1920

Grazing Lands In Utah

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GRAZING LANDS IN UTAH

HEARING

BEFORE THE

COMMITTEE ON THE PUBLIC LANDS

HOUSE OF REPRESENTATIVES

SIXTY-SIXTH CONGRESS
SECOND SESSION

ON

S. 3016

AN ACT TO AUTHORIZE THE DISPOSITION OF CERTAIN GRAZING LANDS IN THE STATE OF UTAH, AND FOR OTHER PURPOSES

JANUARY 5, 6, AND 7, 1920

WASHINGTON
GOVERNMENT PRINTING OFFICE
1920
COMMITTEE ON THE PUBLIC LANDS.

HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS.

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EDWARD D. BALDWIN, Clerk.
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GRAZING LANDS IN UTAH.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,

The committee met at 10.30 o'clock a. m., Hon. Nicholas J. Sinnott (chairman), presiding.

The CHAIRMAN. The committee will please come to order. This hearing was set to consider objections to Senate bill 3016. Certain Members have asked for a hearing on the matter. I suppose they ought to be heard first, but Senator Smoot is here and has other appointments this morning and I told him that we could hear him first. Senator, you may proceed.

STATEMENT OF HON. REED SMOOT, UNITED STATES SENATOR FROM UTAH.

Senator Smoot. Mr. Chairman and gentlemen of the committee, I greatly appreciate the decision of the Chair in allowing me to say what I have to say at this time. I would not have asked this privilege if it had not been for the fact that I am compelled to attend another meeting in about a half hour, and I assure you that what I say will be very brief and to the point. I do not intend to enter into the discussion of the details of the sale of the lands nor do I intend to go into the question of the passage of the original legislation, but I wish to say that I am personally familiar with it all.

Uintah County is located in the eastern part of our State and at an elevation of between 6,000 and 7,000 feet.

They have very severe winters there and some very few years ago it was decided to open that part of the State, and among the men who were most interested in the development of that part of Utah were the men that are interested in this legislation. The Modocs have given their time and money to induce people to go there to settle upon those lands and try to open a new empire. Everyone that has undertaken to make a home in that part of our State has passed through a great deal of suffering and many of them have lost all that they ever had on earth in trying to develop that part of our State. They are among the best citizens of Utah and in this whole business there is nothing that one of them desires to conceal. They are perfectly willing to state not only to the Secretary of the Interior, as they have already done, but to every investigator upon the part of the Government, just what they have done. There is no evasion in any way, shape, or form on their part and they want this committee to know the details of every transaction. I want to bear witness to this committee now that the men who are interested
GRAZING LANDS IN UTAH.

in this legislation stand as high in the estimation of the people of that western country as any men who live there. The State has had to assist the people there a number of years. They have advanced money to them to buy their seed wheat and seed grain because of the fact that it has been almost impossible for them to make a living upon the very best lands that were there. There is no railroad into that country, but they expect some time in the future that there will be. It is well watered, as the members of this committee know, in certain parts of the State, but the lands involved in these sales are as worthless lands as it is possible for one to imagine. They never will be of use for any other purpose than for grazing purposes, and when the members of the committee recognize the fact that it takes from 5 to 6 acres of these lands to feed one sheep or, according to the rules of the Forest Service, five times that amount for one head of cattle, one cow or one steer, amounting to 25 to 30 acres to keep only life in a steer for only a part of the year, you can imagine what the valuation of these lands is.

The first request was made to validate these sales, and I took the question up with the Interior Department. These men appeared before the Secretary of the Interior together with the Commissioner of the Land Office and other officials of that department.

The CHAIRMAN. To get before the committee why the sales were invalid, you might state because they were in violation of the law which limited 640 acres to any one purchaser.

Senator SMOOT. I thought every member of the committee understood that.

Mr. TAYLOR. We have several new members.

Senator SMOOT. That will all be put into the record. The original law for the sale of the lands limited sales to one person to 640 acres, and I think in the testimony it will be shown beyond question of doubt that that was deliberately set aside in the case of the sale of the lands. I want to say to the members of the committee that I was at the sale in 1910, and I was at the sale in 1912. I saw the checks that were written by these men here brought to my bank and deposited every day. I know what the understanding was, and I know that they never could have sold 640 acres of land to one person in that part of the country for anything.

Mr. RAKER. Would you just explain what that understanding was and what they did at the sale whereby they allege the invalidity of these sales?

Senator SMOOT. Would it be just as well to allow the men who made the statements to tell themselves and go into detail what their understanding was and just how far their understanding went? I guarantee to you to-day that the statements made by these men—and I have heard them make them time and again—are true, and I know them to be true. I know when the money was advanced to the men here, and I myself did a great deal of it through the bank, it was advanced with the distinct understanding that they were buying these lands in quantities of 640 acres and with the avowed purpose of taking care of the sheep that were owned by these men, and they knew that is what they were buying them for. They are no earthly good for any other purpose.

Mr. RAKER. What started the contest in this matter by the Government? Who started it, and what was the initiation of it?
Senator Smoot. I think, of course, there were, perhaps, protests made on the part of some of the cattle men out there. I know that the first time it came to me by way of an objection it came from that source. I want you to ask any of these men any question that you desire about it, and they will give you the names.

Mr. Raker. These men are interested and know the facts?

Senator Smoot. Absolutely, and every person living anywhere around Heber City or Uintah County will give you the details, so it will be perfectly satisfactory as to why this protest is being made.

I wanted the Commissioner of the Land Office to go over these lands. I wanted him to see for himself just what kind of lands they were. I have ridden over them horseback—and that is about the only way we could possibly get over many of them—dozens of times, and I thought to myself why on earth God ever created such lands; I was unable to understand, unless it were for the very purpose of holding the earth together. You could not imagine unless you have been out in that part of the country and passed over some of these deserts just what they are.

I wanted the interests of the Indians protected. I want those Indians to get every single dollar out of these lands that they are worth. They are entitled to it. I went to the Commissioner of Indian Affairs and presented this bill as originally drawn and asked him if it was satisfactory to him and he suggested one amendment there, that he thought would undoubtedly take care of the situation. It seems to me that the bill now guards every interest not only of the Government but of every Indian interested in those lands. It says:

The Secretary of the Interior is authorized, in his discretion, to accept a reconveyance of the lands involved in such proceeding and to repay to the purchaser or his assigns the purchase money paid therefor, or to validate, ratify, and confirm such sales, or to examine and determine the present value of said lands and upon payment by the patentee or purchaser or his assigns of the difference between the amount heretofore paid and such ascertained value, to validate, ratify, and confirm such sales.

The purchasers of these lands are not afraid of any investigation as to the value of the lands. I do not believe that there could be a committee from anywhere on earth that would go on those lands and make an examination and determine in their own minds that they were more valuable than the prices that were paid for them, but to be perfectly safe and to guard the interests of every Indian involved, the Commissioner of Indian Affairs put that last proviso as just read by me into the bill, and it was perfectly satisfactory to all concerned. I am sure it was to me. When I introduced the bill it was the furthest from my thought of ever taking any advantage of any Indian. By the way, I might as well say at this time that for years and years the people living in that part of the State have taken care of those Indians. They have fed them winter after winter. That is, I mean the limited number of them around Vernal. They have been interested not only in their welfare there of getting enough to eat but they have taken an interest in their very lives and in their education. I wish the committee, if they want to know more about this, would ask the Commissioner of Indian Affairs what interest the people out there have taken in these Indians. They are the last people in the world that would ever take a dollar from the
Indians, but the Indians will never use these lands and the only thing that they can ever be used for is to provide grazing for either cattle or sheep for part of the year and I am quite sure, Mr. Chairman, that when these men that have come here testify before this committee to the actual conditions existing there will not be a member of this committee but what will say that the legislation is just, it is right, it is proper, and ought to be passed.

The Chairman. Just a question: The law restoring these lands to entry provided that they should first be opened to homestead entry for five years and the lands not entered under the homestead law in the five years' period the surplus would be disposed of.

Senator Smoot. At a price not less than 50 cents an acre.

The Chairman. And that was sold at public auction?

Senator Smoot. Yes.

The Chairman. It is claimed by opponents of the bill that in case the charge of violation of the law is sustained that then the Government retains the purchase price heretofore paid. Is that true?

Senator Smoot. It is true that was done to defraud the Government of the United States, but I want to say that there was no intention on the part of a single soul that bought that land to defraud the Government of the United States, and I want the committee to listen to the testimony, and I am quite sure that they will be convinced of it, too, when these men show that if the Government here, or Congress, or anyone else who makes the investigation would want these lands back they can take them back, and all they ask after that is to return their money.

Mr. Elston. How much is involved in the aggregate, the purchase price of all these lands?

Senator Smoot. If they take all the lands that were sold, I think it aggregates about 640,000 acres.

Mr. Elston. That would be about $300,000?

