, William A. Falconer, a judge of the county and probate courts of Sebastian County, Ark., a court of record, do hereby certify, that Green McCurtain, principal chief of the Choctaw Nation, on behalf of the Choctaw Nation, and George A. Mansfield, John F. McMurray, Melven Cornish, and Cecil A. Lyon executed in my presence the foregoing contract, to which the Choctaw Nation or tribe of Indians and George A. Mansfield, John F. McMurray, Melven Cornish, and Cecil A. Lyon are the parties in interest, as stated to me at the time; and that the said Green McCurtain and George A. Mansfield, John F. McMurray, Melven Cornish, and Cecil A. Lyon were personally present and claimed to be authorized to make such contract under an act of the general council of the Choctaw Nation approved July 3, 1905, and entitled "An act in relation to the sale of the segregated coal and asphalt lands in the Choctaw and Chickasaw nations."

In witness whereof I have hereunto set my hand and caused the seal of the said court to be affixed on this 21st day of October, 1905.

[SEAL.]

WM. A. FALCONER,
Judge of the County and Probate Courts of Sebastian County, Ark.

EXHIBIT B.

CONTRACT.

This memorandum witnesseth that the parties to this contract are Douglas H. Johnston, of Emet, Chickasaw Nation, Ind. T., governor of the Chickasaw Nation, on behalf of the Chickasaw Nation, party of the first part, and George A. Mansfield, John F. McMurray, and Melven Cornish, of South McAlester, Ind. T., and Cecil A. Lyon, of Sherman, Tex., parties of the second part:

That the authority under which this contract is entered into, the scope of such authority, and the reason for exercising the same will appear from an act of the legislature of the Chickasaw Nation passed and approved at its regular session in 1905 and entitled "An act in relation to the sale of the segregated coal and asphalt lands in the Choctaw and Chickasaw nations," a copy of which act is hereto attached, marked "Exhibit A," and made a part of this contract.

That the purpose for which this contract is entered into is to secure the services of the said George A. Mansfield, John F. McMurray, Melven Cornish, and Cecil A. Lyon, parties of the second part, on behalf of the Chickasaw Nation "* * *" to bring about the sale of the coal and asphalt lands and coal and asphalt deposits in the Choctaw and Chickasaw nations "* * *" for the highest price obtainable either to private purchasers or to the Government of the United States" as provided in said act of the legislature of the Chickasaw Nation.

That the special thing to be done under this contract by the said parties of the second part is to render their services to the said Chickasaw Nation, to the end that the said segregated coal and asphalt lands and coal and asphalt deposits in the Choctaw and Chickasaw Nations may be sold for the highest price obtainable, as provided in said act of the legislature of the Chickasaw Nation.

That the basis for the services to be rendered on behalf of the Chickasaw Nation by the said parties of the second part, and which they hereby agree to perform, is the failure of the plan of sale provided by existing law to bring about an advantageous sale of the said coal and asphalt lands and coal and asphalt deposits and the wish of the Chickasaw Nation and people that steps be taken looking to the formation of a new and effective plan of sale, before the expiration of the tribal governments of the Choctaw and Chickasaw nations.

That the compensation of the said George A. Mansfield, John F. McMurray, Melven Cornish, and Cecil A. Lyon, parties of the second part, shall be ten (10) per cent of the proportionate interest of the Chickasaws in the sum of money which may be received from the sale of the said segregated coal and asphalt lands and coal and asphalt deposits, such compensation to be wholly contingent upon a sale being effected and payable, at the Treasury of the United States, wholly out of the moneys received from such sale.

That the fixed time for which this contract is to run is five years from this date.

In witness whereof we have hereunto set our hands at Fort Smith, Ark., on this 17th day of November, 1905.

DOUGLAS H. JOHNSTON,
*Governor of the Chickasaw Nation,
on behalf of the Chickasaw Nation, party of the first part.*

GEO. A. MANSFIELD,
J. F. McMURRAY,
MELVEN CORNISH,
CECIL A. LYON,
Parties of the second part.

CERTIFICATE.

I, William A. Falconer, judge of the county and probate courts of Sebastian County, Ark., a court of record, do hereby certify that Douglas H. Johnston, governor of the Chickasaw Nation, on behalf of the Chickasaw Nation, and Melven Cornish executed in my presence the foregoing contract, to which the Chickasaw Nation or tribe of Indians and George A. Mansfield, John F. McMurray, Melven Cornish, and Cecil A. Lyon are the parties in interest, as stated to me at the time, and that the said Douglas H. Johnston and Melven Cornish were personally present and claimed to be authorized to make such contract under an act of the legislature of the Chickasaw Nation passed at its regular session in 1905, entitled: "An act in relation to the sale of the segregated coal and asphalt lands of the Choctaw and Chickasaw nations," a copy of said act being attached to and made a part of this contract.

In witness whereof I have hereunto set my hand and caused the seal of said court to be affixed on this 17th day of November, 1905.

[SEAL.]

WM. A. FALCONER,
*Judge of the County and Probate Courts
Sebastian County, Ark.*

CERTIFICATE.

I, B. L. Jones, a judge of the fifteenth judicial district of Texas, a court of record, do hereby certify that Cecil A. Lyon, of Sherman, Grayson County, Tex., executed in my presence the foregoing contract to which the Chickasaw Nation or tribe of Indians and George A. Mansfield, John F. McMurray, and Melven Cornish, of South McAlester, Ind. T., and Cecil A. Lyon, of Sherman, Grayson County, Tex., are the parties in interest as stated to me at the time, and that the said Cecil A. Lyon was personally present and claimed to be authorized to make such contract under an act of the legislature of the Chickasaw Nation passed at its regular session in 1905, entitled "An act in relation to the sale of the segregated coal and asphalt lands of the Choctaw and Chickasaw nations," a copy of said act being attached to and made a part of this contract.

In witness whereof I have hereunto set my hand and caused the seal of said court to be affixed at Sherman, Grayson County, Tex., this 2d day of December, 1905.

[SEAL.]

B. L. JONES.

AN ACT In relation to the sale of the segregated coal and asphalt lands in the Chickasaw and Choctaw nations.

Whereas coal and asphalt lands in the Chickasaw and Choctaw Nations aggregating not to exceed five hundred thousand acres, were segregated and provisions made for the sale thereof, at public auction, under the provisions of sections fifty-eight and fifty-nine of the act of Congress, approved July first, nineteen hundred and two, entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians and for other purposes;" and

Whereas by the act of Congress approved April twenty-first, nineteen hundred and four, it was provided, at the request of the Secretary of the Interior and over the protest of the Chickasaws and Choctaws, that such lands should be sold, not at public auction as provided by the former act, but upon sealed proposals or bids, under the direction of the Secretary of the Interior; and

Whereas notwithstanding the offering of such lands for sale under sealed proposals or bids, as provided in said act, none have been sold, such proposals or bids thus made not having represented a fair value of the lands to which they applied; and such plan has therefore proved a failure; and

Whereas while it is realized that congressional action is necessary to repeal existing law and make effective any new plan of sale, yet it is proper that the initiative in the formation of the new plan, should be taken by the Chickasaws and Choctaws, the interested parties;

Whereas it is of the highest importance that such lands should be sold and payment therefor made before the expiration of the tribal governments of the Chickasaw and Choctaw, to the end that our people may have a voice in the disposition of affairs of such vital importance to them: Therefore

Be it enacted by the legislature of the Chickasaw Nation (the general council of the Choctaw Nation concurring), That the governor of the Chickasaw Nation be, and is hereby, empowered and directed to take the necessary steps on behalf of the Chickasaw Nation to bring about the sale of the coal and asphalt lands in the Choctaw and Chickasaw nations, segregated as above set out, for the highest price obtainable, either to private purchasers or to the Government of the United States, and to that end he is hereby empowered to employ counsel to represent the Chickasaw Nation in all matters connected therewith and to agree, on behalf of the Chickasaw Nation, that the counsel so employed shall be paid as compensation for their services not to exceed ten per centum of the sum which may be received from the land sold, such compensation to be wholly contingent upon a sale being effected and payable wholly out of the money received therefrom.

