CHOCTAW AND CHICKASAW INDIANS
SALE OF COAL AND ASPHALT DEPOSITS

HEARINGS
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES
SEVENTY-SIXTH CONGRESS
THIRD SESSION
ON
H. R. 909
A BILL PROVIDING FOR THE PURCHASE BY THE
UNITED STATES OF THE SEGREGATED COAL
AND ASPHALT DEPOSITS IN OKLAHOMA
FROM THE CHOCTAW AND CHICK-
ASAW TRIBES OF INDIANS

APRIL 24, 1940

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CHOCTAW AND CHICKASAW INDIANS—SALE OF COAL AND ASPHALT DEPOSITS

WEDNESDAY, APRIL 24, 1940

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

The committee met at 10:30 a. m., Hon. Wilburn Cartwright presiding in the absence of Chairman Will Rogers.

Mr. CARTWRIGHT. The committee will please come to order.

Gentlemen of the committee, this hearing has been called for the consideration of H. R. 909 by yours truly, providing for the purchase by the United States of the segregated coal and asphalt deposits in Oklahoma from the Choctaw and Chickasaw Tribes of Indians, and to be distributed per capita.

The committee had under consideration H. R. 909, which is as follows:

[H. R. 909, 76th Cong., 1st sess.]

A BILL Providing for the purchase by the United States of the segregated coal and asphalt deposits in Oklahoma from the Choctaw and Chickasaw Tribes of Indians

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior, within six months after the passage of this Act, shall cause to be made an examination and appraisement of the coal and asphalt deposits of the mineral lands of the Choctaw and Chickasaw Nations in Oklahoma. For the purpose of making said examination and appraisement the Secretary of the Interior is hereby authorized and empowered to direct expert appraisers from the Geological Survey to perform said work under the rules and regulations prescribed by him, and the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall designate one appraiser each to represent said nations and assist in appraising said mineral deposits. Upon the completion of the work by the appraisers a written report thereof shall be made to the Secretary of the Interior, and said report shall fix the total value of said mineral deposits, and the amount so fixed by said report and appraisement shall be final, but before the approval of said appraisement by the Secretary of the Interior, thirty days' notice shall be given to the principal chief of the Choctaw Nation and to the governor of the Chickasaw Nation to file and set forth any objections they may have why said appraisement should not be approved and made final; and, unless valid objections are filed within said time, said appraisement shall become final. After said appraisement becomes final the Secretary of the Interior shall cause a proper conveyance to be executed by the principal chief of the Choctaw Nation; and the governor of the Chickasaw Nation conveying all the right, title, interest, and estate of the Choctaw and Chickasaw Nations in and to said mineral deposits to the United States; and thenceon said mineral deposits shall become the property of the United States.

Sec. 2. There is hereby authorized to be appropriated the sum of $12,000,000, or so much thereof as may be necessary, to pay to the Choctaw and the Chickasaw Nations in consideration for the transfer and title of said mineral deposits, the amount determined by said appraisement and said amount when so determined shall be placed to the credit of the Choctaw and Chickasaw Nations on the books of the Treasurer of the United States, and thereafter said money shall be distributed per capita to the members of the said tribes.
SALE OF INDIAN COAL AND ASPHALT DEPOSITS

Sec. 3. To enable the Secretary of the Interior to carry into effect the provisions of this Act there is hereby authorized to be appropriated the sum of $10,000, to be made immediately available. The tribal appraisers appointed under the provisions of this Act shall receive a compensation not to exceed $10 per day.

Mr. CARTWRIGHT. Before we call the witnesses I think I should make a brief statement as to why I have introduced this bill in every Congress during the past 14 years.

Of course, when these Indians were sent to the Indian Territory they were promised that they would have it as long as the grass grew, the moon would shine, and the water would run, and so forth, but back in 1898 they began to nudge in on them, and they passed what was known as the Atoka agreement when they first began to learn about coal and asphalt deposits.

In 1902 they passed what was known as the supplementary agreement, in which they promised that within three years they would sell this coal property. They had agreed to sell, or to allot them land in 320-acre allotments, and these segregated coal and asphalt deposits, were to be sold, and the individuals were to improve their allotments. The Federal Government didn't keep its agreement. The property hasn't been sold yet.

In 1905 Indians could have sold it. The Federal Government could have sold it. The Indians wanted to sell it, but the Federal Government would not permit them to do that.

In 1918 they got an appraisement of it known as the Cameron appraisement of $12,000,000. And since then they have sold it down to about $8,000,000, under that appraisement. And with interest on the unsold part at about 5 percent, it would still be about $18,000,000. The reason for continuing to introduce this bill for $12,000,000. Of course this is just tentative; something to work on.

Mr. MUNDT. Will the gentleman yield?

Mr. CARTWRIGHT. Wait until I finish my statement. The Federal Government let the matter roll along until they discovered oil gas in and around these coal fields. The railroads went to burning oil instead of coal, and the people piped gas into their homes instead of using coal that might be mined. For these reasons it might be profitable for the Government to dispose of the deposits to the advantage of the Indians.

Mr. MUNDT. The committee has not considered it before?

Mr. CARTWRIGHT. The committee has not considered it before.

Mr. MUNDT. Seven times; yes, sir.

Mr. CARTWRIGHT. Seven times; yes, sir.

Mr. MUNDT. Will you give us some idea what has been happening to the bill in these other Congresses?

Mr. CARTWRIGHT. It has just been something that has never gotten up to bat. This is the first time I have gotten up this far.

Mr. MUNDT. The committee has not considered it before.

Mr. CARTWRIGHT. No; not since I have been here. Until the last Congress the Department had always made an unfavorable report on the bill. Their report in the Seventy-fifth Congress was the first one that was encouraging in the least, but it was made too late in the session for a hearing. Then, too, there is a suit pending in the Court of Claims covering the matter and it was thought it might be disposed of there, but it is still pending.

If there are any objections I will place in the record at this point a report from the Bureau of Indian Affairs on the bill, a letter from the Attorney General of the United States, and a letter from the Comptroller General. Are there any objections?

Mr. MUNDT. Mr. Chairman, that also includes the report of the Secretary of the Interior?

Mr. CARTWRIGHT. Yes.

Mr. MUNDT. All right.

(The letters referred to are as follows:)

Hon. Will Rogers,
Chairman, Committee on Indian Affairs,
House of Representatives.

Mr. DEAR MR. CHAIRMAN: Further reference is made to your request for a report on H. R. 909, a bill providing for the purchase by the United States of the segregated coal and asphalt deposits in Oklahoma from the Choctaw and Chickasaw Tribes of Indians.

There is sufficient authority under existing law to permit the sale of these coal and asphalt deposits to outsiders whenever and wherever deemed advisable in the interest of the Indians. Adverse market conditions prevailing in this area as a result of the discovery of large quantities of natural gas and fuel oil in Oklahoma and nearby States have rendered it practically impossible in recent years to dispose of the deposits to the advantage of the Indians. Under these conditions it will doubtless be many years before the tribes will benefit to any great extent by a sale of these coal deposits. In the meantime there will be considerable necessary administrative expense to the tribes and to the Government as well in order property to care for and protect the property and prevent trespassing and the theft of coal. It would also be necessary to provide for the few sales of tracts that may be authorized and the administration of leases and permits which are the only market for disposal of large quantities of coal that might be mined. For these reasons it might be profitable for the Government to buy the coal deposits and hold the same in reserve until such time as there is a better market available for the disposal of them.

If the bill is to receive favorable consideration several changes are desirable.

It is believed the appraisal of the coal and asphalt deposits should be made by a committee representing the Indians and the Secretary of the Interior. The time in which to do the work should be increased from 6 months to 1 year. The mineral deposits, after they are purchased by the United States, should be made subject to disposal under the mineral laws of the United States but with the provision that the proceeds shall all be placed in the Federal Treasury. It is contrary to the policy of this Department to make per capita payments to the Indians. The bill, therefore, should be amended to provide that the proceeds received by the Indians shall be held in the Treasury subject to disposal for the benefit of the Indians as authorized by Congress.

The appropriation to defray the expenses of carrying out the legislation should be increased from $10,000 to $20,000 and the maximum pay to be allowed the appraisers from $10 to $50 per day. This latter change is believed necessary to make sure that qualified appraisers may be obtained.

In order to carry these suggested amendments into effect all after the enacting clause in H. R. 909 should be stricken and there should be substituted therefor the wording of the attached draft of bill.

A memorandum concerning the segregated coal and asphalt deposits of the Choctaw and Chickasaw Nations is attached.
The Acting Director of the Bureau of the Budget has advised "that the proposed legislation either in its present form, or if amended as recommended by you, would not be in accord with the program of the President."

