DEPARTMENT OF THE INTERIOR,
WASHINGTON.

Feb. 8, 1908.

Hon. Moses E. Clapp,

Chairman of Senate Committee

on Indian Affairs.

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is still held in conditional trust by the Government, will be seriously endangered. For that reason this Department, in collaboration with the Department of Justice, has prepared and now forwards for your consideration, the draft of a proposed bill which if enacted into law will prevent much unrest and friction, and facilitate materially the necessary action of the Government in winding up the affairs of the Five Civilized Tribes.

It is argued by some that the enabling Act, as amended by the Act of March 4, 1907, is sufficient in itself to meet the requirements intended to be reached by the enclosed bill. If that is so there can be no objection to the proposed jurisdictional law, since there is no doubt that the sufficiency of the earlier laws will otherwise need to be established by tedious and expensive litigation.

There are those on the other hand who urge that the specific jurisdiction proposed to be vested in the Federal Court by the enclosed bill should not be granted because it temporarily places the State of Oklahoma and the conduct of litigation there, in a different position from court procedure in other states, and that Oklahoma should be in all respects exactly in the same position as the other States. To this objection I wish to submit several suggestions:

Oklahoma accepted Statehood with a full knowledge of the Indian conditions in that region and with specific consent to

the reservation of the United States in the enabling Act, that the new State must, until the Indian affairs therein could be properly closed out be in a different position from other states, as far as the United States might find it necessary to maintain control of Indian affairs. On the admission of Oklahoma, the Five Tribes affected by this legislation had the title and possession of the lands of all that territory now comprising the Eastern District of Oklahoma which has been known since 1830 as the "Indian Country" over all of which the Government exercised guardianship and control, which guardianship must necessarily continue over the interests of full-bloods, under present law, until 1931. No such conditions ever before existed in the organization and admission of a new state. This situation must have been contemplated by Congress when, in the enabling Act, it reserved the right to legislate on the subject matter of this bill.

Care has been taken to leave to the State complete jurisdiction over the person of Indians, and their property, in all cases where restrictions are removed. But such jurisdiction as may be necessary, in order that the United States may fulfill its remaining obligation to the full-bloods of the Five Civilized Tribes and the members thereof should be maintained in specific terms. If the United States had never relinquished its guardianship of the persons of these Indians, there would remain upon this Government not only the power, but the duty of saving to itself jurisdiction whereby it might, in any case affecting such

Indians, require contesting parties to go into the Federal Courts. There is no thought, however, of attempting to take back control of the Indians personally, or of the land freed from restrictions, the idea being, that certain of the lands have been, are, and will be, for a limited time, subject to restrictions maintained thereon by the authority of the Government, and while such restrictions last the Government may and must act in behalf of the Indians to the extent only that questions affecting such restricted lands, or the rents or profits arising therefrom are involved, in order to fulfill the trust assumed or imposed by the peculiar relationship between the Government and the Indians and not as yet surrendered.

Instances might be multiplied to show how persons have taken deeds, mortgages or other instruments which will cloud the title of restricted lands, giving to the Indians in return therefor such inadequate consideration that the transaction would be for that reason alone fraudulent. These deeds or encumbrances have been placed of record and stand as a cloud against the title. When the restrictions are removed the land cannot be disposed of for its true value unless these clouds are removed. Those who have brought about this state of affairs expect to profit either by purchasing the lands themselves for a low price or being paid for the removal of the cloud. These transactions, illegal and invalid in themselves, take place while the land is in the charge

of the United States as far as alienation is concerned. The Indians themselves are for the most part too ignorant to know the meaning and future effect of the clouds thus created. They have neither the means nor the knowledge to institute suits to set aside the invalid deeds. When action is brought against them by the holders of these papers to quiet title to the land the experience of the last two months shows that they seldom know enough to take steps to defend. This results in judgments by default, which legally deprive them absolutely of their land. In the Seminole Nation alone, where selection of allotments has been made, certificate issued but patents to same not delivered, more than 1300 tracts have been encumbered with some kind of conveyance by written instrument unauthorized by law, based upon practically a valueless consideration and made of record, thus clouding the title to all of these lands and working a great imposition and injury upon the Indian. These 1300 tracts constitute approximately one half of the allotted lands of the Seminole Tribe. In the Cherokee Nation the title to about 467 tracts of the lands of full-blood Indians is known to be clouded in a similar manner and the information of the Department is that not less than 1200 tracts in the Creek Nation, mostly lands of full-bloods, are in the same condition. The Department has no information as to the exact number of tracts that are in the same condition in the other Nations but believe that the number so affected is far in excess of that in any other Nation.

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M.E.C.,--6.

The Commissioner to the Five Civilized Tribes, within the past few days, has reported that in many instances the purchasers of these lands have commenced suits in the State Courts for the purpose of quieting titles and validating conveyances to the lands acquired in the manner aforesaid upon wholly inadequate consideration and in violation of law and that jusgments have been taken and are being taken against the Indians in these cases by default. He has been authorized by me to insur such expense as may be necessary to keep in touch with these suits and to bring them to the attention of the United States Attorney in order that an appearance may be entered to prevent the Indians' rights from being utterly lost through default due to ignorance of the Indians.

It will thus be seen from the situation among the Five Civilized Tribes that some additional and specific authority from Congress will greatly aid in the Department and simplify its means of protecting the full-blood, and therefore most helpless, Indian, in the enjoyment of his property rights. A number of suits have already been instituted with a view of protecting the property rights of the Indian many of which are now pending in the State Courts of Oklahoma having been commenced in the United States Courts of the Indian Territory, and others will be necessary if he is not to be deprived of much property contrary to law and for the most inadequate consideration. Applications have been filed in all these cases for a transfer of same to the Circuit Court of the

United States for the Eastern District of Oklahoma. There may be much delay and expense connected with the transfer ofthese cases due to the fact that the Enabling Act is not as specific in regard to the right and procedure in some particulars as could be desired. It is, therefore, considered expedient in the interest of time and economy to ask for a more specific declaration of Congress on the subject and thus facilitate the determination of the rights involved. This would evidently be in the best interest of all concerned.

The subject matter of the propsed bill has been of Federal cognizance from the early history of the Government and it is only because of the amount of legislation recently enacted pertaining to those affairs and the change of local conditions brought about by statehood that any legislative expression is at this time necessary. But for the reason suggested above it is quite apparent that the proposed legislation will greatly facilitate the department in carrying out the obligations of the Government in these matters.

Very respectfully,