Mr. Chairman
and Members of the Committee
on Indian Affairs of the
House of Representatives.

Gentlemen:

Heretofore there has been presented to your Committee an exhaustive argument in support of the Murray Joint Resolution by the National Attorney for the Creek Nation and Mr. Reed, Chief of the Five Civilized Tribes' Division, of the Bureau of Indian Affairs.

We desire to add briefly some additional reasons occurring to us why this Resolution should be favorably reported by your Committee.

The following provisions are to be found in the Act of Congress approved March 1, 1901, ratified by the Creek Council May 25, 1901, known as the Original Creek Agreement:

> Section 3-- All lands of said tribe, except as herein provided, shall be allotted among the citizens of the tribe by said commission so as to give each an equal share of the whole in value, as nearly as may be, in manner following: There shall be allotted to each citizen one hundred and sixty acres of land-- boundaries to conform to the Government survey-- which may be selected by him so as to include improvements which belong to him. One hundred and sixty acres of land, valued at six dollars and fifty cents per acre, shall constitute the standard value of an allotment, and shall be the measure for the equalization of value and any allottee receiving lands of less than such standard value may at any time, select other lands, which, at their appraised value are sufficient to make his allotment equal in value to the standard so fixed.
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> If any citizen select lands the appraised value of which, for any reason, is in excess of such standard value, the excess of value shall be charged against him in the future distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and money equal in value to his allotment. If any citizen select lands the appraised value of which is in excess of such standard value, he may pay the overplus in money, but if he fail to do so, the same shall be charged against him in the future

distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds until all other citizens shall have received lands and funds equal in value to his allotment; and if there be not sufficient funds of the tribe to make the allotments of all other citizens of the tribe equal in value to his, then the surplus shall be a lien upon the rents and profits of his allotment until paid.

Section 4,-- Allotment for any minor may be selected by his father, mother or guardian, in the order named, and shall not be sold during his minority. All guardians or curators appointed for minors and incompetents shall be citizens.

Allotments may be selected for prisoners, convicts, and aged and infirm persons by their duly appointed agents, and for incompetents by guardians, curators, or suitable persons akin to them, but it shall be the duty of said commission to see that such selections aremade for the best interests of such parties.

Section 8,-- The Secretary of the Interior shall, through the United States Indian Agent in said Territory, immediately after the ratification of this agreement, put each citizen who has made selection of his allotment in unrestricted possession of his land and remove therefrom all persons objectionable to him; and when any citizen shall thereafter make selection of his allotment as herein provided, and receive certificate therefor, he shall be immediately thereupon so placed in possession of his land.

The following provisions are to be found in the Act of Congress Approved June 30, 1902, and ratified by the Creek Council July 26, 1902, and known as the Supplemental Agreement:

Section 2,-- Section 2 of the agreement, ratified by act of Congress approved March, 1901 (31 Stat. L., 861), is amended and as so amended is reenacted to read as follows:

All lands belonging to the Creek tribe of Indians in Indian Territory, except twon sites and lands reserved for Creek schools and churches, railroads, and town cemeteries, in accordance with the provisions of the act of Congress approved March 1, 1901 (31 Stat. L.,861), shall be appraised at not to exceed $6.50 per acre, excluding only lawful improvements on lands in actual cultivation.

Such appraisement shall be made, under the direction and supervision of the Commission to the Five Civilized Tribes, by such number of committees with necessary assistance as may be deemed necessary to expedite the work, one member of each committee to be appointed by the Principal Chief. Said Commission shall have authority to revise and adjust the work of said committees; and if the members of any committee fail to agree as to the value of any tract of land, the value thereof shall be fixed by said Commission. The appraisement so made shall be submitted to the Secretary of the Interior, for approval.

Section 3,-- Paragraph 2 of Section 3 of the agreement ratified by said act of Congress approved March 1, 1901, is amended and as so amended is reenacted as follows:

If any citizen select lands the appraised value of which is $6.50 per acre, he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and moneys equal in value to his allotment.

Section 4,-- Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes to determine, under the direction of the Secretary of the Interior, all controversies arising between citizens as to their right to select certain tracts of land.

The following provisions to be found in the Act of Congress approved April 26, 1906.

Section 16,-- That when allotments as provided by this and other Acts of Congress have been made to all members and freedmen of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, the residue of lands in each of said nations not reserved or otherwise disposed of shall be sold by the Secretary of the Interior under rules and regulations to be prescribed by him and the proceeds of such sales deposited in the United States Treasury to the credit of the respective tribes.