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

MEMORANDUM OF INFORMATION RELATING TO A BILL TO AUTHORIZE THE PURCHASE BY THE UNITED STATES OF THE SEGREGATED COAL AND ASPHALT DEPOSITS OF THE CHOCHTAW-AND CHICKASAW TRIBES

Originally there were 445,652 acres within the segregated coal and asphalt area. According to the report of the Superintendent of the Five Civilized Tribes and the Division of the Interior for the fiscal year ended June 30, 1938, there are about 379,637.08 acres of coal and asphalt minerals unleased, valued at $10,041,029.67.

A suit is pending in the Court of Claims (No. 262) by the Choctaw and Chickasaw Nations against the United States claiming more than $8,000,000 as damages arising out of the delay or failure on the part of the Government to dispose promptly of these coal and asphalt deposits in accordance with earlier agreements with these tribes. No doubt the tribal representatives would be willing, however, to withdraw this suit should Congress give favorable consideration to the bill.

Sections 59 to 63 inclusive of the act of July 1, 1902, ratifying the supplemental agreement with the Choctaw and Chickasaw Indians (32 Stat. 641), provided that such lands of the Choctaw and Chickasaw Nations as were chiefly valuable for coal and asphalt should be segregated from allotment and sale. Section 59 of the supplemental agreement provided that the lands leased, and unleased, should be sold at public auction for within 3 years from the date of final ratification of the agreement and before the dissolution of the tribal government.

Before the expiration of the 3-year period or the offering of the lands for sale, as provided by said section 59, a provision was passed, contained in the appropriation act of April 21, 1904 (33 Stat. 189-209), that all leased lands should be withheld from sale until the further direction of Congress. The act further provided that the lands leased, and unleased, should become the property of the United States, and may be leased in accordance with the provisions of the act of April 21, 1904 (33 Stat. 189-209).

The act further provided that the coal and asphalt lands and deposits of the mineral lands of the Choctaw and Chickasaw Nations in Oklahoma. For the purpose of making such appraisement the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation shall designate one person to serve as an appraiser. Upon the completion of the work by the appraisers a written report thereof shall be made to the Secretary of the Interior, and said report shall fix the total value of said mineral deposits, and the amount so fixed by said report and approved under such regulations as may be prescribed by the Secretary of the Interior may, in cases where the tracts remain unsold and the facts are found to justify, cause reappraisements to be made. The act further provided that the lands leased, and unleased, should be segregated from allotment and sold such lands at public auction or private sale at not less than the reappraised value.

All of the unsold tracts have been advertised and offered for sale a number of times. Since the passage of the act of June 19, 1930, supra, a few tracts have been sold in particular instances where it appeared to be for the best interests of the Indians to make the sales.

A BILL Providing for the purchase by the United States of the segregated coal and asphalt deposits in Oklahoma from the Choctaw and Chickasaw Tribes of Indians

Be it enacted by the Senate and the House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Interior, within one year after the passage of this act, shall cause an appraiser to be appointed by the President to appraise the coal and asphalt deposits of the mineral lands of the Choctaw and Chickasaw Nations in Oklahoma.

The act further provided that the lands leased, and unleased, should become the property of the United States, and may be leased in accordance with the provisions of the act of April 21, 1904 (33 Stat. 189-209).

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All of the unsold tracts have been advertised and offered for sale a number of times. Since the passage of the act of June 19, 1930, supra, a few tracts have been sold in particular instances where it appeared to be for the best interests of the Indians to make the sales.
SALE OF INDIAN COAL AND ASPHALT DEPOSITS

A written report of these appraisers to the Secretary of the Interior is to fix the total value of the mineral deposits, but before approval thereof by the Secretary 30 days' notice is to be given to the principal chief of the Choctaw Nation and to the governor of the Chickasaw Nation to file any objections to the appraisement which they may have, and, unless valid objections are filed within the 30-day period, the appraisement shall become final. After the appraisement becomes final, the Secretary is to cause a proper conveyance to be executed by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, conveying all the right, title, interest, and estate of the Choctaw and Chickasaw Nations in and to the mineral deposits to the United States and thereupon the mineral deposits are to become the property of the United States. The bill also contains provisions for the appropriation of the sum of $12,000,000, or so much thereof as may be necessary, to pay the Nations, in consideration for the transfer of the mineral deposits, the amount determined by the appraisement; and the amount so paid is to be placed to their credit on the books of the Treasurer of the United States and is to be distributed to the members of the tribes. For the purpose of enabling the Secretary of the Interior to carry into effect the provisions of this act, the sum of $10,000 is to be made immediately available.

In view of the fact that its subject matter involves a question of policy with which this Department is not concerned, I have no comment to make on this bill. Sincerely yours,

FRANK MURPHY, Attorney General.

COMPTROLLER GENERAL OF THE UNITED STATES, Washington, March 21, 1839.

HON. WILL ROGERS, Chairman, Committee on Indian Affairs, House of Representatives.

I hereby certify that a written copy of the report of the appraisers of the coal and asphalt deposits in Oklahoma was transmitted to me on March 21, 1839, and that I have read and considered the same.

Sincerely yours,

R. N. ELIOPE, Acting Comptroller General of the United States.

My dear Mr. Chairman: There was acknowledged February 28, 1839, receipt of your letter of February 27, requesting a report on H. R. 909, Seventy-sixth Congress, entitled "A bill providing for the purchase by the United States of the segregated coal and asphalt deposits in Oklahoma from the Choctaw and Chickasaw Tribes of Indians," a copy of which was transmitted with your letter. If the bill should pass and become law, it would provide, in substance, for the appraisement of coal and asphalt deposits on the mineral lands of the Choctaw and Chickasaw Nations in Oklahoma, and would authorize an appropriation of $12,000,000, or so much thereof as might be necessary, to pay the Choctaw and Chickasaw Nations for the mineral deposits on the lands held in fee by them.

In view of the fact that its subject matter involves a question of policy with which this Department is not concerned, I have no comment to make on this bill.

Sincerely yours,

R. N. ELIOPE, Acting Comptroller General of the United States.

Mr. Cartwright. Now, we have the tribal officials here, and we will hear from them later. Hon. Grady Lewis has been national attorney for the Choctaw and Chickasaw Indians, but is not at present. However, he is an Indian, and is interested, and wants to testify first.

All right, Grady, we will be glad to hear from you.

STATEMENT OF HON. GRADY LEWIS, ATTORNEY, OKLAHOMA CITY, OKLA., AND WASHINGTON, D. C.

Mr. Lewis. Thank you, Mr. Chairman. My name is Grady Lewis. I am an attorney at law, with offices in Oklahoma City and in Washington, D. C. I am a member by blood of the Choctaw Tribe of Indians, and of the Chickasaw Tribe by marriage.

I have been the Choctaw national attorney for some years, and am now representing them in certain cases in the Court of Claims, and have authority to appear as special counsel for the Chickasaws for this hearing.

To acquaint the committee of this situation it is necessary to give a bit of historical background.

First and foremost, I want to impress upon the committee that these lands in which these coal and asphalt deposits lie are not what are ordinarily termed reservation lands. They are fee lands, bought and paid for by the Choctaw and Chickasaw Indians for a valid consideration, and a patent to them was issued by the United States Government in 1842.

They were purchased by a series of treaties with the United States commencing in 1820, the next treaty being 1825, the next in 1830.

Pursuant to the treaty of 1830 the patent was issued, although it took the Government officials 12 years to get around to writing their names on the patent, but I do want to make that clear; that these lands are fee lands, and comprise a part of some 25,000,000 or 26,000,000 acres of lands that were originally owned by the Choctaw and Chickasaw Indians in what is now the State of Oklahoma, being roughly the south half of the State.

By subsequent treaties these Indians sold all except what would be approximately the southeast fourth to the State. That land was all owned in common. They set up their own tribal governments, they elected their chief executive. With the Choctaws he was known as the principal chief, and with the Chickasaws, the governor. They had their supreme court, attorney general, two houses of their council, or the congress, passed the laws. They proceeded to operate from 1830 until 1906.

In 1893 the Government evinced its intention and, in fact, its determination to extinguish tribal government, to compel the members of these tribes to select from their tribal domain allotments in severalty.

On March 3, 1893, Congress passed a bill creating a commission to go to these tribes of Indians and effect the dissolution of tribal governments, and compel the members of these tribes to select from their tribal domain allotments in severalty.

Negotiations were carried on for some years, resulting, as the chairman has suggested, in an agreement made in 1898, whereby it was agreed that the Indians would do the thing the Government wanted them to do, to wit, ban tribal government and take up their lands in severalty.

But the same Commission, known as the Dawes Commission, by reason of the fact that former Senator Dawes from Massachusetts was chairman, undertook to effectuate the plan set forth in the 1898 agreement. They felt that they were not able to do so by reason of a myriad of intrigue and intimate questions that came up that necessitated an additional agreement.

As a consequence the Indians were reapproached by emissaries of the Government to negotiate a further agreement. That agreement brought on a very, very rigorous fight from the standpoint of politics within the confines of the two nations, the people being divided, first, as to whether or not they would enter into further negotiations with the Government, or whether they would continue as they were.