Proposed by Dixie Colbert.

Passed the house this the 15th day of November, 1905.

C. H. BROWN, *Speaker.*

Passed the senate this the 16th day of November, 1905.

M. V. CHEADLE, *President.*

Attest:

O. D. WHITE, *Secretary.*

Approved this the 16th day of November, 1905.

D. H. JOHNSTON, *Governor.*

EXHIBIT C.

This agreement between certain members of the Choctaw and Chickasaw nations and J. F. McMurray, an attorney at law, residing at McAlester, Okla., witnesseth:

That said members of the Choctaw and Chickasaw nations, executing this contract, and said J. F. McMurray are the parties in interest thereto; that the purpose for which this agreement is made is to secure the services of said J. F. McMurray in the prosecution before the courts or elsewhere of all of the unsettled claims of the Choctaw and Chickasaw people against the United States and for compensation therefor, and to secure his services in procuring the sale of all of the undivided property of the Choctaw and Chickasaw people.

That the special thing to be done by said J. F. McMurray is to prosecute said claims before the courts of the United States or before the Congress of the United States as in his judgment may be necessary; to represent such members of the Choctaw and Chickasaw nations as their representative and attorney in the sale of all of their undivided property of whatsoever character. Said J. F. McMurray is to receive as his compensation therefor 10 per cent of all funds derived by us from the amounts collected from the United States Government in settlement of the various claims due by the United States to the Choctaw and Chickasaw people, and also 10 per cent of the amounts received by said Choctaw and Chickasaw people for all property, of whatsoever kind, held in common by them, when said property shall be sold; and said J. F. McMurray is hereby authorized to draw the compensation above provided for out of the Treasury of the United States when any claim of the Choctaws and Chickasaws against the United States has been adjusted and the proceeds placed in the Treasury of the United States to the credit of the tribes, and when any money hereafter realized from the sale of the tribal property has been placed in the Treasury of the United States: *Provided, however,* that said J. F. McMurray is to pay all expenses connected with his work in prosecuting these claims or in seeking to bring about the sale of said property and is to receive no compensation except as above specified.

That said J. F. McMurray agrees faithfully and diligently to devote himself to the prosecution and settlement of said claims against the United States and to bringing about the sale of the undivided property of said Choctaw and Chickasaw people and the payment per capita of the proceeds therefor to the members of the Choctaw and Chickasaw nations.

That the time for which this contract is to run is five years from October 21, 1908.

THE WHITE HOUSE,
Washington, March 28, 1910.

MY DEAR MR. SECRETARY: With the return of the inclosed papers which have been sent to me with a letter from Rev. William H. Ketcham, concerning the contract for the sale of the coal and asphalt lands of the Choctaw Nation, will you be good enough to give me a report, in duplicate, in order that I may bring the matter to the President's attention?

Very truly, yours,

FRED W. CARPENTER,
Secretary to the President.

HON. R. A. BALLINGER,
Secretary of the Interior

BUREAU OF CATHOLIC INDIAN MISSIONS,
Washington, D. C., March 25, 1910.

DEAR MR. CARPENTER: I beg you to be so kind as to look over the inclosures and bring their more important features to the attention of the President.

Yours, very respectfully,

WM. H. KETCHAM, *Director.*

HON. FRED W. CARPENTER,
Secretary to the President.

MCALISTER, OKLA., *March 17, 1910.*

DEAR FATHER KETCHAM: Im just in receipt of your letter of March 14, and I thank you for the information therein contained and appreciate very much the interest you have taken in behalf of the Indians.

For your information, I will state that the Choctaw council at a special session in July, 1905, passed an act authorizing the principal chief to appoint commissioners or employ counsel to sell the coal lands and deposits, and providing that such commissioners or counsel should receive a compensation not to exceed 10 per cent of said coal lands and deposits. On October 21, 1905, or thereabout, the principal chief of the Choctaw Nation entered into a contract with Mansfield, McMurray & Cornish pursuant to said act of the council and agreed to give them a fee of ten per cent of the value of said coal lands and deposits to sell the same. In this matter I think Cecil A. Lyon, of Texas, was associated with Mansfield, McMurray & Cornish upon the theory and representation that he had great influence with the President.

The contract was entered into with Mansfield, McMurray & Cornish under the act of the council without said act having been approved by the President. Section 29 of the act of Congress approved June 28, 1898, provides:

"That no act, ordinance, or resolution of the council of either the Choctaw or Chickasaw tribes, in any manner affecting the land of the tribe, or of the individuals, after allotment, or the moneys or other property of the tribe or citizens thereof (except appropriations for the regular and necessary expenses of the government of the respective tribes), or the rights of any persons to employ any kind of labor, or the rights of any persons who have taken or may take the oath of allegiance to the United States, shall be of any validity until approved by the President of the United States."

Inasmuch as the act of the council authorizing the contract was not approved by the President, but on the contrary was by President Roosevelt disapproved on or about February 17, 1908, the contract can be of no higher standing in the law than the act authorizing it, and as that act is a nullity by reason of its disapproval by the President, so is the contract, and ever should be.

I inclose herewith copy of letter that Principal Chief McCurtain addressed to Commissioner Wright in transmitting the bill for executive action. The chief explains his attitude toward the act of the council and the contract at the time said act was passed and the contract made, and also gives his views of the same matters later on. However, that has nothing to do with the character and standing of the contract one way or the other, further than to explain the reasons which influenced the council to pass the act and those which impelled the chief to enter into the contract.

When the act of the council authorizing the contract with Mansfield, McMurray & Cornish was submitted by Chief McCurtain to the President for approval, Cecil A. Lyon, who appears to be interested in the contracts, endeavored to have President Roosevelt approve the act of the council authorizing said contract, but in this he was unsuccessful, as Mr. Roosevelt disapproved the act on or about February 17, 1908, as above stated. Surely President Taft will not approve the contract after President Roosevelt has disapproved the act authorizing the contract.

In view of the fact that McMurray and Cecil A. Lyon are endeavoring to have President Taft approve the contract with the nation, which is a nullity under the law, I would suggest and earnestly request that you see the President and personally acquaint him with President Roosevelt's action in this same matter. I do not want to impose upon you in this or any other matter, but we simply must get the attention of the President through some one who can reach him. To approve that contract would be an outrage and a disgrace, and the President should not be imposed upon by anyone who, under any guise or disguise, would seek to induce him to unwittingly commit such a grievous error.

I will ask you to keep me advised of the status of this matter, and if it becomes necessary or advisable for me to come to Washington, I will do so, provided it can be arranged for me to get to see the President.

Again thanking you for your interest in and invaluable service to the Indians, I am,
Very truly, your friend,

D. C. McCURTAIN.

Rev. Father Wm. H. KETCHAM,
Washington, D. C.

THE WHITE HOUSE,
Washington, April 12, 1910.

MY DEAR MR. SECRETARY: Senator Long of Kansas represents Mr. J. F. McMurray, who avers his relation by contract with the

individuals and nation of the Choctaw and Chickasaw Indians. He desires to have an opportunity to present to you the questions which in his view call for action by your department and myself in behalf of the interests he represents. I wish to leave the hearing of this matter to you and the Attorney-General, and to ask you, after you have heard it and prepared your views, to submit the same to me. Will you and the Attorney-General be good enough to fix the time with Senator Long for the hearing?