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For the information of the Committee we are attaching hereto certified copies of the certificate of allotment and the allotment and homestead deeds issued to Barney Thlocco for the cancellation of which an action is now pending in the United States Court for the Eastern District of Oklahoma, Style, United States vs. Bessie Wildcat, et al.

It will be observed that this certificate and the two deeds cover the allotment upon which David Bowlegs, and Jack Elton Wilson, are attempting to file. Neither of these parties, or any of the other parties who are trying to file upon allotments in the Creek Nation, have been issued either a certificate of allotment or patents, but have merely filed with the Department an application to file upon the lands described therein. The applications consist merely of a letter addressed to the Secretary of the Interior and offered for file to the Superintendent for the Five Civilized Tribes, expressing a desire to be allotted the lands described therein.

In the case of Sizemore vs. Brady, decided December 21, 1914, Mr. Justice Van Devanter delivered the opinion of the Court and used the following language:

> Anterior to the legislation which we must consider, the Creek lands and funds belonged to the tribe as a community, and not to the members severally or as tenants in common. The right of each individual to participate in the enjoyment of such property depended upon tribal membership, and when that was terminated by death or otherwise the right was at an end. It was neither alienable nor descendible. Under treaty stipulations the tribe maintained a government of its own, with legislative and other powers, but this was a temporary expedient and in time proved unsatisfactory. Like other tribal Indians, the Creeks were wards of the United States, which possessed full power, if it deemed such a course wise, to assume full control over them and their affairs, to ascertain who were members of the tribe, to distribute the lands and funds among them, and to terminate the tribal government. This Congress undertook to do. The earlier legislation was largely preliminary and need not be noticed.
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> The first enactment having a present bearing is that of March 1, 1901, 31 Stat. 861, c. 676, called the Original Creek Agreement, which went into effect May 25, 1901, 32 Stat. 1971. It made provision for a permanent enrollment of the members of the tribe, for appraising most of the lands and allotting them in severalty with appropriate regard to their value, for using the tribal funds in equalizing allotments, for distributing what remained, for issuing deeds trans-

ferring the title to the allotted lands to the several allottees, and for ultimately terminating the tribal relation. In paragraph 28 this act directed that the enrollment, except as to children, should include "all citizens who were living" on April 1, 1899, and entitled to enrollment under the earlier legislation, and then declared that "if any such citizen has died since that time, or may hereafter die, before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly." X X X X X X X X X X

There was nothing in the agreement indicative of a purpose to make a grant in praesenti. On the contrary, it contemplated that various preliminary acts were to precede any investiture of individual rights. The lands and funds to which it related were tribal property and only as it was carried into effect were individual claims to be fastened upon them. Unless and until that was done Congress possessed plenary power to deal with them as tribal property. It could revoke the agreement and abandon the purpose to distribute them in severalty, or adopt another mode of distribution, or pursue any other course which to it seemed better for the Indians. And without doubt it could confine the allotment and distribution to living members of the tribe or make any provision deemed more reasonable than the first for passing to the relatives of deceased members the lands and money to which the latter would be entitled, if living. In short, the power of Congress was not exhausted or restrained by the adoption of the original agreement, but remained the same thereafter as before, save that rights created by carrying the agreement into effect could not be divested or impaired. Choate vs. Trapp, 224 U. S. 665, 671.

In principle it was so held in Gritts vs. Fisher, 224 U. S. 640. There an act or agreement of 1902 had made provision for allotting and distributing the lands and funds of the Cherokees in severalty among the members of the tribe who were living on September 1, 1902, and an act of 1906 had directed that Cherokee children born after September 1, 1902 and living on March 4, 1906, should participate in the allotment and distribution. By enlarging the number of participants the later act operated to reduce the distributive share to which each would be entitled, and because of this the validity of that act was called in question, the contention being that the prior act confined the allotment and distribution to the members living on September 1, 1902, and therefore invested them with an absolute right to receive all the lands and funds, and that this right could not be impaired by subsequent legislation. This court rejected the contention and said (p. 648): " No doubt such was the purport of

> the act. But that, in our opinion, did not confer upon them any vested right such as would disable Congress from therafter making provision for admitting newly born members of the tribe to the allotment and distribution. The difficulty with the appellants' contention is that it treats the act of 1902 as a contract, when 'it is only an act of Congress and can have no greater effect.' Cherokee Intermarriage Cases, 203 U. S. 76, 93. It was but an exertion of the administrative control of the Government over the tribal property of tribal Indians, and was subject to change by Congress at any time before it was carried into effect and while the tribal relations continued. Stephens vs. Cherokee Nation, 174 U. S. 445, 488; Cherokee Nation vs. Hitchcock, 187 U. S. 294; Wallace vs. Adams, 204 U. S. 415, 423."