It was the actual feeling of the Indians that they were quite happy as they were, and did not want to take land in severalty and lay the foundation for the subsequent State of Oklahoma.
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The principal reason advanced by the advocates of the additional agreement was the fact that the 1898 agreement had laid the foundation for the taking of land in severalty, but had made no provision for any money for the individuals to improve their farms and allotments after they had gotten them.

It was determined that each individual member of the tribes, including women and children, would all be given an average of 320 acres of land for their own. Manifestly, if there was a big family there would be several hundred acres in one family, wholly unimproved, without any fences and barns or anything else. So the Indians protested and said: “We just can’t do that. I may be living here and be given my allotment of land 300 miles from me. And it is valueless to me unless I have some cash in hand to improve it.”

The Government countered then with a proposition that “if you will go ahead with this scheme we have advanced we will agree to do this: You have valuable coal deposits—that was known to everyone—and we will segregate those coal deposits, and not allot that property, but will hold that in common, and in that it has a ready cash value we will undertake to and will sell your coal deposits for you, and make distribution of the proceeds, and then each individual member will have money with which to improve his allotment.”

As usually happens, the Government won the argument. Of course, it necessitated bringing out some troops down there, but in any event the Government won.

As a consequence the supplemental agreement—that was what was called the supplemental agreement—was adopted.

The provisions of the supplemental agreement, beginning with section 52, going through to section 60, provided for the segregation of coal and asphalt deposits to an amount of some 440,000 acres, and the further agreement on the part of the Government that within 3 years from the time the Indians would ratify that agreement by their own action the Government would sell the coal land.

The agreement was ratified September 25, 1902, which would of course go through September 24, 1905, in which the Government would have to go ahead and do it. The lands have not yet been sold.

At the time of the agreement and a short time thereafter—I mean for several years—there was an active demand for this coal. Incidentally, it is a very fine vein of bituminous coal, probably the best west of the Mississippi River. There was a good market throughout Oklahoma, southern Kansas, and most all of Texas.

The provisions of the supplemental agreement required that a commission would be appointed, including a member from the Choctaw Tribe and a member from the Chickasaw Tribe, and a third appointed by the Secretary of the Interior, and their actions were to be approved by the President of the United States.

Theodore Roosevelt at that time was President of the United States. The Rough Riders in the main came from the Indian Territory and had a great following in our country. And in the belief that the President was going to have something to say about this Commission and the setting up of the Commission it made quite an inducement to the Indians to agree to it. They had special confidence in the President.

Mr. Murdock. Will the gentleman yield at that point?

Mr. Lewis. Yes, sir.
they were allotted lands in Jefferson County, fully 300 miles from where they lived. They did not have a dollar. They had not in fact, seen the land, and they could not get to it, and could not do anything after they got there.

When that became apparent and Oklahoma became a State there was great agitation for relief. I might say in the meantime there were so many of these acts, and without being too tedious, I cannot call them to your attention, but when the allotments were first taken allottees were permitted for a short time to divest themselves of their lands, certainly their inherited lands.

A short while thereafter restrictions were imposed upon their alienation. The Indians complained bitterly and said, “Here we are with our lands, which we cannot improve, and we cannot do anything.” And as a result, at statehood in 1907, Senator Owen made his campaign upon one plank, and that was that all allotments restrictions must be removed, upon the theory that you could sell 80 acres, or so, to improve the rest. Of course, the result is obvious. If you could sell it at all, you could sell the whole of it, and the Indians have been pauperized by reason of permission to sell their land in a suggested attempt to raise money with which to improve their farms. That is the situation as it exists today. We have literally thousands of members of these two tribes that are pauperized for that reason.

Mr. MUNDT. Will the gentleman yield? Mr. Lewis? Mr. Mundt.

Mr. MUNDT. The Indians availed themselves to a large degree of the opportunity to sell their land, did they?

Mr. LEWIS. As often as they could; yes, Congressman.

Mr. MUNDT. What happened to the money? Did they spend it under the guidance of the Indian Bureau?

Mr. LEWIS. Not where the restrictions were removed. You see the Indian Bureau has no supervision over it at all. And they were paid no actual value. They did not get the actual money value for the land, and the Indian Bureau had no supervision over its expenditure; and they, being acquainted with the use of money, it just vanished.

Mr. MURDOCK. Mr. Chairman, will the gentleman yield?

Mr. CARTWRIGHT. Mr. Murdock?

Mr. MURDOCK. You are raising here a point that comes up before this committee very, very frequently. It presents one side of a two-sided argument. I have had occasion to say several times that there are Indians and Indians in this country of ours, and that makes it difficult to put a uniform practice into effect with regard to all of them.

I was in Indian Territory in 1906 and 1907. I taught school in the old Cherokee Male Seminary just out of Tahlequah.

Mr. LEWIS. Yes, sir; I am acquainted with it.

Mr. MURDOCK. And I remember the principal of that school was a half-blooded Cherokee by the name of Walter Thompson. You may know him, personally.

Mr. LEWIS. Yes, sir; I do.

Mr. MURDOCK. I thought it most disgusting that Walter Thompson had to go at one time and ask permission of D. Frank Reed over at Tahlequah to sell 40 acres of land.
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Of course, we do realize, with all due respect to the Indian Office and to the Secretary, that when money goes into the Treasury and the Secretary has the privilege of expending them, they seem to disappear almost as rapidly as if we had them ourselves.

Mr. Cartwright. At that point I want to say that the rank and file of the Indians think of getting the money paid to them while they are this side of the golden shore, and it won't do them any good when they pass over to the happy hunting grounds.

Mr. Mundt. I do not doubt that, but my experience has been the same as this gentleman gave in response to the first question, that when he has not had money and then gets it that some shyster, not even Secretary has the privilege of expending them, they seem to disappear and to the Secretary, that when money gets into the Treasury.

Mr. Cartwright. You do not have to be admitted to the bar to roll an Indian.

Now, if I may proceed, I think I have pretty well outlined the situation that had arisen and grown up by the failure of the Government to do as they agreed to do.

In 1902 and through 1905 and up to, we might say, 1911 and 1912, these coal deposits were being operated and considerable revenues were derived from them. But at or about the time we had the experience, fortunate or unfortunate, of having oil discovered in Oklahoma in vast quantities, the upshot has been that our market was simply taken away from us.

The miner would go out and dig coal, and there are only a few of them left, and he would go home and have his supper cooked over a gas stove. I do not blame them for that. I am merely reciting the consequences.

As a consequence the coal which at the time of this agreement was worth $100,000,000 to $500,000,000 is today from the standpoint of actual value, if you go out in the open market and sell it, quite questionable as to any value.

The Government appraiser, Mr. Cameron, for which the Choctaws and Chickasaws gave $50,000 to have the survey made, showed some $12,000,000, which is the figure the Congressman has in this bill, which shows the actual loss to the Indians during that period of time and that those deposits were worth from $100,000,000 to $400,000,000, and were a great asset to the tribes to own by way of an investment to take care of their children and so forth and so on. Of course, that situation does not obtain now by reason of the loss of the market.

Now, I said from the actual legal, as we feel, obligation on the part of the Government, whereby it agreed to dispose of these lands before September 25, 1905, and it has utterly failed to do so, with loss to the Indians of this vast amount of money, we feel that there is further moral obligation on the part of the Government.

I want to repeat that this program of taking lands in severalty was the Government's program, and not the Indians'. They became sold upon the idea of winding up their tribal affairs and trying to become white men. As long as these coal deposits remain tribal, affairs can never be wound up. It just means we go on and on forever like Tennyson's brook.

Now, having gotten us in the position they have the Indians have spent now some 40 years waiting for settlement.

And you can see any full blooded Indian in the Chickasaw or Choctaw Nation and his first and foremost question is, and the Congressman will bear me out in this, "When are we going to get the final settlement? When are we going to get the final settlement?" And I dare say the Congressman cannot make a campaign through his district but that he hears that on an average of 10,000 times every season.

Mr. Cartwright. That is right. You are correct.

Mr. Lewis. And they have a right to know when we are going to get a final settlement. We cannot get a final settlement until these coal lands are disposed of.

As to the economic advisability of it, by reason of the fact that we have tried to keep the coal lands it has been necessary for us to keep some sort of semblance of tribal government. We have to keep the respective chief and the governor of the two tribes.

Mr. Cartwright. And I might say that they are in the committee room.

Mr. Lewis. Yes, they are present.

And also a coal trustee: In addition to that the Government has a set-up there of coal supervisors at a considerable expense from year to year to year.

The Geological Survey was called upon some years ago when this thought was first fixed upon of attempting to get the Government to take these coal lands off their hands as to whether or not it would be an economic advantage to take them. I am not sure that the report came to this committee. I do know it went to the Senate Committee. I am sorry I do not have it here. I would like to supply the record with that by reference if it is not here.

Mr. Cartwright. If there is no objection you may do so.

Mr. Lewis. In reporting to the Senate Committee, the percentage of loss of operation of these coal lands compared with revenues and incomes was compared to other mineral deposits owned by the Government, and the cost for these was some four or five times higher than for any other Government-owned deposit.