Sincerely, yours,

WM. H. TAFT.

Hon. R. A. BALLINGER,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, April 15, 1910.

DEAR SIR: Pursuant to your oral request, there are returned herewith the proposed contracts with the Choctaw and Chickasaw Indians in Oklahoma, transmitted to the President with your letter of the 14th ultimo.

Very respectfully,

R. A. BALLINGER, *Secretary.*

Mr. J. F. McMURRAY,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, April 16, 1910.

SIR: Pursuant to suggestion in your communication of April 12, 1910, late on the afternoon of the 14th conference was had between Mr. J. F. McMurray, ex-Senator Long, of Kansas, and the Attorney-General and myself concerning contracts, one of date October 21, 1905, signed by Green McCurtain, on behalf and as principal chief of the Choctaw Nation, and the other of date November 17, 1905, signed by Douglas H. Johnston, on behalf and as governor of the Chickasaw Nation, executed pursuant to acts of the legislative bodies of the respective tribes or nations adopted in 1905, and employing Messrs. George A. Mansfield, John F. McMurray, Melville Cornish, and Cecil A. Lyon "to bring about the sale of the coal and asphalt lands and coal and asphalt deposits in the Choctaw and Chickasaw nations for the highest price obtainable, either to private purchasers or to the Government of the United States," compensation to be paid at the rate of 10 per cent of the price received.

A form of contract was also submitted between individual members of said tribes and said J. F. McMurray, employing the latter to prosecute "before the courts or elsewhere all of the unsettled claims of the Choctaw and Chickasaw people against the United States," and "to secure his (McMurray's) services in procuring the sale of the undivided property of the Choctaw and Chickasaw people." The compensation provided for in this latter form of contract is contingent and at the rate of 10 per cent.

Mr. McMurray states in a communication to you of March 14, 1910, that he has succeeded to the interest of Mansfield and Cornish in the two contracts first referred to.

At said conference the view was expressed to Messrs. Long and McMurray that, by reason of the act of the Choctaw Indian council authorizing the contract concerning sale of coal and asphalt lands having been disapproved by President Roosevelt on February 17, 1908, the contracts based thereon were considered ineffective; also that, as the contracts with individual Indians relate to property rights and claims of the Choctaw and Chickasaw people, it might reasonably be concluded that they were made in pursuit of an effort to accomplish indirectly, through individual members of the tribe and without the approval of the President, that which, by section 28 of the act of April 26, 1906, declaring that no contract involving the payment or expenditure of any money or affecting any property belonging to said tribes or nations shall be of any validity until approved by the President of the United States, could not be accomplished directly by contract with the tribes without such approval.

At said conference Mr. McMurray asked leave to withdraw the original contracts, and on April 15 the same were transmitted to him by communication of that date, and the original letter of Mr. McMurray, together with copy of said original contracts which accompanied the same, is transmitted to you herewith.

I am in receipt to-day of Senate resolution adopted April 15 and calling upon you, if not incompatible with public interest, for copy of any agreement now pending, or heretofore pending, between the Choctaw and Chickasaw Indians, or the authorities of said tribes, and J. F. McMurray and others, together with all documents and other data on file in the Department of Justice or the Department of the Interior respecting the same and the order of your predecessor above referred to. These papers will be immediately prepared and transmitted.

Very respectfully,

R. A. BALLINGER, *Secretary.*

The PRESIDENT.

[Telegram.]

PHILADELPHIA, PA., *April 14, 1910.*

Hon. WM. H. TAFT,

Washington, D. C.:

Protest against McMurray contract follows by mail.

G. E. GRAMMER,

Provident Building, Philadelphia.

[Telegram.]

WASHINGTON, D. C., *April 15, 1910.*

The PRESIDENT,

Washington.

I respectfully join the Oklahoma delegation in protesting against the J. F. McMurray contract for 10 per cent of the assets of the prop-

erty of the people of the Choctaw and Chickasaw nation as an attorney fee.

SCOTT FERRIS.

INDIAN RIGHTS ASSOCIATION,
Philadelphia, April 15, 1910.

DEAR SIR: Certain bills (S. 7157; H. R. 22484; H. R. 24411) are now pending in Congress by which it is proposed to make final disposition of the affairs of the Five Civilized Tribes of Indians, in Oklahoma.

We urge your careful consideration of the need of affording protection to these Indians against any contracts which they may have entered into by which the funds which may be realized from the sale of their lands or other property will be charged with the payment of any commissions or attorney fees for the pretended service of securing the same and causing the moneys due to be paid over to the individual members entitled thereto.

Your special attention is called to a form of contract which one J. F. McMurray is said to have induced many members of the Choctaw and Chickasaw tribes to execute in his favor, whereby they agree to pay to McMurray a commission of 10 per cent of all moneys which are found to be due from the Government and payable to the contracting Indians. Among other stipulations of the alleged form of contract it is provided that the said attorney is—

to represent such members of the Choctaw and Chickasaw nations as their representative and attorney in the sale of all their undivided property of whatsoever character. Said J. F. McMurray is to receive as his compensation therefor ten per cent of all funds derived by us from the amounts collected from the United States Government in settlement of the various claims due by the United States to the Choctaw and Chickasaw people, and also ten per cent of the amount received by said Choctaw and Chickasaw people for all property of whatsoever kind, held in common by them, when said property shall be sold; and said J. F. McMurray is hereby authorized to draw the compensation above provided for out of the Treasury of the United States when any claims of Choctaws and Chickasaws against the United States have been adjusted and the proceeds placed in the Treasury of the United States to the credit of the tribes, and when any money hereafter realized from the sale of the tribal property has been placed in the Treasury of the United States.

We agree that in cases in which claims are made against the United States by Indians alleging unfulfilled treaty or other obligations which are being denied and payment thereof resisted by the Government, the employment of counsel to prosecute such claims may be altogether legitimate and desirable. The alleged pending contracts between the Indians and J. F. McMurray, however, provide for a commission of 10 per cent of all moneys paid by the Government to them, which includes all funds realized from liquidated obligations, among which are the millions of acres of unallotted lands, together with almost one-half million acres of segregated coal land, of a probable aggregate value of \$20,000,000. It is in the province of Congress to determine when this vast estate shall be converted into cash and prorata payment made to the Indian beneficiaries, and no commission or fees should be allowed to any person for alleged services in the matter.

It may be claimed that the contracts in question are invalid and if not void that they can not be rendered so by legislation. It is not believed that Congress is denied the right under the Constitution of declaring such obligations void.

The Secretary of the Interior on April 23, 1909, refused to approve the contract and notified attorney McMurray accordingly. Hon. Green McCurtain, principal chief of the Choctaw Nation, has called the attention of the Choctaw people to the terms of the contract and urgently advised them against entering into agreements of this nature.

These Indians should be protected against claims of this class by prohibitive statute. We therefore urge that a paragraph be incorporated in any legislation relating to the disposition of affairs of the Five Civilized Tribes which shall provide:

That no contracts made or hereafter to be made by the tribal governments of the Choctaw or Chickasaw tribes or nations of Indians, or by any individual member or members of said tribes, according to the terms of which commissions or charges for the sale of the mineral rights or the surface rights in any of said lands, or for the sale of the unallotted lands or other common property of the members of said tribes, are to be paid, shall be valid, and no portion of the money which shall be derived from the sale of such surface or mineral rights of such lands, or from the sale of the unallotted lands or other common property of the members of said tribes shall ever be used for the payment of any charges, commissions, or attorney fees, for services or purported services claimed to have been rendered to said tribes in the disposition of the properties of said tribes, and all contracts providing for such charges, commissions, or attorney fees shall be absolutely void.

Soliciting your influence in protecting the Indians in the matter, I am,

Very respectfully, yours,

CARL ECKHARDT GRAMMER,
President Indian Rights Association.