As evidence of the fallacy of the argument advanced by Counsel now representing the people who are seeking these oil allotments, your attention is called to the fact that R. B. Wilson, Guardian of Jack Elton Wilson, enrolled as a new-born 3/8 Indian, who is now represented by Mr. Thraves and who has contracted his allotment to Mr. Thraves and in which allotment it was stated by Mr. Mott that Ex-Governor Haskell has acquired a 1/4 interest by purchase from Mr. Thraves, and who the record shows has been represented by numerous attorneys in the past in efforts heretofore made to file upon lands already selected, on the 18th of March, 1907, applied for the allotment of Eli Tiger. Later, and on June 29, 1910, he made application for the lands theretofore allotted to Samson McGilbra. Later, and on February 28, 1914, he applied for the lands theretofore allotted to Joe Grayson--all of which allotments were of particular value and were therefore being sought by this allottee. Later, and on July 11, 1914, he applied for the allotment of Barney Thlocco, and it is this last application that he claims vests him with rights in the Thlocco allotment, although the record shows that long prior to the date of his filing, the client represented by Mr. Mott, who is associated with Mr. Thraves in an effort to defeat this legislation, filed upon this allotment.

You can see by this plan of juggling allotments the confusion that would arise in the scheme of allotting lands if no greater authority was given the Dawes Commission than is claimed for that Commission by the Attorneys opposing this legislation. The action of this allottee in jumping from one allotment to another, as the allotment would become more valuable, applies to practically all of the persons now seeking allotments in the Creek Nation.

All of these original treaties provided that legal title should only pass upon the issuance of patent. By the Act of Congress approved April 26, 1906, above referred to, in order to eliminate all questions of indefinitedness about the precise time when it should be deemed that legal title had finally passed, it was declared in Section 5:

> "That all patents or deeds to allottees and other conveyances affecting lands of any of said tribes, shall be recorded in the office of the Commissioner to the Five Civilized Tribes."

The contract heretofore incorporated in the record between John W. Sanders, guardian of Millard Sanders, a minor, and W. V. Thraves, contains the following provision:

> "It is further agreed that the second party shall use his best efforts in obtaining the allotment of land upon which first party has filed and bear all expenses of same, including attorneys fees and other matters pertaining to the obtaining, filing on, adjusting, and adjudicating the rights of first party to said above described party".

The contract entered into between J. Garfield Bueall, who is represented by Mr. Mott and C. W. Garrett, contains the following provision:

> "And said party of the first part will pay all necessary expenses including attorneys fees for the said party of the second part in connection with any and all litigation which may be necessary to fully

> establish the right of said Quinton Garrett to the aforesaid land. And the said party of the first part further agrees to institute or cause to be instituted any or all suits at law or equity either in the Courts of the State of Oklahoma or of the United States, and pay the expenses thereof which may be necessary to complete the allotment of said land in the name of said Quinton Garrett."

We have not examined the other contracts outstanding, but it is our understanding that similar provisions are contained in the other contracts made and entered into between the other parties and lawyers or oil operators, and we therefore assert that the purden of any litigation that might follow the enactment of this provision into law, would fall upon the attorneys and oil operators having contracts with those persons who are trying to file upon these allotments and for this service they have already been handsomely paid.

If it is the contention of counsel for these parties who ~~are~~ have made application to file upon these allotments, that the effect of their application is to give to these properties the status of allotted lands, than we say to them that they are ~~n~~ in no wise affected by the amendment proposed. If such attempt as they have made to file does vest them with rights in these properties, then that fact is to be lamented by every friend of the Creek Indians. Without discussing the legal questions involved in this amendment we say to your committee that in order to safe guard the interests of the Creek people in the many valuable allotments in the Creek Nation, against those who are seeking to acquire them in allotment, and against those who probably will in the future come from we know not where and assert claims to citizenship in the Tribe, you should without delay recommend to Congress enactment of the pending measure into law and for this action of your Committee we respectfully pray.

Respectfully submitted,

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Principal Chief of the Creek Nation.

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National Interpreter for the Creek Nation.

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National Attorney for the Creek Nation.