Secondly, it was pointed out at the rate of development of these coal lands at the time it would take several hundreds of years to exhaust the deposit, which means of course this final settlement is postponed several hundred years.
SALE OF INDIAN COAL AND ASPHALT DEPOSITS

That is the next moral ground that we submit.

There is one feature of the bill that has been suggested, or at least had its inspiration from the Bureau, and that is relative to a new survey. We paid $50,000 for one survey, and it was core drilled at that time. Veins have not changed. They are still the same depth, the same thickness, and a full report is made here. We do not want to spend another $10,000 now to go down and have another survey made. Frankly, we know from the standpoint of the market value on the open market the deposits would be reduced in cost.

We say that the Government has come down there at our expense and made this survey, and we are willing to stand by it, taking the $12,000,000, set up by Mr. Cameron, and we will call it a day.

Incidentally, there is one further thought and I am through. In the conviction and actual knowledge of the fact that the value has gone out of these deposits we now have pending in the Court of Claims a suit against the Government for a little better than $8,000,000, and we feel we have made adequate proof of an actual loss, and I am authorized to say by the attorneys who have that case pending that should this bill become law they are willing to forget that case and dismiss it, or otherwise of course they are going to insist as to actual liquidated damages the tribes are entitled to that amount of money.

Those, I think, are the principal reasons that impel the advisability of this bill and its virtues.

May I suggest that the present principal chief of the Choctaws who is here, an older man than I, was active and vigorous at the time of the adoption of this supplemental agreement, and he was thoroughly and personally acquainted with the program, and understood it, and was against it, and argued that the Government would not do what it said it would do. Of course, unfortunately, he has proven himself to be a prophet, but he personally is acquainted with these things.

Also, there is present Judge McCurtain, whose father was a candidate for principal chief at the time of the adoption of the program, and who was for the supplemental agreement holding out the vain hope that the Government for one time would do what it agreed to do. Both of those gentlemen are intimately acquainted with the facts and circumstances as they transpired at that time.

I do urge the committee's earnest consideration of those gentlemen's statements because they lived it.

I believe that is all I have to say at this time, and I thank the committee, unless there are some questions that some one desires to ask.

Mr. CARTWRIGHT. We thank you very much for your statement. It is appreciated.

Mr. LEWIS. Thank you.

Mr. CARTWRIGHT. According to the suggested program, the next witness will be the attorney for the two tribes, Hon. W. G. Stigler, commonly known as Bill Stigler.

Bill was president of the Oklahoma State Senate, and I believe he served for a short time as Governor of the State, did you not?
September 25, 1902, the sections of the supplementary agreement which was agreed to July 1, 1902, and ratified by the nation's on September 25, 1902.

The sections of the supplementary agreement which dealt particularly with reference to our coal lands were sections 56 to 63, inclusive.

Section 59 of that act provided that the lands leased and unleased should be sold at public auction for cash within 3 years from the date of the final ratification of the agreement, which was, as I stated a moment ago, September 25, 1902.

And the only thing that we Indians want the Congress to do is to carry out the agreement which we entered into in good faith.

We do not want our coal and asphalt deposits reappraised, but should the committee see fit to recommend the bill out that a new appraisement be had before sale, we want to urge that the recommendation of the Secretary of the Interior that the bill be changed where the appraisement shall have the approval not only of the Secretary of the Interior but the principal chief of the Choctaw Nation and the Governor of the Chickasaw Nation before the appraisement shall become final. We think that amendment is very, very important to our welfare. Since these deposits belong to the two nations, certainly we should have something to say as to whether or not the new appraisement should be approved, and all we want is a fair value for our deposits.

I believe that is all, Mr. Chairman, unless you have a question.

Mr. CARTWRIGHT. We appreciate your statement. Is there any question from the committee? Do you have any, Mr. Buckler?

Mr. Buckler. No; I do not have any at this time.

Mr. CARTWRIGHT. We now have the Governor of the Chickasaws, Hon. Floyd E. Maytubby. Floyd, what do you have to say?

STATEMENT OF HON. FLOYD E. MAYTUBBY, GOVERNOR OF THE CHICKASAW NATION OF INDIANS

Mr. MAYTUBBY. I am Floyd E. Maytubby, Governor of the Chickasaw Nation of Indians.

With reference to this bill our statements will be very brief, because the gentlemen before me have covered most of the details in the Atoka agreement and the supplementary agreement, which was ratified in 1902.

I want to go back to the statement that was made by Mr. Lewis. When this agreement was made these allotments were not favorable to the Choctaws and Chickasaws. They did not want to take allotments and confine themselves on small acreages of land, because it necessitated improvement of the allotments.

And the agreement of the Government was that if the Indians would go ahead and take these allotments they would settle and carry out the agreement which we entered into in good faith.

Coal is bound to come back. I have read in the papers where they are making silk and rayon out of coal. I do not know, but I have been told out of the byproducts of coal a lot of things can be made.

Now, as to the Government, they have made the Chickasaws and Choctaws conserve the coal lands they have not permitted us to operate these mines, fully and have restricted the leasing of the coal mines, and therefore the income has been small, and I just figured here that the income, which we will say would be around 3 to 4 percent, on the value set today would take 15 years before you could realize 4 percent on the value that the Government set on these coal lands back in 1918. Other people have operated businesses and made a greater percent than that. The Government loans money at 5 percent. But on a 3-percent basis this $12,000,000 would bring the Chickasaws and Choctaws $360,000 a year income; $36,000 that we have been getting from the sale of this coal is too small. I just bring that in as a comparison to show the small income on 380,000 acres of coal and asphalt lands that had a great value back there in 1902 and 1905. Substitutes have come. Of course, we know the sale of coal has dropped off and has suspended the operation of mines. There are some mines in Oklahoma that are closed down. They are not operating at all. On the basis of $12,000,000 it is estimated that there is something like 1,200,000,000 tons of coal in these mines, and this would only be asking 1 cent per ton.

Coal is bound to come back. I have read in the papers where they are making silk and rayon out of coal. I do not know, but I have been told out of the byproducts of coal a lot of things can be made.

Now, as to the Government, they have made the Chickasaws and Choctaws conserve the coal lands they have not permitted us to operate them fully and said we should conserve them, we hope the Government will take over these mines and conserve them in the name of the Government.

That is all I have to say.

Mr. MUNDT. Mr. Chairman, I would like to ask the witness some questions.

Mr. CARTWRIGHT. Mr. Maytubby, will you allow for a question? Mr. Maytubby. Yes, sir.
Mr. MUNDT. Are you familiar with the various tribes in such a way so that you could tell the committee about how much tribal funds these Indians now have which are controlled and guardianed by the Government?

Mr. MAYTUBBY. The last statement I had was something like $60,000. Of course, some of that has been set aside for expenditures in appropriations, and if it is not used it will be put back in the Treasury. That leaves, taking the appropriations out, something like $50,000 in the Treasury that is available.

Mr. MUNDT. That belongs to the Indians?

Mr. CARTWRIGHT. Just a moment. In an estimate of that not very long ago, I checked it up, and found that to the Choctaw it amounted to about $5 per capita, and about 30 cents to the Chickasaws per capita.

Mr. MAYTUBBY. The reason our amount is some larger now, we sold some buildings a while back, which brought about $60,000 and interest, sir.

Mr. MUNDT. Then you have between twenty-five and thirty thousand Indians?

Mr. MAYTUBBY. No; we only have 6,338 Chickasaws on the rolls, and something like 20,000 Choctaws, which makes 26,000 for the Chickasaws and Choctaws.

Mr. MUNDT. To whom does this $60,000 belong, which group?

Mr. MAYTUBBY. That is placed to the credit of the Chickasaw Indians.

Mr. MUNDT. The $60,000?

Mr. MAYTUBBY. That is correct. That is not a sufficient amount to make a payment.

Mr. MUNDT. That is about $10 apiece?

Mr. MAYTUBBY. That is about $10 apiece, less than $10.

Mr. MUNDT. What do you propose that the Government do with these coal lands if they purchase them from the Indians for $12,000,000?

Mr. MAYTUBBY. Several years ago, that the coal fields would play out, and they had advocated the conservation of coal and coal lands in the United States, and when they did that of course they began to find substitutes for coal, and oil was discovered, and the burning of oil has taken the place of the burning of coal, and as I said a while ago, a lot of mines in Oklahoma have had to suspend operations because they have no outlet for coal.

Mr. MUNDT. That does not answer the question. The question is what the Government will do with these lands if it buys them.

Mr. MAYTUBBY. I do not know. The Government promised to buy these coal lands in the Atoka agreement, and in the supplemental agreement they promised to take them over and sell them within 3 years from the time this agreement was made.

We have been holding these common lands until today, and as the Mr. Chairman said a while ago, it becomes a white elephant, and the only manner in which we can dispose of the mines today is through the Government.