HON. WILLIAM H. TAFT,
Executive Mansion, Washington, D. C.

[Telegram.]

NEW YORK, *April 16, 1910.*

The PRESIDENT,
Washington, D. C.

Senator Owen, of Oklahoma, asks me to make immediate protest to you against approval of J. F. McMurray contract for the sale of coal lands of the Choctaw and Chickasaw Indians. I had been led to believe that after President Roosevelt's refusal to approve this contract McMurray had abandoned all thought of its approval. I was surprised to receive Senator Owen's telegram saying that the contract had been presented for your approval. May I ask, Mr. President, that you permit me to present formally the opposition of the Choctaws to the approval of this contract, in case you are disposed to give it serious consideration? The present legal force of the Choctaws are doing everything possible to organize the affairs of these people in such a way that Congress can pass the necessary laws authorizing the sale of all of their property. I can see no way that McMurray can assist in this.

Respectfully,

ORMSBY MCHARG,
Attorney Choctaw Nation.

[Telegram.]

WASHINGTON, D. C., *April 15, 1910.*

WM. H. TAFT,
White House, Washington, D. C.

I am directed by the Oklahoma delegation in Congress to request that you take no action upon a contract between J. F. McMurray and the Choctaw Indian Nation for negotiating sale of property or services as counsel until the delegation can be heard.

C. E. CREAGER, *Secretary.*

[Telegram.]

FORT SMITH, ARK., *April 18, 1910.*

The PRESIDENT.

On behalf of the Choctaw Indians, of which tribe I am a member, and as their attorney, I appeal to you to protect the property of the Indians in the hands of the Government against the unnecessary and unconscionable lobbying contracts procured from them by J. F. McMurray. Please see correspondence between Secretary Ballinger and Chief Green McCurtain.

D. C. McCURTAIN.

UNITED STATES SENATE,
Washington, D. C., April 14, 1910.

SIR: I am informed that one Mr. J. F. McMurray, of my State, has recently presented to you for your approval a contract between himself and the Choctaw and Chickasaw tribes of Indians respecting the sale of the segregated coal and asphalt lands belonging to said tribes of Indians. You will please pardon me for saying that this contract was submitted to your predecessor and was by him rejected and disallowed. That course was eminently wise and judicious. No service can be rendered to the Indians equivalent to the consideration provided for in the contract.

It is the duty of the Oklahoma delegation to protect and promote both the interests and the welfare of these Indians. No greater service can be rendered either by the delegation or by yourself than to shield the Indians against the payment of the unearned commissions provided for in the proposed contract. I sincerely trust that you may feel justified in rejecting and disallowing this agreement.

It is probable that other contracts between Mr. McMurray and individual Indians may have been called to your attention. These contracts are equally without consideration and deserve no official recognition at your hands or at the hands of Congress.

Most respectfully,

F. P. GORE.

The PRESIDENT,
White House.

UNITED STATES SENATE,
Washington, D. C., April 15, 1910.

MY DEAR MR. PRESIDENT: I wish to put on record my earnest disapproval of the contract submitted to you by J. F. McMurray proposing a payment to him and his associates of ten per centum of the recovery from the sale of the coal and asphalt properties of the Choctaw and Chickasaw nations.

I am informed that he has personal contracts with the individual members of these two tribes for ten per centum of the recovery of the balance due them by the United States.

I cordially approve reasonable compensation to attorneys for services actually performed. The fees proposed in this case are grossly unjust and would be so regarded by the people of our State. My duty to your administration compels me to register my views in regard to this matter in order that I may protect your administration against public disapproval in my State. Any reasonable compensation to attorneys for professional services shown to have been performed, I am sure, would meet the cordial approval of the Oklahoma delegation, but enormous fees paid for services which are peculiarly the duty of the Oklahoma delegation to perform will not meet the approval of the Oklahoma delegation or of the people of Oklahoma.

I remind you of three personal visits I have recently made, urging your action in settling the affairs of the late Five Civilized Tribes, and particularly immediate action in regard to the Choctaw coal and asphalt fields.

Yours, very respectfully,

R. L. OWEN.

To the PRESIDENT.

[Telegram.]

WASHINGTON, D. C.,
April 14, 1910.

The PRESIDENT, *Washington:*

The contract between J. F. McMurray and the Choctaw and Chickasaw tribes of Indians for the sale of the segregated coal and asphalt lands belonging to said tribes was rejected and disallowed by President Roosevelt. I trust it will be rejected and disallowed by you. The fees and commissions would aggregate approximately \$3,000,000, which could not be earned by the attorneys, and would be a net loss to the Indians.

Most respectfully,

T. P. GORE.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., April 20, 1910.

SIR: I have the honor to acknowledge your reference of April 16, 1910, of the copy of Senate resolution of April 15, 1910, in which you are requested to transmit to the Senate, among other things, any letters, telegrams, documents, or other data on file in the Department of Justice respecting any contract or agreement between the Choctaw and Chickasaw tribes of Indians, or the sureties of said tribes, and J.

F. McMurray and others, relating to the sale of segregated coal and other lands belonging to said tribes.

There are no papers on file in this department relating to the sale of segregated coal lands to Mr. McMurray.

I transmit herewith, however, a copy of all correspondence and other papers on file in this department relating to legal proceedings brought by the United States ex rel. Choctaw Nation and Chickasaw Nation v. J. F. McMurray, principal, and James M. Lindsay, Fisher A. Tyler, jr., and John L. Simpson, sureties, in the United States court for the central district of Indian Territory, and transferred, after statehood to the circuit court of the United States for the eastern district of Oklahoma, to recover the sum of \$22,880 and interest at the rate of 6 per cent per annum as royalties on four leases of coal land belonging to the Choctaw and Chickasaw tribes, the said leases having been made by Napoleon B. Ainsworth and Lemuel C. Burriss, as mining trustees of the said tribes, and John F. McMurray, as lessee. The lessee was sued as J. F. McMurray. While these papers are not strictly responsive to the resolution, they may be of some service to you and the Senate in connection with the subject-matter thereof.

Very respectfully,

GEO. W. WICKERSHAM,
Attorney-General.

The PRESIDENT.

[Telegram.]

AUGUST 9, 1909.

UNITED STATES ATTORNEY,
Muskogee, Okla.

Forward immediately copies pleadings suit against J. F. McMurray and others involving payments on coal leases; also original papers in your possession relating to same.

ELLIS,
Acting Attorney-General.

DEPARTMENT OF JUSTICE,
EASTERN DISTRICT OF OKLAHOMA,
Muskogee, Okla., August 10, 1909.

SIR: In accordance with your telegram of August 9, 1909, there are inclosed herewith copies of pleadings in the case of the United States v. John F. McMurray and others.

Very respectfully,

WM. J. GREGG,
United States Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

AUGUST 24, 1909.

SIR: I inclose herewith certain papers with respect to the suit of the United States ex rel. Choctaw and Chickasaw Indian Nations v. John F. McMurray et al., growing out of a claim for unpaid royalties on coal lands in Oklahoma.

This matter has recently been examined by Mr. A. A. Richards, of this office, and you will note by his memorandum to the Attorney-General, dated August 20, 1909, it is recommended that the case be dismissed on the ground that the Secretary of the Interior was without authority to make the changes in the leases involved.

This department will of course want to have your views before taking any action in the matter.

Very truly, yours,

WADE H. ELLIS,
Acting Attorney-General.