Senator Smoot. But there is a great quantity of these lands that have been patented, and in many cases these lands would fall under the law no matter whether the patents have been issued, just as well as those to which patents have not been issued, and I think they would all be involved. I wish to say, Mr. Elston, there is more than that price, because the lands sold for all the way from 50 cents, little patches, to as high as $7; I think that was about the highest price. That was only in certain spots for certain reasons that somebody wanted just that little spot of land, for instance, water holders.

The Chairman. I think there were 61,286.71 acres involved in these suits commenced by the Department of Justice.

Senator Smoot. That was in the first suits commenced, and I wish to say that there has been involved in it here since the suits started many more acres than that, because patents have been issued upon lands purchased exactly in the same way, and I suppose if there was any attack upon them the Government of the United States would likely attack the whole of it.

The Chairman. Then there is a larger amount in controversy than 61,000 acres?

Senator Smoot. I think there will be, I will say, Mr. Chairman. That is all I desire to say at this time.

The Chairman. We will hear first from those who are opposing this measure.
Mr. LOUGHRAN. I do not know that he is here, or that any one who has communicated with me on the subject is present. There is nothing in this telegram to indicate whether he was in favor of the bill or opposed to it. I went to the office of Senator Smoot, and from his secretary I learned the then status of the bill. I wired to Mr. McDonald stating that the measure was in such a position that it would probably be passed by the House in a few days, and then I wrote him and asked him to advise what his position was, but there was nothing in his telegram to give me a clue as to whether he was a friend or opponent of the bill. I received a letter from him in which he stated that he was opposed to the bill and spoke for a very large number of people in the counties of Duchesne and Wasatch. He asked me then to express my views on the measure. I told him that I thought the bill was a measure proposing unprecedented legislation. Afterwards he asked me to address the members of the committee who would be in charge of the bill with a view to having them consider the measure very carefully, and also with a view to having them acquainted with all the facts with respect to which the bill was contemplated to be remedial.

I know nothing whatever concerning the condition of these lands. I know nothing whatever of the circumstances under which these gentlemen made the purchases. I am in possession of no facts which would enable me to controvert the statement made by Senator Smoot that the law was disregarded deliberately by the officers of the Government who, under oath, assumed the obligation of enforcing it in accordance with its letter and spirit. It is said here that these gentlemen did acquire title to these lands in a manner plainly at variance with the intention of Congress, and therefore contrary to law.

The burden of the Senator's argument in that respect is that there was no positive fraud; that whatever fraud was committed was fraud of a constructive character. I am prepared, however, to admit, for the purpose of argument, that those gentlemen were guilty only of constructive fraud. But the Senator intimates—the language of his statement justifying me in so saying—that there was a deliberate disregard of the law, and I trust that when these gentlemen who are here to present their side of the case address this committee, they will circumstantially, definitely, and with precision indicate where and by whom this deliberate violation of law was committed and, if sanctioned, by whom. There is somebody, somewhere—assuming the Senator's statement to be correct—who, under oath to effectuate the will of Congress under the act of 1905, took upon himself the responsibility of disregarding the will of Congress under the act of 1905. In that connection, let me say this, that if any of the defendants in those suits are victims of any mis-
representation made to them by any officer of the Government commissioned to administer this act, that I am prepared to file a brief on behalf of these defendants rather than oppose them before this committee.

Mr. Taylor. Let me say this, that both you and Senator Smoot are assuming that this committee knows all about this thing. We do not know anything about it. I wish you would get back to the foundation and tell us what the facts are and what you are talking about.

Mr. Loughran. I am astonished that a member of this committee admits at this late stage in the history of this bill that he is without the knowledge of the facts with respect to which he expects to legislate.

Mr. Taylor. We are without knowledge of the facts of the fraud in the sense you are talking about.

Mr. Loughran. It is perplexing to me that any member of Congress, a member of this committee, should deliberate on this bill, remedial in character, without knowing the facts in respect to which he is legislating.

Mr. Taylor. I am talking about facts you are complaining of, not fraud.

Mr. Loughran. Let me make this statement, Mr. Taylor, that no member of this committee is in any way dependent upon me or Mr. Bonnin or upon any of these gentlemen for the facts. You have it within your power to bring the facts here by a letter written by your chairman to the Secretary of the Interior and the Department of Justice. All the facts are within your reach; extend your arm and you can get them. The facts, whatever they may be, influenced two Cabinet officers to go into the district court of the United States and to charge in the name of the United States positive acts of fraud, collusion, and conspiracy on the part of the defendants named in this bill.

Mr. Raker. Have you read the report of the Secretary of the Interior of September 19, 1919?

Mr. Loughran. I do not think I have.

Mr. Raker. That [indicating report] is partly in response to Mr. Taylor's question.

Mr. Loughran. Yes; I have read that. Now, as to the facts: It is utterly immaterial to me what construction anybody places upon my statements made here or elsewhere. They are honestly made, expressive of my judgment. This committee, as well as the committee of the Senate, very naturally looked to the Secretary of the Interior for enlightenment on the conditions to which this measure is directed. A communication was sent to the Secretary of the Interior and he replied. You asked for light on the facts and it was withheld.

Mr. Vaile. I am very humble in this matter, being a new member of the committee, and did not legislate on it before. As it has been presented to us we have understood that the removal of this limitation was a privilege of the Indians. We asked for light and we did not know that any light was withheld because it seemed clear enough it was to the advantage of the Indians to have this limitation removed. In other words, we are not advised of these fraudulent matters which you say we ought to have been advised of. Will you not comply with Mr. Taylor's request and give us some of the details as to the facts of this fraud?
Mr. Elston. I would like to have Mr. Loughran also address himself to the thing which seems to be material here, at least, with regard to prejudice and injury. I would like him to show wherein the wards of the Government have been injured and prejudiced badly by the transaction or by the bill. In other words, get right down to the merits and show us where we may be prejudicing or obstructing the material interests of the Indians as affected by the bill. That is what we want to get.

Mr. Taylor. If you can not address yourself to some details, you will not get anywhere. Point out the details of the fraud that you say are here. Where is this fraud? Who did it? Let us know about it?

Mr. Loughran. When the merits of any bill are under consideration, I think that the circumstances attending the introduction of the bill, the speedy passage of the bill, the pressure for its enactment are certainly relevant.

Mr. Taylor. You understand that we have 20,000 bills before Congress, and we do not assume that everything is fraud that comes in here, and when the department makes a recommendation and it has jurisdiction in these matters, and Senators and Representatives from that State who are elected here to represent these people, come here and favor the measure and it is within their own jurisdiction, we are loth to assume that there is any fraud connected with it, and now you come in here and charge that it is honeycombed with fraud.

Mr. Elston. No, he is not charging that; he says it may be constructive or innocent fraud, but the thing is as to how far this conspiracy or what not is causing injury to Indians, and whether it is remediable under the bill and can be removed so that the sheet is absolutely clear.

Mr. Loughran. Why discuss with me at all the matter of fraud in the light of my opening statement? I have no personal knowledge of the facts. I have knowledge only of what has occurred at Washington. I know that the situation with reference to this land was investigated by the Department of the Interior. I know that at great expense special agents were sent out and gathered evidence. I know that evidence was submitted in reports from these field officers and considered by the Land Department, and I know that the officers of the Land Department concluded that a crime had been committed against the United States. When I say crime, I do not mean that crime was committed in the sense that these gentlemen would possibly be subject to criminal prosecution, but a crime in the sense that the act of Congress placing a limitation upon the area an individual could acquire had been deliberately violated.

The Chairman. It is claimed that they are not subject to criminal prosecution because the statute of limitations has run.

Mr. Loughran. Yes.

The Chairman. And a complaint filed by the Attorney General's office alleges fraud, a scheme to defraud the Government and acquire land over the limitation of 640 acres?

Mr. Loughran. Yes.

The Chairman. That ought to give you a cue.

Mr. Loughran. The bill of complaint in the equity proceedings sets out all the elements of crime, but the defendants are not within the reach of criminal process because the statute has run. I do not
want to say anything aspersing these men; I do not know about the facts.

Mr. Raker. Before you go on I would like to suggest at this point that the act authorizing this land to be opened might be inserted in the record for the benefit of the committee, and then I would like to ask Mr. Loughran wherein in a general way does he claim that this law was violated in the disposition of this land.

Mr. Taylor. Following the original law, the act of March 3, 1905, I think that we ought to include this bill (S. 3016) in the hearings, and also include the Secretary's report. It would be appropriate for all three of these documents to go into the hearings at this point.

(The documents referred to are as follows:)

DEPARTMENT OF THE INTERIOR,
September 19, 1919.

My Dear Senator: I am in receipt of your letter of September 18, 1919, requesting an expression of my views on Senate No. 3016, "A bill to authorize the disposition of certain grazing lands in the State of Utah, and for other purposes."