Mr. CARTWRIGHT. And it does not matter what the Federal Government does with it, but under our boasted plan of conservation I feel that Uncle Sam could stand it better than these poor Indians. They have been holding the bag long enough.
period of years, but it is set at a minimum today, and it is estimated at about 1 cent per ton.

I believe that if we had a few good salesmen that our mines could be sold very quickly for 1 penny a ton. It would be a bargain to begin with.

Mr. MUNDT. Mr. Chairman, I would like to ask the witness the same question that I asked his predecessors.

Mr. CARTWRIGHT. All right, Mr. Mundt.

Mr. MUNDT. Would you have any objection to changing the bill so that this money was placed to the credit of the tribes instead of being distributed on a per capita basis, if and when the bill passes?

Mr. MAYTUBBY. We do not have the money yet, and I did not know just what could be done as to the tribe after they had received the money, but I would rather have the money in the Treasury first before we begin to do what we can with it.

Mr. MUNDT. You have it in the bill, and you have decided in advance on a per capita basis.

Mr. MAYTUBBY. Per capita payment is the way the original agreement was set up. That is, the Government said, “We will sell your coal lands for a certain consideration within 3 years, and divide the money up with the tribe per capita, so much per capita payment.” And this bill here is following the agreement which was made back in 1902.

Mr. MUNDT. I do not know if you have read the Secretary of the Interior’s report or not—Mr. Ickes?

Mr. MAYTUBBY. I have not read that.

Mr. MUNDT. You have not?

Mr. MAYTUBBY. I have not read that report.

Mr. MUNDT. Mr. Ickes says in his report specifically that if the bill passes they want to change it so that the money is set aside to the tribe and not distributed on a per capita basis. That is in the report signed by Harold L. Ickes, dated March 10, 1939. Would you object to that?

Mr. MAYTUBBY. I would not object to it.

Mr. MUNDT. In fact, they have rewritten the whole bill, and that is one of the changes which the Department has made.

Mr. MAYTUBBY. I would like to have the money set aside somewhere.

Mr. CARTWRIGHT. May I state that that would be up to Congress to decide.

However, I want to say as a representative not only of all of the Indians in my district, but as of the white people a well, that there would be a very serious objection from every standpoint. Having been reared among these Indians I believe I know exactly what their sentiment is on this matter. They want it sold and paid out per capita, and according to all agreements and everything else, that it would be paid out per capita. That will be the only way to keep faith.

Mr. MAYTUBBY. The only remarks I have made are in regard to this bill 909. I have not read the Department of the Interior’s bill.

The only thing I would base my few remarks on is this H. R. 909, and in H. R. 909 it says the money will be paid out in per capita payments.

Mr. CARTWRIGHT. I want to say that I have known Governor Maytubby for a long time. He was a successful banker and insurance man before he was selected as governor of his tribe.

Mr. MAYTUBBY. The next witness I am calling for is Chief William A. Durant. He wielded the gavel in the tribal council long before statehood, and when we were getting statehood he was sergeant at arms of the constitutional convention. He was elected to the first legislature. He was elected speaker of the third legislature. I served in the fifth and sixth legislatures with him and I must say he was one of the best men I ever knew on parliamentary procedure in governing a legislative body. He served for 10 years in the State legislature. A few years ago he was selected as chief of the Choctaws, and I am delighted and happy to introduce my old friend, Chief Durant.

STATEMENT OF CHIEF WILLIAM A. DURANT, PRINCIPAL CHIEF OF CHOCTAW NATION INDIANS

Mr. DURANT. Mr. Chairman and gentlemen of the committee, if you will permit me, I will go back a little. I should like to insert in the record here a copy of a resolution passed in 1909 by the Choctaw council and signed by me as speaker of the house, urging the Government to buy our coal lands.

Mr. CARTWRIGHT. If there is no objection, it is so ordered.

A MEMORIAL OF THE CHOCTAW COUNCIL REQUESTING THE GOVERNMENT OF THE UNITED STATES TO PURCHASE THE UNDIVIDED PROPERTY OF THE CHOCTAW AND CHICKASAW TRIBES

Whereas said coal and asphalt lands were not disposed of as was provided they should be by said Choctaw-Chickasaw supplementary agreement, but were withdrawn from sale by acts of Congress approved April 21, 1904, and April 26, 1906, subject to the further direction of Congress; and
Whereas there are remaining unsold and undisposed of about 5,000 town lots belonging to the Choctaw and Chickasaw Tribes according to the plats, surveys, and other records of the Choctaw and Chickasaw Townsite Commission and the United States Government; and

Whereas the Choctaw Tribe of Indians own many public buildings, such as the capitol building, academy and seminary buildings, courthouses, and jails, undisposed of; and

Whereas the Choctaw people very much desire to dispose of all the undivided property now held in common by the Choctaw and Chickasaw Tribes, and make division and final settlement thereof, giving to each Choctaw and Chickasaw his pro rata share of said property, or the proceeds thereof; and

Whereas by the act of Congress approved March 3, 1893, creating the so-called Dawes Commission and authorizing negotiations with the Five Civilized Tribes looking to the allotment of lands and the dissolution of the tribal relations, declared its purpose "to procure the cession, at such price and upon such terms as shall be agreed upon of any lands not found necessary to be so allotted or divided, to the United States": Therefore be it

Resolved by the General Council of the Choctaw Nation assembled:

SECTION 1. It is the sense and desire of the Choctaw people, expressed and declared through their representatives in general council assembled, that the United States Government purchase all the undivided property belonging to and now held in common by the Choctaw and Chickasaw Tribes of Indians, consisting of the unallotted lands, the coal and asphalt lands, and the undisposed of town lots; and that the Government purchase, also, the public buildings of the Choctaw Tribe at an appraised price, all to the end that the Choctaw and Chickasaw tribal affairs may be finally and properly closed up and each Choctaw and Chickasaw citizen get his pro rata share of said property to which he is justly entitled and for which he has an immediate need.

SEC. 2. The Choctaw Nation is willing, and hereby proposes, that the United States Government may take all the undivided property of the Choctaw and Chickasaw Tribes, including the unallotted lands, the coal and asphalt lands, and the undisposed-of town lots, and also the public buildings that are belonging to the Choctaw Tribe of Indians, the Choctaw capitol building, the academy and seminary buildings, the courthouses and jails undisposed of, at a price of $60,000,000.

SEC. 3. That the Congress of the United States be, and hereby is, respectfully memorialized to take appropriate action looking to the consideration of the proposition herein made by the Choctaw Nation or Tribe of Indians, and that we may be advised through our principal chief of the pleasure of the United States Government in the matter.

SEC. 4. That this resolution take effect and be in force from and after its passage and approval.

Proposed by:

E. A. Moore,
Chairman of the chief's message committee.

Read, interpreted, passed the house, and referred to the senate this the 8th day of October 1909.

W. A. Durant, Speaker of the House.

Attest:

Joseph Moore, Recording Secretary.

My friends, Mr. Lewis and Mr. Stigler, have covered the details of this matter very carefully and very accurately; but when there was demand made to make a new State out of Oklahoma and a demand was made on Congress that the former treaties made with the Choctaws and Chickasaws be done away with, and that a treaty be made to settle all of their affairs, and give up their government, just forget them entirely. The Government commenced making that treaty, and it was about 4 years educating them up to it, and the Dawes Commission was appointed, and finally the Choctaws and Chickasaws before they got to the point where they made the Atoka agreement, there was an act passed by Congress known as the Curtis bill, which under the decision of the Supreme Court of the United States Congress already had the power and the authority to do anything on earth they wanted with their property in a legislative way. The Choctaws and Chickasaws went to work really in making the Atoka agreement, and they made it. Under the provisions of the Atoka agreement they agreed to divide up every vestige of property they had equally between them. That was the agreement. But when they went to put the thing in operation, for instance, went to make that good, the United States said the Choctaws and Chickasaws were not capable of making their own roll of citizens, and should give that power to the Congress. And when Congress did that they went and allowed people to go on the rolls of Choctaw and the Chickasaws, something like 2,000 white people, who never had a drop of Indian Choctaw or Chickasaw blood in them at no time, and they got on the roll. Then they gave the district court about 30 days to hear all of those appeals and required the district judge to render about 3,000 decisions in about 30 days of those who were members, and the court cut a few of those applicants off and the balance of them he put on, and just about 2,000 on which should have been cut off. That 2,000 were absolutely white.

The Choctaws were very much chagrined about having those white people on the rolls taking their property, but they decided to go ahead.

Mr. MUNDT. Mr. Chairman, would the gentleman yield for a question?

Mr. CARTWRIGHT. Will you yield for a question, Chief?

Mr. DURANT. Yes.

Mr. MUNDT. As to these 2,000, were they connected with the tribe for many years?

Mr. DURANT. No, sir. They were speculators and gamblers, who swore their souls away in order to get a little piece of land. That is exactly what they did.

The machinery set up by the Government was absolutely inaccurate, because it made then the necessity for the authority of the Government as to this coal land. The agreement divides all of that property. As to the coal and land everyone was to take his share.