P. S.—The return of the inclosed papers is requested.

W. H. E.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, August 27, 1909.

SIR: Responsive to yours of August 24, inclosing certain papers concerning suit entitled "United States ex rel. Choctaw and Chickasaw Indian Nations v. John F. McMurray et al.," growing out of claim for unpaid royalties on account of leases of coal lands in Oklahoma, I have to state that the memorandum prepared by Assistant Attorney-General A. A. Richards has been carefully examined by the Assistant Attorney-General for this Department, who agrees with the conclusion therein announced that the regulations of the Interior Department adopted after the execution of the leases referred to, materially changing the amount of royalty to be paid, as well as the manner of coal development, can not be read into the leases in question, and thus accomplish a change of the material obligations assumed by the second party thereto without his consent. In this connection, your attention is respectfully directed to an opinion lately rendered by United States District Judge Campbell in the case of *Turner v. Seep et al.* (167 Fed., 646), pending in the eastern district of Oklahoma, which supports the view advanced by Mr. Richards.

However, in view of the fact that suit is now pending on demurrer to a complaint for recovery of royalty on the basis of the amended regulations, ruling upon which demurrer would judicially settle the question, it is respectfully suggested that the United States attorney for the eastern district of Oklahoma be directed to present the matter to the court, with request for early consideration. This suggestion is deemed to be especially appropriate because this department now has before it recommendation from the Commissioner to the Five Civilized Tribes for the institution of further action against the defendants in the pending litigation for the recovery of \$15,951.68 on account of royalty claimed under said amended regulations.

The papers inclosed with your letter above mentioned are herewith returned.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

The ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
August 20, 1909.

SIR: By direction of Acting Attorney-General Ellis, I submit for your consideration the following statement in reference to the case entitled "United States ex rel. Choctaw Nation and Chickasaw Nation v. John F. McMurray, principal, and James M. Lindsay, F. A. Tyler, jr., and John L. Simpson, sureties," pending in the United States circuit court for the eastern district of Oklahoma.

This suit was instituted before Oklahoma statehood in the United States court for the central district of Indian Territory. The complaint and demurrer thereto are hereto attached.

The facts in the case are as follows:

On March 15, 1899, the mining trustees for the Choctaw and Chickasaw nations of Indians made four mining leases with John F. McMurray, who gave a bond with Lindsay, Tyler, and Simpson as sureties. There is no controversy about the payments of the amounts stipulated for in these leases. The only controversy is over the payment of certain amounts, not provided for in the leases but required by certain regulations made by the Secretary of the Interior after these leases had been executed and approved by the Secretary of the Interior.

These leases are made under the provisions of section 29 of the act of June 28, 1898 (30 Stat., 495), "An act for the protection of the people of the Indian Territory, and for other purposes." Section 29 of said act (30 Stat., 505) ratifies and sets out in full an agreement between the United States and the Choctaw and Chickasaw nations of Indians providing for the allotment of their lands. Under said agreement certain lands especially valuable for coal were reserved from allotment, and the lands involved in the leases in this suit are a portion of said reserved lands.

In the paragraph of said section 29, commencing near the top of page 510, this language appears:

Such coal and asphalt mines as are now in operation, and all others which may hereafter be leased and operated, shall be under the supervision and control of two trustees, who shall be appointed by the President of the United States, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, whose term shall be for four years, and one on the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood, whose term shall be for two years; after which the term of appointees shall be four years. Said trustees, or either of them, may, at any time, be removed by the President of the United States for good cause shown. They shall each give bond for the faithful performance of their duties, under such rules as may be prescribed by the Secretary of the Interior. Their salaries shall be fixed and paid by their respective nations, each of whom shall make full report of all his acts to the Secretary of the Interior quarterly. All such acts shall be subject to the approval of said Secretary.

It was by virtue of this legislation that Napoleon B. Ainsworth and Lemuel C. Burris were appointed mining trustees for the Choctaw and Chickasaw nations by the President. You will note that it is provided in this agreement that all coal and asphalt mines thereafter leased and operated "shall be under the supervision and control" of these two trustees. Pursuant to this legislation these mining trustees have made and executed all the coal and asphalt mining leases in the Choctaw and Chickasaw nations. Such leases are submitted to the Secretary of the Interior for approval, and he duly approved the McMurray leases sued upon in this case.

The next to the last paragraph on page 510 reads as follows:

All leases under this agreement shall include the coal or asphaltum, or other mineral, as the case may be, in or under nine hundred and sixty acres, which shall be in a square as nearly as possible, and shall be for thirty years. The royalty on coal shall be fifteen cents per ton of two thousand pounds on all coal mined, payable on the twenty-fifth day of the month next succeeding that in which it is mined. Royalty on asphalt shall be sixty cents per ton, payable same as coal: *Provided*, That the Secretary of the Interior may reduce or advance royalties on coal and asphalt when he deems it for the best interest of the Choctaws and Chickasaws to do so. No royalties shall be paid except into the United States Treasury as herein provided.

Under the authority conferred upon the Secretary of the Interior by the proviso at the end of this paragraph he reduced the royalty on coal in all Choctaw and Chickasaw leases from 15 cents to 8 cents per ton.

In the paragraph commencing at the bottom of page 510 and extending over onto page 511 the amounts of advanced royalties to be paid by the lessee were definitely fixed by this agreement as follows:

All lessees shall pay on each coal or asphalt claim at the rate of one hundred dollars per annum, in advance, for the first and second years; two hundred dollars per annum, in advance, for the third and fourth years; and five hundred dollars for each succeeding year thereafter. All such payments shall be treated as advanced royalty on the mine or claim on which they are made, and shall be a credit as royalty when each said mine is developed and operated and its production is in excess of such guaranteed annual advance payments, and all persons having coal leases must pay said annual advanced payments on each claim, whether developed or undeveloped: *Provided, however*, That should any lessee neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance thereon shall then become and be the money and property of the Choctaw and Chickasaw nations.

It is stated in the complaint in this case that McMurray has paid all of these advance royalties except \$1,000 on each lease. McMurray admits his liability for these advance royalties and states that he tendered the respective amounts, coupled with a demand for a receipt in full, and now proposes, as I understand, to pay all of the advance royalties provided for in his original lease.

The entire controversy in this case arises from a regulation promulgated by the Secretary of the Interior on April 27, 1900, long after the McMurray leases had been approved by the Secretary of the Interior. The portion of said regulation pertinent to this case reads as follows:

And the lessees shall operate and produce coal from each and every lease in not less than the following quantities: Three thousand tons during the first year from date of approval of lease, four thousand tons the second year, seven thousand tons the third year, eight thousand tons the fourth year, and fifteen thousand tons the fifth and each succeeding year thereafter.

Under this regulation it is claimed that there is due from McMurray, on the first six years of these four leases, \$18,800 more than the advance royalties provided for in the original leases.

There seems to be no controversy whatever about the facts in the case. The whole controversy is a question of law, whether the Secretary of the Interior can by a regulation change and modify a contract entered into between these mining trustees, who by statute are given supervision and control of these mines and leases, and McMurray without the assent or concurrence of either the mining trustees or McMurray.

Each of these leases contains the following provision:

And the party of the second part agrees that this indenture of lease shall be subject in all respects to the rules and regulations heretofore or that may be hereafter prescribed under the act of June twenty-eighth, eighteen hundred and ninety-eight, by the Secretary of the Interior relative to mineral leases in the Choctaw and Chickasaw nations.

But I find nothing in said act of June 28, 1898, that would authorize the Secretary of the Interior, on his own initiative, to change or modify or increase the burdens of a party to a lease. In my judgment, the extent of his authority under said act is to approve or disapprove of leases executed by the mining trustees, and, in my judgment, the regulation of the Secretary of the Interior requiring that given quantities of coal shall be produced from each mine is inoperative and void as to any lease executed and approved prior to the promulgation of such regulation.

Under this regulation, Mr. McMurray would be required to pay \$340 for the first year and \$420 for the second year, whether he operated the mine or not, while the law and his leases require him to pay only \$100 for each of these years whether he operated the mine or not.