This bill appears to be a substitute for Senate No. 2769, concerning which I submitted a favorable report on the 21st of last month. The present bill amends Senate No. 2769, to the extent of adding after the word "sales," in the present draft of the bill, line 7, page 2, the following:

"To examine and determine the present value of said lands and upon payment by the patentee or purchase or his assignees of the difference between the amount heretofore paid and such ascertained value, to validate, ratify, and confirm such sales."

I see no objection to the amendment, and recommend that Senate No. 3016 receive the favorable consideration of your committee. F. K. Lane, Secretary.

Hon. Reed Smoot.
Chairman Committee on Public Lands,
United States Senate.

(For act of Mar. 3, 1905, see Appendix B, p. 246; S. 3016, see Appendix C, p. 248.)

Mr. Loughran. The law was violated, Mr. Raker, by those defendants, provided those pleadings are meritorious. I examined one of the bills in the office of the Attorney General of the United States. I read that bill. It charged deceit by misrepresentation. It charged conspiracy through collusion. It charged a purpose on the part of one or more of these individuals to appropriate more land than Congress had intended anyone individual should appropriate. I learned in the Department of Justice that said department had taken up the matter upon the recommendation of the Secretary of the Interior. Let me discuss this matter without being required to go into the matter of fraud. The Government has gone into that, Mr. Chairman. Patrick H. Loughran knows nothing about the facts, and therefore he is not competent to testify as to them.

Mr. Raker. What I was trying to get at is that the law authorizes the disposition of this land in tracts of 640 acres to each individual, and no more?

Mr. Loughran. Yes, sir.

Mr. Raker. The contention is that certain individuals entered into an agreement among themselves contrary to the provisions of the statute. It is charged they got together and bought this land in 640-acre tracts, through dummies. That is the contention of the Government now, and it is trying to have the titles invalidated?

Mr. Loughran. Yes. Let me bring to the committee's attention another matter, that these suits now pending are suits brought within
Mr. Raker. Yes.

Mr. Loughran. I want to call the committee's attention to one fact with respect to those patents which are outlawed, so to speak, with respect to which the statute has run, patents issued more than six years ago. While the Government in such instances is disabled to obtain the cancellation of those patents with resultant recovery of the title to the United States, I want the committee to bear in mind that the Government may go in five, six, seven, eight, ten, twelve or fifteen years after the issuance of the patents and recover from the purchaser who committed the offense in acquiring the patent the value of that land, provided the Government is not estopped by the equitable doctrine of laches. In other words, gentlemen, while the Government is now suing to recover the title to lands alleged to have been acquired fraudulently it is also in a position where, with respect to lands patented more than six years ago, it may go into a court of equity and recover the value of those lands from the persons who committed offenses. That is under consideration in the Department of the Interior now.

Mr. Elston. Without tendering back the money which they received for the land?

Mr. Loughran. Absolutely; without tendering back the money.

Mr. Loughran. Keep that money, and in addition get the value of the land?

Mr. Raker. Do I understand that patent has been issued to all this land?

Mr. Loughran. Patent has been issued to several hundred thousand acres.

Mr. Raker. The Government has commenced suit against all those who obtained their patent within six years prior to the date of suit? Is that right?

Mr. Loughran. Yes.

Mr. Raker. When was that suit commenced?

Mr. Loughran. That suit was commenced in May or June of 1919.

Mr. Raker. What is the status of it now?

Mr. Loughran. When those suits were instituted, process was taken out and service made upon the defendants, and it appears that, instead of answering, the defendants came to Congress. This bill had its origin, I take it, in fright on the part of the defendants. My inference from the circumstances is that those men have no defense against the suits. If they had a defense against these suits, any equities to present in the district court, they would have answered and would have hastened as far as possible the trial of these proceedings. But when the Government solemnly charged them with these acts of fraud, instead of answering, instead of acting like sensitive, honest men would have done under the circumstances—resented the aspersion upon their honor and demanded speedy trial—they evaded the courts and came into Congress to get relief.

Mr. Raker. Did the defendants demur or plead to these complaints at all?

Mr. Loughran. Not at all. The defendants, speaking upon information and belief, I mean, on the record made in the district.
court, the defendants had a tacit understanding with the district attorney in this case that they could answer whenever suitable to their convenience; that as a bill in Congress is pending, it would be useless to answer, and only a waste of time and expense for lawyers if the bill should pass.

Mr. Raker. Have they not appeared in court at all?

Mr. Loughran. Whether they have made an appearance I do not know, but I am informed at the Department of Justice that no answer has been made or pleadings filed.

Mr. Raker. Where is that? It is very important. They have only a certain time within which to appear. Without appearance, of course, it would go by default.

Mr. Loughran. Not necessarily; the time could be extended.

Mr. Raker. Unless there is something on record?

Mr. Loughran. A stipulation; yes.

Mr. Raker. Is there anything on record—a stipulation?

**STATEMENT OF MR. JACOB EVANS, ATTORNEY AT LAW, 1022 BOSTON BUILDING, SALT LAKE CITY, UTAH, REPRESENTING INTERESTS IN FAVOR OF THE BILL.**

Mr. Evans. Might I answer that question of Mr. Raker's?

The Chairman. Yes.

Mr. Evans. I am an attorney from Salt Lake City, representing a majority of these defendants. When the suit was filed appearance was made and stipulation was entered into by the attorneys for the Government and for the defendants that the answer would not be filed pending the action of Congress concerning these matters.

Mr. Vaile. I was going to suggest to Mr. Loughran while on that subject that as to suits for lands acquired within the six-year period it might be doubtful whether there would be any equitable appearance at all. They might have to rely on action, remedial action by Congress?

Mr. Loughran. Yes.

Mr. Vaile. So they can not be criticized for failure to raise an equitable defense. The question would be whether or not they had any more land than was authorized by this statute?

Mr. Loughran. If they had any equitable defense are they not now in the only forum, the courts, where equitable defenses can be heard?

Mr. Vaile. That is why they should come in here.

Mr. Loughran. No, my dear sir, the courts have jurisdiction to hear and determine equities.

Mr. Vaile. I am suggesting that in the case of suits for lands filed within the six-year period there would be no equities.

Mr. Loughran. I understand, precisely, the gentleman's point, but my reply was only made to emphasize that in the light of the circumstances of these cases it is probable these gentlemen have no equities of which any court in Christendom would take notice.

Mr. Raker. If Congress should pass this bill to be approved by the President, and time has been extended in which to answer, they could appear in court and say Congress has passed this bill and here is an equitable defense whereby they could obtain the land.

Mr. Loughran. I address myself now to the character of this bill, and will try to characterize it fittingly.
Mr. Evans. I would like to say a word. We do not think we
are deprived of any of the defenses that we have, and the fact that
we take this position in not filing an answer, it does not follow
that we have not defenses to this suit, but we thought this was the
better way for the defendants as well as for the Government to
have some legislation passed. We, however, expect if we do not
get legislation which is satisfactory to the Government as well as
the defense to try our cases in court and set up our defense there
and try it out.

Mr. Loughran. Let us now discuss whether this is the better pro­
cedure. This bill contemplates legislation without any precedent so
far as I am informed. Bear in mind, gentlemen, this bill underta­
takes to clothe the Secretary of the Interior with jurisdiction over
patented lands. That officer of the Government has jurisdiction
limited exclusively over unpatented land, and is given by Congress
power to administer the laws relating to those lands. Now you re­
verse this order. You undertake by this bill to give this officer juris­
diction over patented lands. You undertake by this bill to oust the
district court of jurisdiction in a matter over which it has jurisdic­
tion normally, naturally, traditionally, and constitutionally, and
give it to the Secretary of the Interior, who has no jurisdiction nor­
mally, naturally, traditionally, or constitutionally. Why clothe the
Secretary of the Interior with this peculiar jurisdiction? Why
oust the court? Those gentlemen are not going to save any time by
doing that, because I assume, if this proposed bill is enacted, the
Secretary of the Interior will proceed with some respect for the
rights of the people of the United States, and will order hearings
to determine the facts essential to the wise operation of his judg­
ment under the provisions of this bill. Just see the plenary grant
of power that Congress is asked to make to the Secretary of the In­
terior. You are asked to abdicate your power and delegate it to,
vest it absolutely in, the Secretary of the Interior.

What else do they ask you to do? They ask you to empower the
Secretary to do these things; to allow him to accept a reconveyance
of the lands involved in such proceedings and he as Secretary will
then be required to repay to the purchaser or his assigns the pur­
chase money paid therefor. The Secretary may say to these gentle­
men, "Come in and reconvey these lands and I will give you back
your money, notwithstanding the fact that it is before me in the re­
port of my agents that you have committed offenses against the law
in acquiring the patents, and notwithstanding the further fact that
the United States, through its Department of Justice, has committed
the Government to proceeding against you for a crime."