So far as I am concerned, my land was not on coal land. I would not have been benefited if they had carried out the Atoka agreement, but I am just stating my personal viewpoint of things.

So the supplemental agreement was proposed for two things, to correct that roll, and the other was to segregate the coal and then sell it within 3 years and get the money so each Indian would have some money to improve his land. Theoretically the Atoka agreement was all right, but in practice it was all wrong. When you go and give a man three or four hundred acres of land and set him out on it without a dime on earth to improve it and help maintain the State government, you have just put a burden on him which is pretty a hard thing, and he will be old and gray before he gets the place developed.

So in making that supplemental agreement, it was made for the purpose of getting that coal sold, getting the money, as stated by Mr. Lewis, so that these Indians could improve this property. That is one of the big inducements that made them adopt this treaty.

As stated by Mr. Lewis, I was a member of the Choctaw Nation that opposed this supplementary agreement. I told my people that the Atoka agreement provided for winding up their affairs right now. We are going to change and give up our government and become citizens of the United States and participate in National and State
Goverments. Let us do it by this first treaty, but if you adopt the supplemental agreement in 50 years you will go up to Congress and try and get what it provides.

My friend, Judge McCurtain, advocated this, and the Governor, who is a very good friend of the Choctaws, was in favor of it. I differed with them on this supplemental agreement. I thought they were wrong on this supplemental agreement. I said let us settle our affairs among us all at once, and do not do it by piecemeal. I happened to have been a delegate sent up by some of my people here, and I appeared before the Secretary of the Interior against this supplemental agreement. I told him exactly what it was doing to us, and what the Atoka agreement provided for. I said to him, "You have drafted the supplemental treaty, and the terms of it were dictated by you, and it gives you more power. I said you under the Atoka agreement, "We will be here, our grandchildren, and great grandchildren, trying to get this thing adjusted." They put it over.

So, then, we started under the supplemental agreement to make that allotment, make those sales, and we have been in a turmoil with it ever since. It was one of the great things that held this property back, and which made an inducement for these adventurers to try to get on our rolls as to these rolls which were posted here in Congress in order to have the Chief or an attorney or somebody to protect and prosecute the white people who have not got a drop of Indian blood in their veins so that they could not get on our rolls. That was part of what this Atoka agreement should be when everything was supposed to have been settled. But that is not getting to this bill.

We have got this coal land on our hands. At one time we could have sold it. Congress did not see fit to let us sell it, and stopped the sale of it.

Incidentally, the Secretary of the Interior at that time, we always thought, right or wrong, had an interest in the coal business, or some of his close relatives, and he was not very faithful to us. We may be wrong about it. That is the way I personally feel about it. They said the Choctaws did not have much business sense then. We were getting 12½ percent royalty on coal. Hitchcock cut it down to 8. Since I have been Chief we have gotten it back to 10. On some of these permits for mining this coal we are getting 15 percent. But we are not mining enough. It shows the difference. Those kind of transactions make an impression on me that many whites were put on them with no Indian blood.

So we have got this coal, and the truth of the matter today is that no private corporation can buy it nor private person. There is no one on earth but the Government that can buy that coal rather existed from the present low price and the limitation that is placed upon them? Did I understand one witness to say no operator could get any more than about 900 acres?

Mr. Durant. No. That limitation has expired. Mr. Hitchcock put that in there.

Mr. Murdock. That is gone now?

Mr. Durant. Yes, that is gone now.

Mr. Murdock. May I ask another question or two? How many Indians are on the rolls of this tribe now?

Mr. Durant. There are 20,676 I think on the Choctaw roll, and there are 5,000 and some fraction on the Chickasaw roll. The Choc-

The American people, which is to buy coal and try it. I want to sell it, but if I cannot I am perfectly willing to go in and try to mine it.
SALE OF INDIAN COAL AND ASPHALT DEPOSITS

The truth of the matter is I do not know but one full-blooded Indian who is a coal digger.

Mr. MUNDT. A coal digger?

Mr. DURANT. Yes; he was baling hay for me, and he quit and went to work at a coal mine.

Mr. MUNDT. There are a lot of Indians who are pretty ambitious, and who I imagine have not had a chance to do that.

Mr. DURANT. I will give you this illustration: When we built the hospital at Talihina at a cost of a million dollars Secretary Ickes put a provision in that contract that they had to work Indian labor. The superintendent that built the courthouse at Oklahoma City with W. P. A. labor, and he built some other buildings at Norman, where the university is, and when he got this contract, after signing it, he told me about it, and he said, "I have sure got a headache on my hands." He said, "I have to work Indian labor, and you know they won't work." I said, "Go try them." After he started the work for 2 or 3 weeks I went over there, and, I said, "How are my Indians getting along?" He said, "The best hands I have ever had anywhere." They developed into carpenters, stonemasons, brickmasons, and so forth, and he worked 125 of them of either half blood or full blood.

We have C. C. C. camps where we work only Indians, either half blood or full blood. They do not permit any others.

Then we have a set-up of what we call Indian projects. They grew out of the method of relief which was handled in this way in all States out of the method of relief which was handled in this way in all States. They developed from the Indian population to take care of it. In other words, they just would not ask for what was coming to them. We had to set up that kind of a project in order to cut out mixed blood and the white man and let those fellows have work.

Mr. CARTWRIGHT. Let me make a brief statement right there. As chairman of the Committee on Roads in the House, for the last few years I have been able to get $4,000,000 a year authorized for Indian road projects limited to Indian labor. And I want to say they have done wonderful work in building roads through their country. I have taken special interest in this kind of work.

Mr. MUNDT. We have had the same experience in South Dakota.

The Indians have built splendid roads, and the Indians have been anxious to go to work and make some money.

Mr. DURANT. They are anxious to do it. I have had a little project down there in Oklahoma where I use only half blood and full blood, and the help I have had there has just been wonderful out of those Indians.

Mr. CARTWRIGHT. May I state here that we are drifting somewhat away from this bill, but I am glad this road business was injected here.

Mr. MURDOCK. Mr. Chairman, may I inject two or three sentences here?

The road up over the Apache Trail from Phoenix to Roosevelt Dam was built by Apache Indians, and they are about the worst fighters of all Indians, and yet that highway was built, and I want to say that it is a monument to highway erection.

Mr. DURANT. We built some right straight up over the mountains for perhaps a hundred miles. And I was at a meeting of the Highway Commission men of the State and Government, in which the Government engineers said there was not a white man connected with the construction of roads except himself and one assistant in the Oklahoma City office, and the State Highway Department of Oklahoma City and their engineers complimented the work done by these Indians very much.

Mr. MUNDT. Just one other question. You say you have pretty well purged your rolls of pure whites now?

Mr. DURANT. Yes; they are pretty well purged.

Mr. MUNDT. What proportion do those of Indian blood on the rolls now possess?

Mr. DURANT. There is no limitation on that. There never has been. Of course, it is gradually getting farther and farther away, but you know when you first commenced intermarrying with Indians about 150 years ago they gradually were mixed, but as the years go by the Indian blood finally disappears.

Mr. MUNDT. Just as long as there is any remote Indian blood in their veins you are going to have them on the rolls?

Mr. DURANT. We have never turned one down. For instance, I am a quarter-blood Indian. My father was a half-blood, and he married a white woman, making me a quarter. I married a white woman, making my children one-eighth, and their children will be one-sixteenth.

We have some Indian girls working in the Capitol which are one-sixteenth and one thirty-second.

Mr. MUNDT. What I am getting at is, are you going to divide this money equally between the full blooded and the one thirty-second?

Mr. DURANT. No; here is the law about the money. The only people that draw that money are those who were on that original list in 1906. It will be divided that way. This property belongs to those people on that roll.

Mr. MUNDT. And their children?

Mr. DURANT. Whatever you pay them today you would have to pay out to the heirs of the dead Indians so much by law.

The last payment we got was about 10 years ago, which was $10. In the last 2 years, my friends have gotten checks for 25 cents from heirs and the various distributions. That means that some one on the roll has died and it has gone into his estate, and the distribution of it is an expensive proposition. It is almost impossible for the Government to make such a small per capita payment. If you want to make a payment it is not economical unless there is perhaps $100. You have got to go to the Muskogee office and there a clerk and a lawyer have to trace the heirs in administering an estate, and that takes time and a lot of expense.

I had a relative, an old gentleman who died, and the Government tried to locate the children and the heirs. I knew some of them. They sent me some checks from Oklahoma City for 25 cents and 50 cents. I delivered the checks. They asked me about the kinfolks, and they were scattered in California, and everywhere.

Mr. CARTWRIGHT. I might say I thought I was doing a good job when I went down to the Bureau and insisted upon getting a $10 payment for the Chickasaws. The Chickasaws didn't have enough for a payment then. That is all they could pay at that time.