Under this regulation, Mr. McMurray would be required to pay \$760 for the third year and \$840 for the fourth year, whether he operated the mine or not, while the law and his leases require him to pay only \$200 for each of these years if the mine is not operated.

Under this regulation, Mr. McMurray would be required to pay \$1,700 the fifth and each succeeding year, whether he operated the mine or not, while the law and his leases require him to pay only \$500 for the fifth and each succeeding year if he does not operate the mine.

For this reason, also, this regulation, in my judgment, is absolutely void, at least as to any lease executed and approved prior to the promulgation of the regulation.

I do not consider the citation of authorities necessary on these questions, and have not time to look them up as I expect to take my leave commencing to-day.

Very respectfully,

A. A. RICHARDS,

Special Assistant to the Attorney-General.

The ATTORNEY-GENERAL.

IN THE UNITED STATES COURT IN THE INDIAN TERRITORY, CENTRAL DISTRICT,
SOUTH McALESTER DIVISION.

United States ex rel. Choctaw Nation and Chickasaw Nation v. John F. McMurray, principal, and James M. Lindsay, Fisher A. Tyler, jr., and John L. Simpson, sureties.

COMPLAINT AT LAW.

Comes the United States of America for and on behalf of the Choctaw and Chickasaw nations or tribes of Indians by Thomas B. Latham, United States attorney for the central district of the Indian Territory, being authorized and directed thereto by the Attorney-General of the United States, and for cause of action herein, state:

That on March 15, 1899, there was entered into by Napoleon B. Ainsworth and Lemuel C. Burriss, as mining trustees of the first part, and John F. McMurray of the second part, certain contracts or mining leases in the Choctaw and Chickasaw nations as authorized by acts of Congress; said contracts are herewith filed, marked 1, 2, 3, and 7, respectively, made exhibits hereto and a part of this complaint.

That there was also on the same day made by John F. McMurray and the above-named sureties a bond to the United States of America in the sum of \$75,000, conditioned for the faithful performance of each and all the stipulations of said contracts or leases.

That each of said contracts provide for the payment of \$100 per annum in advanced royalty for the first and second year; \$200 advanced royalty for the third and fourth years, and \$500 per annum each for the fifth and each succeeding year for the term of said leases, which is thirty years, and each of above contracts contained the following stipulation and provision:

"And the party of the second part agrees that this indenture of lease shall be subject in all respects to the rules and regulations heretofore or that may be hereafter prescribed under the said act of June 28, 1898, by the Secretary of the Interior relative to mineral leases in the Choctaw and Chickasaw nations."

That for the first six years there was paid for each of said leases the advanced royalty as contracted, to wit, \$1,600, leaving now due and unpaid on each of said leases the advanced royalties under said contracts and the following regulation made pursuant to law by the Secretary of the Interior:

"All advanced royalties as above defined shall apply from date of approval of each lease, and when any mine on a tract leased is operated royalties shall be paid monthly as required until the total amount paid equals the first annual advanced payment, after which royalty due shall be credited on such payments; and the lessee shall operate and produce coal from each and every lease in not less than the following quantities: Three thousand tons during the first year from date of approval of lease; four thousand tons the second year; seven thousand tons the third year, eight thousand tons the fourth year, and fifteen thousand tons the fifth and each succeeding year thereafter," the sum of \$5,720 each on the above four leases, making a total of \$22,880, \$1,000 of which on each lease being due as advanced royalties under said contracts, and the balance being due as minimum royalty on coal required by the regulations of the Secretary of the Interior to be mined under said contracts, a full and itemized statement of said amounts due being attached hereto and made a part hereof.

Premises considered, plaintiff prays for judgment against John F. McMurray, principal, and the above-named sureties in the sum of \$22,880, interest at the rate of 6 per cent per annum from the date said royalties became due, and for all costs in this action.

J. B. LATHAM,
United States Attorney for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA.

United States ex rel. Choctaw Nation and Chickasaw Nation, plaintiffs, v. John F. McMurray, principal, and James M. Lindsey, Fisher A. Tyler, jr., and John L. Simpson, sureties, defendants. No. 605.

DEMURRER.

In this cause comes the defendant, John F. McMurray, and demurs to that part of the complaint filed against him and others in the above-styled cause which seeks to recover from the defendant what will for convenience be called rate royalties as distinguished from advanced royalties, and for grounds of demurrer he says:

That said complaint and the exhibits thereto show on their face that there is no liability attaching to defendant in favor of plaintiff for rate royalties, and that there is nothing due plaintiff from defendant on this account and no cause of action stated against him.

For the above ground and others to be assigned in argument defendant prays the judgment of the court whether he shall plead further, etc.

J. P. KEITH,
Attorney for Defendant.

STATE OF OKLAHOMA, County of Pittsburg.

John F. McMurray makes solemn oath and says that he is the defendant and that the foregoing demurrer is not interposed for delay.

JOHN F. McMURRAY.

Sworn to and subscribed before me this the 15th day of July, 1909.

[SEAL.]

M. E. WILLIAMS,
Notary Public in and for Pittsburg County.

My commission expires May 28, 1913.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

J. P. KEITH,
Of Counsel for Defendant.

(Endorsed: No. 605. United States ex. rel. Choctaw Nation et al. v. John F. McMurray et al. Demurrer. Filed in open court July 15, 1909. L. G. Disney, clerk U. S. circuit court, eastern dist. Okla.)

DEPARTMENT OF JUSTICE,
August 28, 1909.

SIR: The department is in receipt of your letter of the 27th instant with reference to the suit of the United States ex rel. Choctaw and Chickasaw Indian Nations v. John F. McMurray et al., and in accordance with your suggestion it is directing the United States attorney for the eastern district of Oklahoma to press this case for early consideration by the court.

Respectfully,

WADE H. ELLIS,
Acting Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF JUSTICE,
August 28, 1909.

SIR: Referring to the case of the United States ex rel Choctaw and Chickasaw Indian Nations v. John F. McMurray et al., pending in your district, you are directed to press this case for early consideration by the court in order that the issues raised by the demurrer of the defendants may be brought to a speedy determination. It is important for the Government to have determined at an early date the questions of law presented by the case by reason of the fact that there are other claims where the same issues are involved.

In this connection your attention is respectfully directed to an opinion lately rendered by the United States district judge Campbell in Turner v. Seep (167 Fed., 646), which seems somewhat opposed to the position taken by the Government in the McMurray case.

Respectfully,

WADE H. ELLIS,
Acting Attorney-General.

WILLIAM J. GREGG, Esq.,
*United States Attorney,
Muskogee, Okla.*

OFFICE OF UNITED STATES ATTORNEY,
EASTERN DISTRICT OF OKLAHOMA,
Muskogee, Okla., September 4, 1909.

SIR: I am in receipt of your favor dated August 28, signed Wade H. Ellis, Acting Attorney-General, in which you say:

Referring to case of United States ex rel Choctaw and Chickasaw Indian nations v. John F. McMurray et al. pending in your district, you are directed to press this case for early consideration by the court in order that the issues raised by the demurrer of the defendants may be brought to a speedy determination.

This is civil case No. 6005 in the circuit court and involves the right of the United States to recover certain minimum royalties alleged to be due on account of certain coal mining leases. If I understand the issues in this case, the principal question involved and raised by demurrer, is a question of whether or not the Secretary of the Interior had the authority by executive order to change the rate of royalty to be paid under these leases.

You are advised that I will take this matter up at as early a date as I can and have it considered by the court, but owing to the congested condition of the docket and press of business in this district, it is quite probable that it will not be reached at a hearing to be decided by the court for several months. I will advise you when further action is taken in the matter.