He may not only do that, but here is an unconditional, unmodified
grant of power to validate. To validate what? To validate patents
which the United States in the pending suits solemnly avers were
acquired in violation of law and as the result of the practice of posi­
tive fraud. This man may validate those things, ratify them, and
he may confirm them; or, if he thinks that would be a little too gen­
erous and liberal in the way of treatment of these defendants, he
may then go through the formality of reappraising the lands and
exacting from them additional money in condonation of that crime,
in compromise of that crime. This bill is shocking and offensive
to any honest citizen of the Republic. For the Congress to give this
man under these circumstances all the power and authority you have constitutionally in respect to public lands, for that man to do anything he sees fit in his discretion, it is shocking.

Mr. Vaile. Have we not the right to assume that the Secretary of the Interior will be honest?

Mr. Loughran. Wait until I get through. I impugn no man's motives in this matter, but I want to say this, and I say it with all due consideration, that the Secretary of the Interior failed dismally and completely to perform his duty to this Congress when in reporting on this bill he deliberately or otherwise withheld knowledge from it of the crimes which he had already made the subject of a suit commenced to cancel these patents. You men did not know anything about it at that time. This bill would not have gotten out of the committee if you had known of it. I want this committee to be made up of men virile enough to ask the Secretary of the Interior to explain fully why in those circumstances he withheld light upon these essential facts in respect to this remedial measure. If I were chairman of this committee he would answer fully for his failure to acquaint me with the facts so withheld for purposes best known to the Secretary of the Interior.

Mr. Raker. Is it your contention that in all of these cases wherein patent has been issued that the Department of the Interior or the Secretary of the Interior has completely and entirely lost all jurisdiction of those?

Mr. Loughran. Absolutely lost jurisdiction for all purposes except ancillary jurisdiction, ancillary to the powers and functions of the Department of Justice; ancillary in the sense that the Interior Department may be employed to investigate the facts and submit them and recommendations thereon to the Department of Justice for exercise of its judgment as to whether suits shall be brought by the United States. Public money has been spent for the purpose.

Mr. Elston. Are you going to address yourself at all to showing that in addition to the fact that there was a crime, you do not know whether it has been constructive or by reason of malice or conspiracy, whether there has been any prejudice to anyone's interest here financially? I suggest this to you for this reason, that we have instances of crime such as you are designating, and Congress has just validated a $3,000,000,000 crime of the extent or nature that you speak of; that is, a conscious violation by the officers of the Government of the direct mandate of the law with respect to contracts, going outside their boundary entirely and making contracts invalid, and Congress has been asked to validate it. They have not looked into the question of conscious violation, but they have looked into the merits of the case to see whether anyone has been prejudiced, the Government defrauded, to see whether it was good or bad policy, and if, on the whole, anybody was prejudiced and the thing was without sinister design, Congress frequently in curative acts and remedial measures cures it. We did that in validating war contracts, informal contracts, to the extent of $3,000,000,000; validated what you would call conscious excursions outside of the law—nominal crimes. Let us not go into the crime; let us get down to who was prejudiced and what was violated and what was stolen; what has been done. Let us go into that. That is not your point. We have in three or four words this point, namely, that something has been
done outside the law. Admitted. Let us not go into that. That gives the Government a legal, valid reach into that. I do not know about the defense of these people, whether they did it under mistake or by invitation of the Government. You are stressing the fact that the law has been disobeyed. There is no use going into facts we understand. Let us not go into that further. Let us get into the real merits of the thing as to who was prejudiced, and not into why it was done and the surrounding circumstances. There are plenty of officers here who will say whether it was done with good or bad intent. Let us get down to the prejudice.

Mr. LOUGHRAN. Let us get down to the logic of it before we get to anything else. The gentleman does not want it to appear in this record that an analogy exists between contracts made by Government officers, possibly in excess of their authority, with manufacturers and others in time of war to promote the public needs and effectuate national business and the sort of contract which is the subject of this transaction.

Mr. ELSTON. I do not know anything about that.

Mr. LOUGHRAN. That is the point of your argument.

Mr. ELSTON. This is the point of the argument: You admit ahead of time that you know nothing about the facts, whether constructive or by design, sinister or criminal intent, or what not. You put your argument on the very basis of this thing upon the fact that a dry legal invasion of the law had been made, an evasion of the law without sinister intent. What we want to get at here from you is whether there is some tremendous injury or harm done anyone by this invasion of law.

Mr. LOUGHRAN. Take the 640-acre limitation of the act. In the report of the Commissioner General of the Land Office made several years ago he referred in a very commendatory manner to the beneficent operation of the Kinkaid Act, with which you gentlemen are familiar. You know that that act provided for an appropriation by individuals of not exceeding 640 acres of land in western Nebraska. It was said that the strict enforcement of that act, the insistence upon the provision that no one man could hold more than 640 acres, had done tremendous benefit, had conferred a lasting prosperity upon western Nebraska, it having encouraged small stock growers and small sheepmen to go into and build up that section of the State. I do not know anything about the character of these lands, but if they are any worse than the lands of western Nebraska, on which I have ridden on horseback, they must be, as the Senator says, simply pieces of earth connecting other pieces of earth and serving no other purpose. The Department of the Interior says that the Kinkaid Act broke up the big ranges. On extensive ranges cattle are allowed to run improperly cared for, and when not looked after perish by the hundreds in severe winters, as they do now in eastern Oregon. The big range to-day loses every year hundreds of head of cattle through neglect. It was said by the department that the 640-acre Kinkaid Act did away with that and conserved the animal industry, encouraged and increased larger herds every year in western Nebraska. Why would it not have the same effect in Utah?

Now, in closing, let me say this: That I am not here in the representational capacity of a lawyer merely. I would be here as a citizen
if I had heard of this bill otherwise than through Mr. McDonald. I think this bill is vicious. I think it would establish a dangerous precedent. I can not see why Congress should not give the very same relief to every other violator of law who has been so far successful in his crime as to get a patent from the United States. I have represented men who have gotten patents questionably, and have represented men who have gotten patents when the technical fraud of which they were guilty was absolutely induced by misleading, but well-meant, advice of special agents of the department, and I could not get any relief for them—from the Department of the Interior. I do not know of any other fellow, the poor fellow, the small fellow, who has had the burden and misery of being pursued by the Land Department special agents being relieved in the manner proposed in this bill. These men, the beneficiaries of this bill, have power and influence. These men have had success so far with this bill, and as a citizen, I think that with respect to Congress they have gone as far as they should with the measure.

Mr. Mays. Do you know how many sheep a section of this land would sustain?

Mr. Loughran. It is hardly necessary that you should ask me that, in view of my preliminary statement.

Mr. Mays. You speak of the Kinkaid Act as being an act of great benefit to the people. Suppose it should appear here that 640 acres of this land will sustain not to exceed 100 head of sheep—would it be possible for a man to protect 100 sheep, hire a herder and protect them from the predatory animals, and make a living off of 100 sheep?

Mr. Loughran. An answer to that would presuppose I had qualified as an expert on these matters. I do not know anything about it. I would not know. I never grew sheep, and do not know anything about it.

Mr. Mays. Do you think the income from 100 sheep would be enough to hire a herder and maintain a family on 640 acres?

Mr. Loughran. I have not the slightest idea.

Mr. Mays. You did not get in your address to the question of selling this land or to homesteading for a number of years before it was opened to sale at all?

Mr. Loughran. No.

Mr. Mays. Do you know anything about that?

Mr. Loughran. Not a thing.

Mr. Mays. Who is Andrew McDonald, who hired you?

Mr. Loughran. I do not know him except by correspondence.

Mr. Mays. Does he tell you, if it is fair to ask the question, what he wants to do with this land?

Mr. Loughran. No; he has not told me what he wants to do with this land.

Mr. Mays. Did he say he wanted to take it from the Indians and put it into the Forest Reserve?

Mr. Loughran. No. I have the entire correspondence and will be glad to file it with the committee.

Mr. Mays. He did not tell you that?

Mr. Loughran. No, sir.

Mr. Mays. Do you know whether that is his intention or not?

Mr. Loughran. I think it is.
Mr. Mays. That is, he would like to get this land back from the Indians and put it into the Forest Reserve.

Mr. Loughran. Let me be perfectly candid with you. More than four or five months ago, there came to this city some gentlemen who were interested in a movement to have included in the Forest Reserve in Utah some lands in that State. I heard of it. I forget now from what source it came. I learned afterwards, after my attention had been called to this matter by McDonald, that some time ago these gentlemen had made an inquiry to learn whether in the event these lands were reacquired by the United States it would be the judgment of the Forest Reserve that they should be included in the Forest Reserve in order that everybody might have equal opportunity at the range.

Mr. Mays. In that event the Indians would not receive any payments for the lands, would they?

Mr. Loughran. In that event the Government would pay the Indians the price for the land.

Mr. Mays. What price?

Mr. Loughran. The appraised price, whatever that was.

Mr. Mays. These lands brought more than $1.25 an acre.

Mr. Loughran. Whatever the appraised price was. The Government would not, certainly, appropriate these Indian lands without making payment therefor.

Mr. Mays. You do not know how much?

Mr. Loughran. No.

Mr. Mays. You do not know whether you represent the best interests of the Indians?