As the Chief has told you, in tracing down heirs they get as low as 150 years ago they gradually were mixed, but as the years go by the Indian blood finally disappears. We have some Indian girls working in the Capitol which are one-sixteenth and one thirty-second. The last payment we got was about 10 years ago, which was $10. In the last 2 years, my friends have gotten checks for 25 cents from heirs and the various distributions. That means that some one on the roll has died and it has gone into his estate, and the distribution of it is an expensive proposition. It is almost impossible for the Government to make such a small per capita payment. If you want to make a payment it is not economical unless there is perhaps $100. You have got to go to the Muskogee office and there a clerk and a lawyer have to trace the heirs in administering an estate, and that takes time and a lot of expense.

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Mr. CARTWRIGHT. I might say I thought I was doing a good job when I went down to the Bureau and insisted upon getting a $10 payment for the Chickasaws. The Chickasaws didn't have enough for a payment then. That is all they could pay at that time.

As the Chief has told you, in tracing down heirs they get as low as 25 cents and 50 cents. If they could get $50 or $100, that would mean something to them.
SALE OF INDIAN COAL AND ASPHALT DEPOSITS

Mr. Durant. And it would not make the checks so small and unhelpful to the heirs. But whichever way you go equitably and legally you have got to pursue that course in paying them anything substantial.

Mr. Cartwright. I would like to recognize two other gentlemen, if the committee is through with the chief.

Judge McCurtain is with us. His father, Green McCurtain, was chief of the Choctaw Tribe when this supplemental treaty was passed, was he not, Chief?

Mr. Durant. Yes, sir.

Mr. Cartwright. Judge McCurtain was active in tribal matters and after we got Statehood he practiced law and became a District Judge. Judge McCurtain, you are recognized.

STATEMENT OF JUDGE D. C. McCURTAIN, A RESIDENT OF OKLAHOMA

Mr. McCurtain. I would like to say that I feel that the privilege suggested by Mr. Murdock that we submit a statement, myself and Colonel Leecraft, if he cares to, which would be a résumé, you might say, of the statements that have been made in the record, and if I may be permitted to do so, I will prepare and file such a statement.

Mr. Murdock. I move, Mr. Chairman, that the committee include in this hearing such statements as that.

Mr. Cartwright. If there is no objection it is so ordered.

I want to say as to the Judge that he is in the habit of filing papers. He is a lawyer of no mean ability back home.

You are more than a halfbreed?

Mr. McCurtain. Just about a halfbreed. My father was a full-blood Choctaw Indian. My mother was a white woman, so my allegiance is evenly divided.

(The statement referred to above follows.)

Mr. Chairman and members of House Committee on Indian Affairs, by your permit, Mr. Clerk, I submit a statement in reference to H. R. 909, entitled "A bill providing for the purchase by the United States of the segregated coal and asphalt deposits in Oklahoma from the Choctaw and Chickasaw Tribes." Inasmuch as the proposed bill provides for a final disposition of the coal and asphalt deposits of the Choctaw and Chickasaw Tribes, an undertaking which was begun by the United States Government and said Indian tribes nearly 40 years ago, it might be useful to review briefly for the information of the committee the legislation of Congress and the agreements of the tribes with the Government providing for the final settlement of the affairs of said tribes in the Indian Territory.

The Congress of the United States, by the act of March 3, 1893 (27 Stat. 612), authorized the appointment of a commission composed of three members to negotiate agreements with the Five Civilized Tribes, the Choctaw, Chickasaw, Cherokee, Creek, and Seminole, for the extinguishment of the tribal title to the lands held by said tribes in the Indian Territory, either by cession of the same to the United States, or by allotment or division of said lands in severalty among the Indians of such tribes, with the view and ultimate purpose of creating a State of the Union to embrace the lands within the said Indian Territory. (Italics supplied.) It should be borne in mind by the committee that the movement to extinguish the tribal title and allot the lands in severalty among the members of the tribes was initiated by the Government for the express purpose of creating a State of the Union to embrace said lands, and that said movement did not originate with the Indians, who were content to hold their lands in common. The tribal title, or the community interests of the members of the tribes in said lands, however, was wholly inconsistent with the purpose and policy of the Government to create a State; and the policy of the Government prevailed.

By authority of the act of Congress of March 2, 1895 (28 Stat. 910), the membership of the Commission to negotiate with the tribes was increased from three to five.

By the act of Congress of June 10, 1896 (29 Stat. 321), the commission appointed under the acts of Congress of March 3, 1893, and March 2, 1895, supra, and which became commonly known as the "Dawes Commission," was authorized and directed to hear and determine the application of all persons who may apply to it for citizenship in any of said nations or tribes of Indians, and after such hearing to determine the right of such applicant to be admitted and enrolled as a citizen of the tribe. And "thereby hangs a tale" of one of the many gross injustices done the tribes in the settlement of their affairs.

By the act of June 10, 1896, provided that such applications should be made to the Commission within 3 months after the passage of the act, and that the Commission should decide all such applications within 90 days after the same should be made. The Commission was literally "swamped" with applications of persons, running into thousands in numbers, who had never theretofore claimed to be Indians.

In the performance of its duties in the determination of the applications for citizenship and enrollment of such applicants as members of the tribes, the Commission was empowered and authorized not only to administer oaths and issue process for and compel the attendance of witnesses, but to send for persons and papers, and all depositions and affidavits and other evidence in any form whatsoever theretofore taken where the witnesses giving said testimony were then dead or residing beyond the limits of the Indian Territory. The tribes were utterly helpless to contest all the thousands of applications and to meet the avalanche of depositions, affidavits and other evidence of all forms whatsoever within the brief time in which the Commission had to consider and determine such applications, to-wit: 90 days. And likewise, the Commission was, in the very nature of things, unable in that brief time to give due consideration to all the applications and the great mass of evidence, much of which was submitted in deposition and affidavit form as aforesaid, either for the purpose of determining the rights of persons claiming citizenship in the tribes, or of proving the status of said tribes, or of proving the status of persons claiming citizenship.

As an unavoidable result, many persons were admitted to tribal citizenship who had no rights thereto whatsoever.

Since said act, it has been made the policy of the United States District court, and provided that such appeal should be taken within 60 days, and that the judgment of the court should be final. Practically, the same condition obtained in the courts as existed before the Commission.

The court dockets were already crowded with other cases and the courts had to refer the citizenship cases to special masters to hear the cases and make their reports and recommence the appellants in the appellate courts. Because of the over-crowded state of the courts and the great mass of deposition and affidavit evidence introduced by the applicants, the tribes were wholly unable to contest successfully the great number of cases so appealed. And as a result, the courts of the tribes are left to two thousand at the decision of the Commission, as was afterward shown. This citizenship litigation is presented here at some length because of it arose one of the necessities for the negotiation of the supplementary agreement, of which so much has been said in the record of this hearing. The rank injustice done the tribes in the citizenship litigation instituted before the Commission and appealed to the United States District courts in the Indian Territory was one of the causes that made necessary the supplementary agreement entered into between the United States and the Choctaw and Chickasaw Tribes to correct that injustice.

In the cases appealed from the decisions of the Dawes Commission to the United States District courts in the Indian Territory, both those applying to citizenship and those denying the applications for citizenship, the courts did not confine themselves to a review of the action of the Dawes Commission but permitted the introduction of other evidence and tried the cases de novo. In the Choctaw cases appealed by the applicants, the applicants gave notice of appeal to the Choctaw Nation or Tribe only, and likewise in the Chickasaw cases, notice of appeal was given to the Chickasaw Nation only, and in each of said cases judgment was rendered against one of the tribes only, whereas the Choctaw and Chickasaw Nations or Tribes were jointly interested in the property affected by said judgments, and the tribes contended that such judgments were void for lack of notice to both tribes.
Accordingly, a special tribunal known as the Choctaw and Chickasaw Citizenship Court was created by the supplementary agreement (32 Stat. 641), consisting of a chief judge and two associate judges to be appointed by the President, by and with the advice and consent of the Senate, with authority to finally determine (1) the validity of the citizenship of the United States courts in the Indian Territory against the Choctaw Nation or Tribe and those against the Chickasaw Nation or Tribe; (2) in the event said citizenship court is declared to be invalid and were annulled or vacated, then said citizenship court was authorized to try said cases upon their merits and determine the very right of the controversy.

The provisions of the supplementary agreement pertinent to the Choctaw and Chickasaw Citizenship Court are as follows:

"31. It being claimed and insisted by the Choctaw and Chickasaw nations that the United States circuit courts in the Indian Territory, acting under the Act of Congress approved June 10, 1896, have admitted persons to citizenship or enrollment as citizens in either of said nations, or both of said nations, as aforesaid, and that the United States courts in the Indian Territory were wrongfully obtained as citizenship court hereinafter named, seek the annulment and vacation of all such decisions by said courts.