Yours, respectfully,

The ATTORNEY-GENERAL,
Washington, D. C.

WM. J. GREGG,
United States Attorney.

DECEMBER 16, 1909.

SIR: Referring to the case of the United States ex rel. Choctaw and Chickasaw Nations *v.* John F. McMurray, et al., pending in your district, your attention is invited to my letter of August 28, 1909. I suggested that the case should be presented for early consideration by the court on defendants' demurrer. This was in accordance with the suggestion of the Secretary of the Interior, who agrees that there is small chance of success for the Government, but urges the formal submission of the matter in order to have similar questions in other cases judicially determined. The opinion of Judge Campbell in *Turner v. Seep* (167 Fed., 646), supports the view that the provisions of the new regulations can not be held to affect the rights secured by these defendants under their leases.

These cases have been pending for over two years in your district, and I believe the delay, which you say is unavoidable, imposes a hardship upon the lessee of these lands that this department is not disposed to prolong.

You are therefore directed to bring the case on for hearing on the demurrer at the earliest possible date.

Respectfully,

WILLIAM J. GREGG, Esq.,
United States Attorney, Muskogee, Okla.

WADE H. ELLIS,
Acting Attorney-General.

OFFICE OF UNITED STATES ATTORNEY,
EASTERN DISTRICT OF OKLAHOMA,
Muskogee, Okla., December 20, 1909.

SIR: Replying to your favor of December 16, 1909, relating to the case of the United States ex rel. Choctaw and Chickasaw Nations *v.* John F. McMurray and others, directing my attention to your letter of August 28, 1909, I beg to say:

I take it from your letter that for some reason I am supposed to be at fault because of the delay in the hearing of this case. I beg to

advise that this case was commenced by Mr. Latham prior to statehood. I found it pending on the docket in default, there being no answer, demurrer, or other pleading filed by the defendants. I had the case transferred to the United States court for this district, and at the repeated solicitation of Mr. McMurray and upon his promise to plead in the case I permitted it to stand over from term to term. The fact is this case stood in default until the — day of August, 1909, at which time a demurrer was filed by the defendants, which is the first and only pleading they have ever filed in the case. Since the date of the filing of this demurrer it has been impossible to get it considered.

I have had the case assigned for hearing at the January term and expect to take it up at that time and dispose of it.

I do not know what representations defendants may have made with reference to this delay, but I give you this information so that you may be fully advised as to facts.

Respectfully, yours,

W. J. GREGG,
United States Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

JANUARY 11, 1910.

SIR: Receipt is hereby acknowledged of your communication of the 20th ultimo, relative to the case of United States ex rel. Choctaw and Chickasaw Nations *v.* John F. McMurray et al.

It was not my intention in the letter of August 28, 1909, to express any criticism of your course in this matter. Mr. McMurray represented great delay and inability to secure a final hearing. It appeared that the case had been pending for some time and the desire of this department was expressed to the effect that final adjudication should be reached.

Your detailed explanation is entirely satisfactory and very much appreciated, in view of the representations made by the defendant in this case.

However, it is still clear that the case should be disposed of at the earliest opportunity.

Respectfully,

WADE H. ELLIS,
Acting Attorney-General.

W. J. GREGG, Esq.,
United States Attorney, Muskogee, Okla.

OFFICE OF UNITED STATES ATTORNEY,
EASTERN DISTRICT OF OKLAHOMA,
Muskogee, Okla., December 24, 1909.

SIR: I am advised by the attorneys for John F. McMurray that in the case of the United States on the relation of the Choctaw and Chickasaw Nations *v.* John F. McMurray, now pending on demurrer, and which is set for hearing January 4, will ask leave of court to withdraw the demurrer and file a motion against the complaint to make it more definite and certain in that the Government be required to set out copies of the regulations of the Secretary of the Interior made

and promulgated governing the leasing of coal lands on segregated lands in the Choctaw and Chickasaw nations.

I wish, therefore, that you would have sent to me by the Secretary of the Interior, at once, copies of all regulations governing the leasing of coal lands in the Choctaw and Chickasaw nations made and promulgated by the Secretary of the Interior since the passage of the act of Congress of June 28, 1898, commonly known as the "Curtis bill," down to the present time. Also, the regulations of the Secretary of the Interior governing the approval of leases made by the old Choctaw-Chickasaw mining commissioners.

The sole question involved in this litigation is the question of the right of the Secretary by regulations to increase the amount of the annual minimum royalties to be paid under coal and mineral leases made by the mining commission of the Choctaw and Chickasaw nations.

As I understand the issues the defendants will not contend that the changes in the regulation avoid the lease, but will contend that the Secretary has no power to increase the amount of annual minimum rental to be paid under these leases.

These old coal leases are very valuable because in recent years no leases can be obtained on these lands, and in this case of McMurray he has held these leases for a number of years without making any development or taking out any coal under them. This, of course, deprives the nations of the royalties that would otherwise accrue to them if the leases were operated in good faith; so the real question to be determined in this litigation is whether or not under these old leases they can be held indefinitely upon the small minimum annual rental required by the original lease. This case seems to me to present a very important question, and I desire to be fully advised upon the question of all regulations issued affecting the matter, the date of their promulgation and the act of Congress under which it is claimed they are authorized.

Please furnish me with this information at your earliest convenience, and oblige,

Very respectfully,

W. J. GREGG,
United States Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

DEPARTMENT OF JUSTICE,
Washington, D. C., December 28, 1909.

SIR: I have the honor to request that there be forwarded to this department as early as possible a copy of the regulations governing the leasing of coal lands in the Choctaw and Chickasaw nations, made and promulgated by the Secretary of the Interior since the passage of the act of June 28, 1898, known as the Curtis bill, down to the present time. Also a copy of the regulations of the Secretary of the Interior governing the approval of mining leases by the Choctaw-Chickasaw mining commissioners.

Very respectfully,

C. W. RUSSELL,
Acting Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 7, 1910.

SIR: I have the honor to acknowledge receipt of your letter of December 28, 1909, requesting copies of the regulations promulgated to govern the leasing of coal lands in the Choctaw and Chickasaw nations under the act of June 28, 1898 (30 Stat. L., 495).

The supply of printed pamphlets containing the regulations approved by the department on October 27, 1908, and May 22, 1900, is exhausted, but the regulations are fully set forth in Senate Executive Document No. 396 (59th Cong., 2d sess., part 4, pp. 194-211), a copy of which is inclosed. There is also inclosed a copy of the amendment approved on December 6, 1907, in regard to royalties.

Very respectfully,

FRANK PIERCE,
First Assistant Secretary.

The ATTORNEY-GENERAL.

AMENDMENT TO REGULATIONS GOVERNING ROYALTIES ON COAL IN THE CHOCTAW AND CHICKASAW NATIONS.

DEPARTMENT OF THE INTERIOR,
Washington.

The fifth and sixth subdivisions of paragraph 5 of the regulations to govern mineral leases in the Choctaw and Chickasaw nations, adopted May 22, 1900, are amended to read as follows:

"Lessees shall pay advanced royalties, beginning from the date of approval of each lease, on each mine or claim, whether developed or not, such payments to be 'a credit on royalty when said mine is developed and operated and its production is in excess of such guaranteed annual advanced payments,' as follows, viz: One hundred dollars per annum in advance for the first and second years, two hundred dollars per annum in advance for the third and fourth years, and five hundred dollars per annum in advance for each succeeding year thereafter; and that, should any lessee neglect or refuse to pay such advanced royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and all royalties paid in advance shall be forfeited and become the money and property of the Choctaw and Chickasaw nations.