Mr. Loughran. I do not assume to represent the Indians at all.

Mr. Mays. You do not know whether Mr. Andrew McDonald has the interests of the Indians in mind?

Mr. Loughran. No. I believe Mr. Andrew McDonald and the several gentlemen who have signed letters received by me are men in the cattle business who are moved largely by selfish impulses, a selfish motive, a perfectly legitimate motive, a perfectly natural selfish motive. They feel they have been deprived by certain individuals, competitors in business, of a large public range obtained fraudulently from the United States, and they believe as citizens they have a perfect right to protest against any measure that will effectuate and perpetuate that fraud.

Mr. Mays. Where does Mr. McDonald live?

Mr. Loughran. Heber.

Mr. Mays. How far is Heber from the land in question?

Mr. Loughran. I have no idea.

Mr. Mays. Do you not know it is 75 or 100 miles distant?

Mr. Loughran. If I had I would have said yes to your first question.

Mr. Mays. You do not know how far?

Mr. Loughran. I do not know.

Mr. Mays. If it should be 75 or 100 miles he could not have been very much interested, could he, in grazing his cattle on land that distance?

Mr. Loughran. A response to that question by me would not be of value to you.
Mr. Mays. These lands were opened under the act of 1905 to homesteaders, were they not?

Mr. Loughran. Yes.

Mr. Mays. And the law provided they should be opened to homesteaders for five years?

Mr. Loughran. Yes.

Mr. Mays. And then they should be sold to the highest bidder, and you are aware from the evidence that the department found it impossible to sell the land at any price that would be at all fair to the Indians in lots of 640 acres?

Mr. Loughran. Your question is that I am aware?

Mr. Mays. Are you advised as to that?

Mr. Loughran. No, sir; but I infer, and we all would infer from the circumstances that these were surplus lands which, not having been appropriated under the homestead laws, were sold under the provisions of the act.

Mr. Mays. Do you understand in what way these men committed fraud?

Mr. Loughran. In a general way I understand what is alleged by the Government. I make no allegation for or against these men. It was alleged by the Government in its bill that these defendants, knowing the provisions of the act of 1905, did induce and persuade their relatives and others to make purchases of these lands with the understanding and agreement that the title thus acquired would inure to the benefit of the defendants.

Mr. Mays. An understanding or agreement with whom?

Mr. Loughran. With the purchasers from the Government and with the understanding on the part of the defendants who procured the dummy to make an entry that the title acquired under the dummy's entry would ultimately inure to the defendants.

Mr. Mays. That is your understanding?

Mr. Loughran. That is what I am stating is the understanding and theory upon which the Government is prosecuting these cases, as I have read the bill.

Mr. Mays. What is your understanding?

Mr. Loughran. Absolutely no understanding, except what I gathered from the bills.

The Chairman. In connection with the question Mr. Mays put, I do not understand what you said about desiring to put this land into the forest reserve; whether your client Mr. McDonald desired to have it put in the forest reserve or not. What was your statement in regard to that?

Mr. Loughran. My statement was that four or five months before this bill was called to my attention, some gentlemen came to Washington, and whether they came or who they were I know not, but they came to Washington with a view to learning whether the Forest Service would consider favorably a proposition to have these lands included in the forest reserve in the event the Government was successful in its suits to recover the title.

The Chairman. Did not Mr. McDonald broach that matter to you?

Mr. Loughran. If he did, as I say, I have the entire correspondence here and will be very glad to submit it to the committee, as I want you to know exactly my interest in this matter.
Mr. WELLING. You did say that McDonald had not said anything to you about conveying these lands to the Forest Service. You made that statement.

Mr. LOUGHRAN. If I made it, I made it in good faith, and if it is untrue, it is untrue. It is not a lie; it is a mistake.

Mr. WELLING. The simple fact of the matter is that McDonald's correspondence with you itself shows that he said after this bill has been defeated we expect to get the interest of big business.

Mr. LOUGHRAN. I recall that, and it is true, but I want to say in this connection that I am not here to-day under a retainer, so far as big business is concerned. I want to say that the amount I had requested was not sent me, but I felt in view of the extent to which I had committed myself with this committee, and also my prejudice against this bill as a citizen it was my duty to be present to-day.

The CHAIRMAN. Have you any amendment to suggest to this bill?

Mr. LOUGHRAN. The bill is so obnoxious to my conception of what should be done in this matter that it should not be amended in any particular but stricken from the calendar and lost forever in the pigeonholes.

Mr. VAILE. You would strike out the enacting clause.

Mr. LOUGHRAN. Yes.

The CHAIRMAN. It is contended by the Interior Department, by the Indian Department, and by others that the Government can do better by the Indians to sell this land in tracts larger than 640 acres.

Mr. LOUGHRAN. Yes. On that phase of this matter, my friend, Mr. Brosius, will have some data to present to the committee. I want to say in closing that this bill in its present form would necessarily impose upon the Secretary of the Interior in administering under it, the duty of ordering hearings. I want to impress that upon you, gentlemen, as clearly as I possibly can. Unless the Secretary of the Interior intended to act arbitrarily, unless he intended to employ some strong-arm methods, so to speak, he would have to, in the due administration of this act, order hearings for the purpose of bringing before him evidence tending to show whether these men would or would not be entitled to have their claims validated.

You are not going to hasten a conclusion of this controversy between the United States and these defendants by enacting this bill unless the Secretary of the Interior is going to validate, or do otherwise, without due process of law in respect to the interests of the people, and due process requires the Secretary of the Interior, in the event that this bill is enacted, to order hearings for the purpose of bringing before him legal evidence upon which his mind can operate to the end of administering the statute. Now, then, you are already at issue in the district court or could be at issue if the defendants answered. You could bring the equities in this case very speedily before you by having the district attorney and counsel representing defendants come to an understanding for diligent prosecution of the cases. Why is not that the way to get the equities before you? Why take these interested gentlemen's ipse dixit? You are here as a tribunal. Those gentlemen have a perfect right to come here, but their's is a one-sided ex parte case thus far. Why not defer consideration of this bill? Defer consideration thereof until these gentlemen have gone to the district court with their cases, until evidence supporting their defense has been adduced, and their supreme equities
have been established. Thereafter, and in event the judiciary felt constrained to grant the prayers of the Government's bill, then these people would come in here with the record made in the district court and immediately point to their equities and show you that while such equities are without appeal to the judiciary, they have a peculiar quality that causes them to appeal to the legislative conscience.

That to me, gentlemen, is the sane, prudent, deliberative manner in which this body of representatives of the people, the custodians of the lands of the United States, should proceed in these circumstances.

Mr. Raker. Do I understand that the Department of the Interior made an investigation and reported to the Attorney General's Office the facts growing out of the disposition of these lands, whereby the Department of Justice was induced to commence these suits?

Mr. Loughran. Precisely.

Mr. Raker. Have you gone through that correspondence?

Mr. Loughran. They denied it to me absolutely in the Department of the Interior. I went there inquiring as to the status of those cases. I was confronted at once with the inquiry, "For whom do you appear?" Upon replying that I appeared for those opposing the bill, I was told I could not inspect the records. Is there anybody here from the Department of the Interior to gainsay that statement?

Mr. Finney. I will say that he should not have had those papers.

Mr. Loughran. I do not care anything about that. But I do want to know whether any man questions this fact: Now, when I learned the character of the bill I became very earnestly, deeply, seriously interested in it. I said, "The Department of the Interior can not withhold these facts from me. I can get them." And after several days' effort I got them. And I got the fact that the Department of the Interior had sent its agents, at public expense, into the vicinity of these lands; it had caused extensive investigations to be made; had caused its agents' reports to be submitted, and had caused those reports to be considered, and had come to the conclusion—

Mr. Raker (interposing). Have you got that report?

Mr. Loughran. I have the fact that the Secretary of the Interior recommended affirmatively to the Department of Justice that the suits now pending be instituted.

The same men who heretofore exercised their judgment by declaring that the judiciary should have jurisdiction of the matter and should adjudicate the controversy are at this late day, contrary to their former action, recommending that Congress take jurisdiction of it.

Mr. Raker. Have you a copy of that recommendation?

Mr. Loughran. I have not. Let me say this: There is a resolution before this committee introduced by Mr. Cramton. That resolution provides that the Secretary of the Interior be directed to send to the House of Representatives all data in his files bearing on this matter. So far as I know, no action has been taken upon that resolution.

But I want to say that if any compromise is made with respect to that resolution; if, instead of reporting it out and having the
House adopt it and thereby coercing the Secretary of the Interior to bring in the data that he has withheld, an arrangement is made with Mr. Crampton's consent whereby the Secretary will send that data by a personal letter; I want to see that data; and I want to see that there are sent to this committee room the reports made by special agents after the suits were instituted, in which those special agents, who had gone over the land, and had interviewed these men and had gathered the evidence, had very earnestly contended that it would be contrary to all precedent and would be condoning crime and legalizing fraud if this bill should be adopted. I want to see those reports in this committee room.