Ten persons so admitted to citizenship or enrollment by said courts, with notice that one but not both of said nations, shall be made defendants thereto, shall be entitled as representatives of the entire class of persons similarly situated, the number of such persons being too numerous to require all of them to be made individual parties to the suit; but any person so situated may, upon his application, be made a party defendant to the suit. Said suit shall be commenced by a petition, notice of the proceedings in such courts being given to each of said nations; and it shall be determined within ninety days after the last publication. Said suit shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to any other suit or action by or on behalf of any other person whose admission to citizenship or enrollment by said United States courts in the Indian Territory was wrongfully obtained as provided in the said supplementary agreement.

The said service of the dead or person, as the representatives of the entire class of persons similarly situated, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to any other suit or action by or on behalf of any other person whose admission to citizenship or enrollment by said United States courts in the Indian Territory was wrongfully obtained as provided in the said supplementary agreement.

The said service of the said court, shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to any other suit or action by or on behalf of any other person whose admission to citizenship or enrollment by said United States courts in the Indian Territory was wrongfully obtained as provided in the said supplementary agreement.

The said service of the said court, shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to any other suit or action by or on behalf of any other person whose admission to citizenship or enrollment by said United States courts in the Indian Territory was wrongfully obtained as provided in the said supplementary agreement.

The said service of the said court, shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to any other suit or action by or on behalf of any other person whose admission to citizenship or enrollment by said United States courts in the Indian Territory was wrongfully obtained as provided in the said supplementary agreement.
in his judgment are reasonable and necessary out of any of the joint funds of said nations in the Treasury of the United States."

As a result of the litigation of the citizenship cases in the Choctaw and Chickasaw Citizenship Court created by the supplementary agreement, supra, all the judgments of the United States courts in the Indian case in such cases were declared to be invalid and were annulled and vacated; and upon a trial of said cases in the United States Citizenship Court, all the individuals who had been admitted to tribal citizenship by said United States courts in the Indian Territory were rejected.

COAL AND ASPHALT DEPOSITS—ATOKA AGREEMENT BETWEEN THE UNITED STATES AND THE CHOCTAW AND CHICKASAW TRIBES

In the Atoka agreement between the United States Government and the Choctaw and Chickasaw Tribes, which provided for the allotment of lands and the extinguishment of their tribal title (sec. 29 of the act of Congress, approved June 28, 1898 (30 Stat. 459)), it was agreed that all the coal and asphalt within the limits of the Choctaw and Chickasaw Nations should remain and be the common property of the members of the Choctaw and Chickasaw Tribes (freedmen excepted), so that each and every member should have an equal and undivided interest in the whole, and that all said coal and asphalt in or under the lands allotted and the lands reserved from allotment should be reserved for the sole use of the members of said tribes, and that no patent provided for in said agreement should convey title to said coal and asphalt.

Said Atoka agreement also provided that all coal and asphalt mines, at that time developed, or to be thereafter developed, should be operated and the royalties therefrom paid into the Treasury of the United States, and be withdrawn therefrom under rules and regulations prescribed by the Secretary of the Interior. And that the revenues from the coal and asphalt, or so much as should be necessary, should be used for the education of the children of Indian blood, until such time as the members of said tribes should be required to pay taxes for the support of schools, then the fund arising from such royalties should be disposed of for the equal benefit of the members of said tribes (freedmen excepted) in such manner as the tribes may direct.

It will be observed that the Atoka agreement made provision for the reservation of the coal and asphalt and for a proper use of the royalties arising therefrom, but omitted to make provision for the final disposition of said properties in the winding up of tribal affairs. Moreover, there was a growing and insistent demand among the members of the Choctaw and Chickasaw Tribes for a final settlement of their affairs, which involved, among other things, a final disposition of the coal and asphalt properties of said tribes. Hence, one of the necessities for the negotiation of the so-called supplementary agreement, supra, which, among other things, provided for the segregation of the coal and asphalt deposits belonging to the Choctaw and Chickasaw Tribes and the distribution of the proceeds arising from said sale per capita among the members of said tribes (freedmen excepted).

COAL AND ASPHALT LANDS AND DEPOSITS—SUPPLEMENTARY AGREEMENT BETWEEN THE UNITED STATES AND THE CHOCTAW AND CHICKASAW TRIBES

The pertinent provisions of the supplementary agreement authorizing the sale of coal and asphalt lands and deposits of the Choctaw and Chickasaws, are as follows:

"SEC. 56. At the expiration of two years after the final ratification of this agreement all deposits of coal and asphalt which are in lands within the limits of any town site established under the Atoka agreement, or the act of Congress of May 31, 1900, or this agreement, and which are within the exterior limits of any lands reserved from allotment on account of their coal or asphalt deposits, as herein provided, and which are not at the time of the final ratification of this agreement covered by then existing coal or asphalt leases, shall be covered by then existing coal or asphalt leases, shall be covered by then existing coal or asphalt leases, and within that time he shall, by a 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 shall be covered by then existing coal or asphalt leases or until such time as may be otherwise provided by law. Such 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, and the proceeds thereof may, at any time, be withdrawn therefrom under rules and regulations prescribed by the Secretary of the Interior. And the proceeds of the sale of said coal and asphalt lands and deposits shall be deposited in the Treasury of the United States to the credit of said tribes and paid out per capita to the members of said tribes (freedmen excepted) with the other moneys belonging to said tribes in the Treasury of the United States, subject to the existing lease, and shall by the purchase 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 separately sold. The purchaser shall take such coal or asphalt deposits subject to the existing lease, and shall by the purchase succeed to all the rights of the two tribes of every kind and character, under the lease, but all advanced royalties received by the tribe shall be retained by them."

"SEC. 59. 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. The said coal and asphalt lands and deposits shall be sold to the highest bidder for cash, and the proceeds of the sale shall be paid to the United States. 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 separately sold. The proceeds of the sale shall be paid to the United States."

Thus, was the sale of the coal and asphalt lands and deposits of the Choctaw and Chickasaw Tribes expressly and earnestly agreed to between the United States Government and said tribes. The agreement to sell the coal and asphalt lands and deposits of the two tribes was wise and timely, for at that time the production of oil and gas as competing fuels in the Indian Territory was comparatively in its infancy, and had the coal and asphalt of the tribes been sold in accordance with the terms of the agreement, the Indians would have received millions more for said properties than they can receive for them today, or in the immediate future, because of the present condition of the coal market and of the competition of fuel oil and gas.

In the act of Congress of April 21, 1904 (33 Stat. 189), directed that all leased lands be withheld from sale until the further direction of Congress. Later, by the act of Congress of April 26, 1904 (33 Stat. 190), the proceeds thereof were provided that all coal and asphalt lands whether leased or unleased be reserved from sale until the expiration of the then existing coal and asphalt leases or until such time as may be otherwise provided by law.

Without impugning the motives of anyone, it is plain to be seen that in the withdrawal or withholding of the coal and asphalt lands and deposits from sale,
The Government, if it should purchase said coal and asphalt deposits, could hold the same in reserve until such time as there is a better market for the deposit thereof, or lease the same in accordance with the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as suggested by the Honorable Harold L. Ickes, Secretary of the Interior, in his report on the pending bill. Respectfully submitted.

May 13, 1940.

Mr. Cartwright. The other gentleman I wish to recognize is Col. A. N. Leecraft, of Durant, Okla., he is a member of the present State Legislature of Oklahoma, ex-State treasurer and one of my best friends. Colonel Leecraft.

STATEMENT OF COL. A. N. LEECRAFT, A MEMBER OF THE STATE LEGISLATURE OF THE STATE OF OKLAHOMA

Mr. Leecraft. I am Chairman and gentlemen, the time is growing late, and I know you are in a hurry.

I just want to say I am what is known as a squaw man in Oklahoma. I was living in the Indian country at the time the Atoka agreement was ratified, as well as the supplemental agreement, and all we heard at that time, about 35 years ago, was a speedy settlement. That is the word that got through to all the Indians, a speedy settlement.

I think it would be a fine thing to get this estate wound up and do away with all of the expense of trying to carry on this shell of tribal Government, and I think I express the sentiments of all those here when I say that we appreciate the fine courtesy which you have given us.

Mr. Mundt. As to a squaw man, do you mean that you married an Indian?

Mr. Leecraft. Yes and I mean that I am on the rolls as an intermarried citizen. The newly born do not participate and are not on the rolls. The descendants of any enrolled member would be entitled to the rolls. The newly born are not, since that time, when the rolls were closed.

I have my young son here now, and he is 26 years old. He was born after the rolls were closed. His brothers and sisters got 320 acres of land each. He did not get anything, because he was born after that fateful day when the sun went down and the rolls were closed.

Mr. Cartwright. He was born too late to participate in the allotment of land.

Mr. Leecraft. Here he is right here [indicating].

Mr. Cartwright. We appreciate having had you gentlemen up here. I suppose this will close the hearings? Do you have anything more? If not, we will proceed to have these hearings printed, and later call the committee together relative to reporting out the bill.

If no objections we will stand adjourned subject to the call of the chairman of the committee. (Whereupon, at 12:30 p.m., an adjournment was taken subject to the call of the chairman.)