"Each lessee shall produce coal equal to the aggregate of three thousand tons for each lease held by him during the first year from date of approval thereof; four thousand tons during the second year; seven thousand tons during the third year; eight thousand tons during the fourth year; and fifteen thousand tons the fifth and each succeeding year during the term of such lease, or pay royalty as if such amounts had been produced; provided, that any amount paid in excess of that required by actual production shall be held as a credit to be applied in payment of royalty on subsequent actual production; and a failure to meet this requirement will subject the lease or leases as to which default shall occur, to cancellation."

Approved, December 6, 1907.

JAMES RUDOLPH GARFIELD,
Secretary.

DEPARTMENT OF JUSTICE,
Washington, January 13, 1910.

SIR: This department duly received your letter of December 24, 1909, relating to the case of United States ex rel. Choctaw and Chickasaw Nations v. John F. McMurray, in which you ask to have sent you copies of all regulations governing the leasing of coal lands in the Choctaw and Chickasaw Nations promulgated since the passage

of the act of June 28, 1898, also of the regulations of the Secretary of the Interior governing the approval of leases made by the old Choctaw-Chickasaw mining commissioners.

I inclose herewith part 4, Senate Document 396 (59th Cong., 2d sess.), which contains all of the rules and regulations so promulgated by the Secretary of the Interior. I am informed that the Choctaw-Chickasaw mining commissioners were purely tribal representatives and were under no rules and regulations of the Interior Department; at least, no such rules and regulations can now be found.

Respectfully,

WADE H. ELLIS,
Acting Attorney-General.

WM. J. GREGG, Esq.,
United States Attorney, Muskogee, Okla.

OFFICE OF UNITED STATES ATTORNEY,
EASTERN DISTRICT OF OKLAHOMA,
Muskogee, Okla., January 27, 1910.

SIR: Replying to your favor of January 11, 1910, relating to the case of the United States ex rel. Choctaw and Chickasaw nations against John F. McMurray and others, to recover the amount claimed to be due on account of royalties on four certain coal-mining leases executed by the trustees of the Choctaw and Chickasaw nations on March 15, 1899, I have the honor to report that I have this day filed an amended and supplemental bill in that case.

The supplemental feature simply covers the amount due for the years 1908 and 1909 which have accrued since the filing of the original complaint. The amendment affects the nature of the claim to this extent: In the original action it was pleaded and claimed that the Government had the right to collect the advanced royalties provided in the lease, being \$100 for the first and second years, \$200 for the third and fourth years, and \$500 for each succeeding year thereafter, and that in addition to the advanced royalties they had a right to collect royalty at the rate of 8 cents a ton upon the minimum output required to be mined under the regulations prescribed by the Secretary of the Interior of May 22, 1900, and December 6, 1907.

After making a thorough examination of the leases and the regulations, I reached the conclusion that the Government could not recover royalty at the rate of 8 cents per ton on the minimum production required and in addition thereto recover advanced royalties, but under the terms of the lease, which expressly provides that it shall be subject to the regulations existing at the time it was entered into and such subsequent regulations as may be provided by the Secretary of the Interior, I am of the opinion that the subsequent regulation requiring the production of a minimum tonnage per annum is a lawful regulation and within the power of the Secretary to provide, for the reason that it does not in any manner affect the provisions of the lease, but is a matter of operation. It is a regulation providing the manner in which the lease shall be operated.

In another portion of the lease it is covenanted and agreed by the lessee that he will use diligence to immediately begin the operation

and production of coal from the premises described, and operate the same in a workmanlike manner. Unless it can be said that the minimum production required by the regulations is an excessive one I see no reason why the Secretary would not be authorized to require such production or, in event it is not produced, to require the payment of royalty thereon at the rate provided in the lease or by regulations subsequently made, which in this case is 8 cents per ton instead of 10 cents provided in the lease itself.

However, if the royalty is charged against the lessee at the rate of 8 cents per ton as minimum production, which in this case is 15,000 tons, after the fourth year, and that amount of royalty exceeds the advanced payments required by the lease, the advanced payments must be credited upon the royalty due from the minimum production, and if the advanced payments are paid only the difference would remain. In other words, the regulation requiring this lessee to produce 15,000 tons of coal and pay a royalty of 8 cents per ton thereon would require the annual payment of \$1,200 royalty to the Choctaw and Chickasaw nations; if the advanced payment of \$500 is made, it should be credited upon the \$1,200, leaving a balance of only \$700 and not added to the \$1,200, which would require the payment of \$1,700. This latter plan was the one adopted in the pleading originally filed in this case. I have therefore sued for the amount due on these leases requiring the payment of royalty on the minimum output required by the regulations and have credited the amount that has been paid by the lessee as advanced royalty. The original petition asks for judgment for \$22,880 for royalty due up to April 27, 1907, whereas the amount claimed in the amended and supplemental petition is \$28,880 for royalty due up to April 27, 1909. This is the amount claimed after allowing Mr. McMurray credit for \$1,600, paid in as advanced royalties on each lease.

Under the order of court I was required to separately state and number the several causes of action, and there appeared to be one cause of action arising under each lease and a cause of action upon the bond. This makes the bill very cumbersome, and I am not inclosing a copy because I anticipate that you can understand the nature of the suit from this letter. However, if it is not clear I will send you copies of the original bill filed; also copy of the amended and supplemental complaint if you desire.

Respectfully, yours,

W. J. GREGG,
United States Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

OFFICE OF UNITED STATES ATTORNEY,
EASTERN DISTRICT OF OKLAHOMA,
Muskogee, Okla., February 3, 1910.

SIR: I inclose herewith copy of demurrer filed to the amended complaint in the case of the United States v. John F. McMurray and others by his attorney, Mr. A. A. Richards.

I filed the amended complaint in the name of the United States for the use and benefit of the Choctaw and Chickasaw nations. I do not understand, and never have been able to understand, how a suit could be maintained in the name of the United States ex rel. the Choctaw and Chickasaw nations. The original suit was brought by the United States for the use of the Choctaw and Chickasaw nations, and the complaint so alleges, and I have so alleged in the amended complaint. The title, I assume, has no material bearing upon the nature of the action.

I think the serious question will be raised by the fifth ground of demurrer. That is the only one that occurs to me will be at all troublesome.

Very respectfully,

WM. J. GREGG,
United States Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

IN THE UNITED STATES CIRCUIT COURT IN AND FOR THE EASTERN DISTRICT OF
OKLAHOMA.

United States ex rel. Choctaw Nation and Chickasaw Nation, plaintiffs, *v.* John F. McMurray, principal, and James M. Lindsay, Fisher A. Tyler, jr., and John L. Simpson, sureties, defendants. At law. No. 605.

DEMURRER OF JOHN F. M'MURRAY.

The defendant, John F. McMurray, demurs to the "Amended and supplemental complaint at law," filed in this action on January 26, 1910, and further demurs to each of the first, second, third, fourth, and fifth causes of action therein set out, severally and separately, on each and all of the grounds hereinafter set out, and alleges that from the face of said pleading it appears:

1. That the party named therein as "complainant" has no legal capacity to sue upon any of the causes of action therein set out.
2. That there is a defect of parties plaintiff, in that said amended and supplemental complaint is not filed in the name or names of, nor by, the same complainants by whom this action was commenced, and said original complainants are not named in said amended pleading, although there has been no substitution of parties herein.
3. That there is a defect of parties plaintiff in said pleading in that it appears therefrom that the Choctaw Nation of Indians and the Chickasaw Nation of Indians are both interested in the subject-matter in controversy in each and all of the causes of action set out in said pleading.
4. That there is a defect of parties plaintiff in that it is not attempted in said amended pleading to prosecute this action in the name or names of the real parties in interest.
5. That neither said pleading, nor any of the several causes of action therein set out, states facts sufficient to constitute any cause of action in favor of the complainant therein named and this defendant.

Attorney for Defendant, John F. McMurray.