I would like to have a report also concerning all the correspondence between the officials of the General Land Office and the Chief of the Field Division on this matter.

Are there any questions?

Mr. Vaile. I understand that one of your objections to this bill is that the Secretary of the Interior, in reappraising this land would hold hearings to ascertain what evidence was produced in support of the contentions of either side, and your contention is that that had better be done by the courts; is that correct?

Mr. Loughran. Yes; that is correct.

Mr. Vaile. And you would expect that he would hold such hearings, would you not?

Mr. Loughran. I will say that if the Secretary attempted to function under an act of this kind without holding hearings, he should be impeached.

Mr. Vaile. Yes; you would not expect him to act without holding hearings, would you?

Mr. Loughran. Now, it is not any answer to that to laugh. There is no argument in a laugh. If you can not answer that logically, do not laugh about it.

Mr. Vaile. I am not laughing about it.

Mr. Loughran. I say that if the Secretary of the Interior attempted to grant relief under an act embodying the provisions of that bill without due process of law, he would be liable to impeachment and should be impeached.

Mr. Vaile. And none of us would expect him to act in that arbitrary way, would we?

Mr. Loughran. Nobody will.

Mr. Vaile. And therefore you could not consider a reappraisal by him as a mere formality, as you remarked a while ago, could you?

Mr. Loughran. It might not be a mere formality.

Mr. Vaile. It would not be a mere formality under ordinary circumstances, would it?

Mr. Loughran. And therefore, if the Secretary of the Interior should order hearings, you would have the controversy as long drawn out as it is now. All they need now are hearings. Let them go into the district court and get their evidence; when they get it let them submit it to the court; let the defendants put in their defense and introduce their evidence; and then let the court say, "We can not grant relief." When all this is done, let the evidence come before this committee. Under this bill you would have only one side of the case. Why not have both sides? The proper way
is to let the men defend these suits. Let the Government introduce its evidence, and let the parties introduce their defense. Then let the transcript be brought here, and you will have the whole case before you. Here you would have a unilateral hearing only.

I do not say that the department is so biased that it is going to induce any man to commit perjury. But I say that no sane court on earth, no court whose attainments are worth a cent, would take at its face value the ipse dixit of a biased defendant in a matter of such very great importance as this. The way to treat the matter is to let them go into court, make their record, get a transcript of the evidence, and then, if the court says that there is nothing known to the doctrines of the law that will grant relief, let them come here and point out what in their case peculiarly appeals to the legislative conscience. I suppose the judicial conscience is the most sensitive. These gentlemen seem to think that the legislative conscience is the one to which they should appeal.

The CHAIRMAN. Let us assume that that has all been proven. Assume that these men are guilty of fraud and violation of the law, what should we do, in your judgment, in order to protect the Indians?

Mr. LOUGHRAN. In my judgment you should not interfere with the orderly process of the law under any circumstances. Moreover, I think, Mr. Chairman, that we should approach with a great deal of care at this time—

The CHAIRMAN (interposing). Just a moment. I am taking up your own proposition. You say let these cases go on in the courts and let there be a settlement there. But I say, assuming that that has been done, what are we to do, consulting the interests of the Indians?

Mr. LOUGHRAN. Assuming that the court has refused them relief?

The CHAIRMAN. Yes; that the court has refused relief.

Mr. LOUGHRAN. Then let those gentlemen come here; if they conceive it possible that the peculiar circumstances of the case will appeal to the legislative conscience, let them come here.

The CHAIRMAN. I am assuming, for the purposes of this hearing, that those men are guilty of the fraud alleged against them.

Mr. LOUGHRAN. All right.

The CHAIRMAN. Now, what should we do? Assume that that has all been proven.

Mr. LOUGHRAN. In my judgment, what should be done is to have quick, decisive action by this committee, dropping forever and a day the further consideration of this measure, which has been characterized in every one of the stages through which it has passed in Congress by what the public esteems special privilege. I regard this bill as savoring of special privilege. I regard this bill as of the type of legislation that is responsible for the spirit of unrest which is rampant in this country. We can sit here and criticize the uneducated and half educated who become excited about alleged wrongs; but the average man on the street, on becoming acquainted with the facts of this bill, would say that it was a case of special privilege enacted by Congress, and that his confidence in Congress was impaired. I would say that it was a case of special privilege and that if a bill of this character is enacted by Congress, the American people would be justified in regarding their confidence in Con
gress as greatly impaired. You could not possibly criticize the high-strung, sensitive people of the country should they cry out strongly against Congress, through bolshevism, syndicalism, communism, or what not, if Congress undertakes in this special, exceptional way to deal with a class of defendants who are alleged to have violated the laws of the country, and to take from the judiciary the power to adjudicate the charges against them.

If that is not special privilege, or class legislation, what is it? Is it any wonder that there should be among some of the people not only discontent but a sort of suspicion?

This bill, to my notion, is so obnoxious to lawyers, to laymen, and to citizens generally as to seem to me to be without need of argument to show that it ought to be condemned.

Mr. Elston. With respect to whether or not it is possible for anyone to purchase this land in 640-acre tracts and make use of it, you know nothing; is that right?

Mr. Loughran. Nothing at all.

Mr. Elston. And as to Senator Smoot's statement that it could never be sold for usable purposes in units of 640 acres, you know nothing?

Mr. Loughran. I know nothing at all about that statement.

Mr. Elston. And you know nothing at all as to whether or not there was actual fraud in these cases, as distinguished from constructive fraud?

Mr. Loughran. I know nothing about that, except what is shown by the bills filed in the equity suits.

Mr. Elston. You know nothing about that personally; you were not a witness in the cases, and are ignorant of the facts?

Mr. Loughran. Ignorant of the facts; yes.

Mr. Elston. And at the same time you have nothing to say as to whether financial prejudice or material prejudice has been suffered by the Government or by the Indians, have you?

Mr. Loughran. No; but I regard the financial injury as insignificant compared to the moral wrong involved.

Mr. Elston. I understand that.

Mr. Loughran. The Government is not exclusively interested in dollars and cents.

Mr. Elston. I understand. Your theory, then, in regard to the moral part of it, is this: But first, I will say this: You know nothing as to whether any injury or prejudice has been suffered by the Government or the Indians, or any other interest that there is; your only point is that an infraction of the literal provisions of the law has been made; you do not know whether it has been made with sinister intent or not. And those infractions you believe should be dealt with by making no compromise with the parties of any kind, accepting no reconveyance and driving forward on these transactions. You say, your general principle would be that wherever any infraction of law is involved—you do not know whether there was any moral turpitude involved in these cases—but when any infraction of the law, for whatever purpose, has been made, that involves a case where the Government should have no relation whatever with the people who participated in that infraction. That is about the general principle.
Now, I want to get at that part of it, in view of the fact that you know nothing about the particulars. The facts may be disclosed in such a way that we may be differently inclined, and as I have said, our minds are perfectly open on the matter; but I want to get down to a summary of your argument. Have I expressed at all correctly? I want to boil down the substance of your argument.

Mr. VAILE. I think his argument goes one step further; that after carrying these prosecutions through the court, then the persons should come to Congress for the final relief that they ask for after the prosecutions are concluded. Is that it?

Mr. LOUGHRAN. My argument may be considered as summarized in these terms: There rests upon the Congress no duty, legal or moral, to discriminate between offenders against the laws and the dignity of the United States by selecting a group of such offenders and relieving them of the duty of making their defense in court. The Congress should not oust the courts of jurisdiction and clothe an executive officer of the Government with the power of performing a judicial duty in connection with a subject matter over which he has lost jurisdiction by the issue of patent. That is my argument.

Mr. ELSTON. Let us add one more point: In connection with your whole argument, is it understood that these prosecutions, so far as the effect of them is concerned, and not the allegations contained in them, are in the nature of civil and not a criminal proceeding; that is, that these are what are known as fraud suits? If I sold a piece of real estate and made misrepresentations in doing so, that would cause a civil suit, although moral turpitude would be involved. Now, is that the essence of these suits brought by the Government, although brought by the Department of Justice?

Mr. LOUGHRAN. Now, of course, moral turpitude—

Mr. ELSTON. Please answer my question; whether these suits are in the nature of civil suits containing allegations of fraud, or whether they are in the nature of criminal prosecutions?

Mr. LOUGHRAN. Let us distinguish in terms. They are civil suits, resting essentially upon conduct involving moral turpitude.

Mr. ELSTON. You have already said that the suits involved moral turpitude. Now, those are mere allegations involving moral turpitude?

Mr. LOUGHRAN. Yes.

Mr. ELSTON. Is it a customary thing in civil suits involving fraud regarding real estate transactions—and this is substantially a real estate transaction—to compromise those suits in such a way as to obviate trouble or expense on the part of either side? That is, is it regarded, in the case of civil suits between private persons where fraud is alleged, as illegal or criminal to settle those suits? For example, if you have brought a suit to avoid the sale of real property where there is misrepresentation or fraud alleged, would you consider it an immoral thing or an unrighteous thing to settle that suit and compromise it where it would be more beneficial to both sides? Now, here is a situation where no criminal prosecution is involved; it is a civil proposition; and what we want to know is whether among private people composition or settlement of such a suit or controversy is a good or bad thing. What would you say about that?
Mr. LOUGHRAN. A composition of a controversy is always a desir- able thing. But the argument——

Mr. ELSTON (interposing). I am not making any argument. I am just trying to get this thing down, and to view it from a proper side light, if the facts will warrant.

Mr. LOUGHRAN. But where the subject matter sought to be com- posed has been acquired by a person as a result of what Senator Smoot declared this morning to be willful disregard of law by an officer of the Government conducting the sale, then I say that neces- sarily these defendants were in collusion with such officer who con- ducted the sale, and knew of the willful disregard of the terms of the act by such officer. Do you see nothing of enormity in that?

Mr. ELSTON. That was in the hypothetical statement I made; and that is always understood in allegations of fraud in private suits. I just wanted to get the analogy and the comparison of this suit with other suits of like kind in civil matters, if there is any such analogy.

Mr. LOUGHRAN. A lawyer can see that a civil suit to rescind usu- ally arises out of fraud practiced by one of the parties. But why go into that? I say that the statement of Senator Smoot made here this morning should be established by due proof. I certainly should not accept it unless it was established by due proof. And I say that with no intention whatever of reflecting upon the integrity and honesty of Senator Smoot, with whom I have had a long acquaint- ance and whom I admire. And Senator Smoot says there was this willful disregard of law, and he implies that these defendants were inveigled into these transactions by some one employed in the De- partment of the Interior. Let us not proceed upon that basis. Let us not proceed with the mists of the dells around us, or the quag- mires of slander. Let us find out what the facts are——

The CHAIRMAN (interposing). Just a moment. I want to ask you this question: Was it necessary to bring these suits in order to pre- vent the statute of limitations from running?

Mr. LOUGHRAN. Yes, sir.

The CHAIRMAN. If they had not been commenced when they were, the Government would have been barred from taking action?

Mr. LOUGHRAN. No; the Government would have been barred from an action to recover title to the lands, but not barred from an action to recover the value of the lands.

The CHAIRMAN. It could have sued for the value of the land?

Mr. LOUGHRAN. Yes; have I made that clear?

The CHAIRMAN. Yes.

Mr. MAYS. Suppose the value of the land was not any greater than the amounts that were paid by these parties?

Mr. LOUGHRAN. Do you mean the measure of damages?

Mr. MAYS. Yes; the measure of damages.

Mr. LOUGHRAN. The measure of damages would be the value of the land at this time, because in the eye of equity title never passed.

Mr. MAYS. Suppose that was no greater than these men paid?

Mr. LOUGHRAN. Then that exhausts the Government’s remedy.

Mr. MAYS. Then there is nobody hurt?

Mr. LOUGHRAN. Then there is nobody hurt; it exhausts the Gov- ernment’s remedy. The three-year period for the punishment of
crime, and the six-year period for the recovery of title under the patent have passed. The Government has no remedy now except to recover the value. When that is recovered, the case is ended.

The Chairman. Just a moment, does the statute ever run against the recovery of the value of the land?

Mr. Loughran. Only in cases where it would be possible for the equitable doctrine of laches to interpose—a period which is somewhat analogous to the statute of limitations. Do I make that clear?

The Chairman. Perfectly clear.

Mr. Welling. After Mr. McDonald had employed you to appear in connection with this bill, you personally interested Mr. Brosius to appear in connection with the matter?

Mr. Loughran. I did.

Mr. Welling. And other people who are here?

Mr. Loughran. Yes, sir.

Mr. Elston. Just a moment. Are we to understand, then, that this whole matter has been brought to the attention of the committee, not by spontaneous revolt on the part of an outraged public but really has been induced more or less by your action?

Mr. Loughran. A more or less spontaneous operation, induced largely by the payment of a fee. [Laughter.] I do not care anything about that; that has nothing to do with the case; it is like the flowers that bloom in the spring.

Mr. Welling. Besides having brought these other people into the case, you also notified Mr. McDonald that it would be necessary to stir up some propaganda at the other end, did you not?

Mr. Loughran. Yes; I am glad you reminded me of that. I said to Mr. McDonald, "The committee does not want to hear me, except on the legal aspects of the case. I would not be an interesting witness so far as the character of this land is concerned. You will have to have some first-hand evidence on that. Can you not come on here?" Mr. McDonald replied, "No; I can not come on; I am too busy." I asked him, "Can you not send some of your associates on here?" "No," he replied, "they are too busy." I said, "Then let us get up a little propaganda. Suppose you draft a petition addressed to Congress, setting out the circumstances with respect to this land, and the facts of these suits so far as you know them, and scatter it all over the district at various places, and have it signed by as many people as you can, and then have all of that bundled up and sent in here." And what do you suppose happened? McDonald sent the petition to Mr. Mays, whom McDonald, possibly did not know was a friend of this bill.

Mr. Mays. Those papers are all before this committee.

Mr. Loughran. Yes; I knew they would be filed with the committee. But I mentioned that to show the trust and confidence of the people out there. They did not know who were the friends of the bill, or who were the enemies of the bill.

The Chairman. Mr. Meritt is going to represent the Indian Office and Mr. Tallman, the Commissioner of the General Land Office and Mr. Finney, of the office of the Secretary of the Interior, are going to make statements before the committee; and I think the committee would like to have you remain and make such reply as you see fit to the representations made by them.
Mr. Loughran. In view of the fact that I have been interrupted—
and I certainly have manifested no displeasure at being inter-
rupted—I trust that I may be privileged, when the other gentlemen
testify, to inject an inquiry now and then, at a place where it would
be appropriate. Will that be all right?
The Chairman. I think that will be all right.
Mr. Elston. I think you might make rebuttal.
The Chairman. Yes; we would like to have you in rebuttal.
Mr. Raker. I have a few questions. Have you read the complaint
of the Attorney General against these people?
Mr. Loughran. Yes; I have read the complaints?
Mr. Raker. Is there more than one complaint?
Mr. Loughran. There are several complaints; but they are all of
the same general character.
Mr. Raker. What is the total number of suits?
Mr. Loughran. There were 18 or 14 suits.
Mr. Raker. And there are several defendants in each suit?
Mr. Loughran. Yes. Now, that is not all the land that is in-
volved in this bill. This bill is not restricted to the land involved in
these suits. The bill is drawn in general terms and its provisions
may be invoked in connection with other lands within the entire
reservation. You have heard Senator Smoot say that 600,000 or
700,000 acres were involved. In these suits there were only about
60,000 acres involved. And if you pass this bill you will not only
act with regard to the 60,000 acres covered by these suits, but with
regard to the whole 600,000 or 700,000 acres in the reservation undis-
posed of.
Mr. Raker. One of the members of the committee asked this ques-
tion a while ago: That if you sold the land in larger tracts you
might get more for it. Is that not the crying demand of all large
concerns, cattlemen, horsemen, sheepmen, and all men who get
large tracts of land to-day? They want it so that they can get large
tracts of land for living on, and they are willing to pay higher
prices for them?
Mr. Loughran. Obviously, Mr. Raker; now, and for many years,
that has undoubtedly been the objective of the big cattle and sheep
men—the acquisition of our public lands in as large areas as possible.
Whether that is wise from the standpoint of policy with respect to
the public lands is not for me to determine.
Mr. White. And if they can not get them themselves they want
to put them in forest reserves?
Mr. Loughran. Yes; but it is not for me to say whether that is
wise as a matter of policy.
The Chairman. Do you think that we should consult the view-
point of getting this land divided up into smaller tracts, or should
rather consult the interest of the Indians in getting the most money
that we can out of the lands?
Mr. Loughran. My judgment, Mr. Chairman, is this: That in-
stead of legislating in accordance with the provisions of this bill, this
committee should drop this bill absolutely for the time being; then
the defendants would necessarily be heard in court; they would
make their case. Their transcript of evidence would then be avail-
able to you, and in the event that the court was of opinion that there
was nothing in equity jurisprudence warranting the dismissal of the bills, then those gentlemen could come here with that transcript of evidence, and if they had a case which did not involve a serious infraction of the law, in the sense that there was——

Mr. Benham (interposing). Moral turpitude.

Mr. Loughran. Moral turpitude of the degree indicated by my friend, this committee might properly—I do not know—grant the relief asked in this bill. I do not want to prejudge it. They may have a good case, but you do not know that case, and you certainly are not going to get "a clean, unvarnished tale unfolded" from these parties.

The Chairman. Do you not think that we will get an unvarnished story from Mr. Meritt, Mr. Finney, and Commissioner Tallman, representing the department?

Mr. Loughran. I have not the slightest doubt that those gentlemen are going to speak in defense of this bill and are going to give you their honest judgment in reference to its merits.

The Chairman. How could we get these lands into forest reserves?

Mr. Loughran. You would have to enact a bill. There is a law taking away from executive officers the power to create forest reserves, as you know.

The Chairman. Then, we would have to pay the Indians the value of the lands?

Mr. Loughran. Yes.

Mr. Raker. Where did you get the authority for that?

Mr. Taylor. That came from the decision of the Court of Claims, where the Uintah Indians got paid $3,000,000 for lands put in forest reserves, in my district.

Mr. Raker. The original bill set aside part of this land; the Executive set aside part of it as a forest reserve?

Mr. Loughran. Yes.

Mr. Raker. Were the Indians paid for that?

Mr. Loughran. I do not know. But, of course, you understand that a forest-reserve proclamation is a Government appropriation of land.

Mr. Raker. Just one other question: The act found on page 1070, Thirty-third Statutes at Large, provides that "all lands opened to settlement and entry under this act remaining undisposed of at the expiration of five years from the taking effect of this act shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than 640 acres to any one person."

This bill proposes to repeal that limitation, does it not?

Mr. Loughran. This bill is a repeal absolutely of that limitation, so far as these cases are concerned.

Mr. Raker. As to all the land in the reservation?

Mr. Loughran. As a practical proposition; yes.

Mr. Raker. The enactment of that provision would repeal the limitation?

Mr. Loughran. Yes. I am very glad you called my attention to that. And this bill accomplishes more than I have adverted to in my remarks. This bill knocks the props from under the courts, so far as
jurisdiction over these cases is concerned, because this bill repeals the provision of the act of 1905, against which these defendants offended.

Mr. Vail. I think you did advert to that.

Mr. Baker. Well, I am laying the foundation for another question—

Mr. Mays (interposing). Is there any objection to selling more than 640 acres of these grazing lands to one person?

Mr. Loughran. So far as I know there is not.

Mr. Mays. If it should happen that these lands, through long years, were not sold and could not be sold with this limitation in the law—if that should appear to be true, it would seem advisable to remove that limitation, so that the lands could be disposed of for the Indians, would it not?

Mr. Loughran. That is, if in the wisdom of Congress the sale of such lands is a wise policy to pursue. I doubt very much whether the sale of such lands in such large areas, even though suitable only for grazing, is a wise policy. Assuming that it is a wise policy, that would be a good thing to do, as a practical proposition.

Mr. Mays. But you must remember that these are Indian lands, unused by anybody, and that the Indians, of course, are entitled to the proceeds of the sale. That being true, if it should appear that the only way to sell them to any practical advantage is in larger tracts than 640 acres for grazing purposes, so that cattle and sheep owners could have enough land to graze a reasonable sized herd upon them, would there be any objection to the removal of that limitation, in your judgment?

Mr. Loughran. Let me qualify my answer. The major consideration here is not the pecuniary benefit and welfare and advancement of any Indian fund; that is not the major proposition. The major proposition in considering legislation with respect to any public land is the public benefit. The question should be what course will yield the maximum of wealth from that land—

The Chairman (interposing). Why should we not have principally in mind the benefit of the Indian?

Mr. Loughran. I say it should not be the major and controlling consideration. Let us not magnify that and minimize the other.

Mr. Mays. These lands have been on sale now for 15 years. I know something about that, because I went through a portion of them, thinking I might get a piece of land worth while, and I saw that I could not get any land worth while. That was 15 years ago; ever since that they have been on sale. They are idle; they are largely still unsold. Now, if 15 years' time is a sufficient test for the operation of this provision, and there should be failure to dispose of them throughout that 15 years, is there any objection in your mind to a removal of that limitation as applied to those particular tracts of land?

Mr. Loughran. Mr. Mays, the men who inhabit Duchesne and Wasatch Counties and other counties—the people there whose labor brings out the wealth of that country—are the people who should be consulted first, last, and all the time as to the policy of Congress with respect to these lands.

Mr. Mays. Heber County is hundreds of miles away.

Mr. Loughran. I am not engaging in any petty partisanship in my statement. Wherever those lands may be, the people out there on
those lands, the people who are giving their thought and their muscle and their minds and their lives to these lands, are the people who should be consulted first as to what might be the wisest course to pursue with respect to them.

Now, as a practical proposition, if these lands have remained unsold, some of them, for 15 years, and men acquainted with the region and knowing the uses to which they are adaptable are of a fair, disinterested, honest opinion that the development of Utah in that region would be promoted by selling the lands in areas of 2,000 or 5,000 acres to an individual, I say, "Go to it."

Mr. Mays. Is not 15 years a pretty good test?

Mr. Loughran. A pretty good test; yes.

Mr. Mays. What benefit are those people who you say are working out their lives there getting from those idle lands?

Mr. Loughran. What benefit are they getting?

Mr. Mays. Yes.

Mr. Loughran. I can not apprehend any value from land lying idle.

Mr. Mays. It is better to have sheep and cattle on those lands, is it not?

Mr. Loughran. In connection with this colloquy we should be mindful that the lands in these suits are not the lands that have been idle for 15 years. The lands that are involved in these suits are the best and most attractive of these lands, and they were early appropriated.

Mr. Mays. I thought you said you did not know anything about the character of the lands?

Mr. Loughran. Well, is that not a fair inference—that they are the best lands?

Mr. Mays. It might be and it might not be. A man might want a tract of land upon which he could graze a herd of sheep, and he might buy the less valuable lands. But however that may be, does not the larger part of these lands remain unsold?

Mr. Loughran. The larger part remains unsold. And I want to say that, so far as I am concerned, I would like to see Congress enact a bill ceding all the public lands in the various States to the States, or a law transferring the administration of the public-land laws to some place suitable, such as Salt Lake City or Denver, where the people could come in contact with the men who administer the laws, and the men who administer the laws could apprehend the conditions under which those people live and have some sympathy with the people of that country.

Mr. Vaile. Is not a step which will stimulate the passing of lands into private ownership—is that not a step toward passing them into the control of the States, letting them get on the tax list, etc.?

Mr. Loughran. It is a step toward getting them on the tax rolls. Mr. Vaile. And it gets the lands utilized.

Mr. Loughran. Of course it does; and the lands you have got remaining now are of very little value without the costly expedient of irrigation. And why the Government should hold them and have the poor fellows who are struggling to acquire title fighting their claims for the lands 3,000 miles away surpasses my understanding.

Mr. Vaile. Exactly.
Mr. Loughran. Why that could not be transferred to Denver or Salt Lake City, where it would be accessible to the people interested, I can not understand.

Mr. Vaile. Therefore, unless there is some particular reason against it, we should encourage the passing of the lands into private ownership, as is proposed by this bill.

Mr. Loughran. We should encourage progress always, but never by questionable methods. I am not inclined to agree with you that the ends always justify the means.

Mr. Vaile. I did not say that.

Mr. Loughran. Pardon me; I will retract that; I did not mean to say that you said that.

Mr. Raker. To get back to this bill: This land is already in private ownership, so that that is not involved.

Mr. Loughran. No.

Mr. Raker. Now, how many acres of the lands on this reservation remain in the public domain—do you know?

Mr. Loughran. I do not.

Mr. Raker. Do you know, Mr. Finney?

Mr. Finney. 180,000 acres.

Mr. Raker. Now, that 180,000 acres remains in public ownership; and the land involved in this legislation—I am not referring to the land in suit, but this is a question of policy—could be acquired by anyone in any quantities that might be desirable, under the amended bill; there is no limitation as to the acreage that might be acquired.

Mr. Loughran. You ask whether that would be desirable?

Mr. Raker. No; I say that is the provision of this bill.

Mr. Loughran. Virtually, yes.

Mr. Raker. No; that is the provision.

Mr. Loughran. Yes; practically—an amendment to this bill.

Mr. Raker. Now, I ask you, is there any limitation? You have gone into these matters. Is there any limitation on the amount of land that any one individual can acquire?

Mr. Loughran. No, sir. The point is—

Mr. Raker (interposing). Let me lead on to this: Suppose a man should apply for 50,000 acres of land. The Secretary of the Interior, under his discretion or otherwise, to deny—

Mr. Loughran. I agree with you.

Mr. Raker. And as a matter of fact, under the conditions relating to public lands now, the individual could afford to pay the Government more for large tracts of land where he does not have to reside on or improve or cultivate the land than he could in taking small tracts.

Mr. Loughran. I do not agree with you on that proposition.

Mr. Raker. Then, you do not understand the conditions of the remaining public domain.

Mr. Loughran. I do not agree with you on that. I think that the large sales, where there is no limit, where the sky is the limit, are wrong; it is the big man who is always getting the benefit; and the little fellow is entitled to some consideration, too.

Mr. Raker. But I am just trying to ask you if that would be the effect of this legislation?
Mr. Loughran. Yes; the effect of this legislation could be to exclude the little fellow.

Mr. Raker. It would cut out all small ownerships?

Mr. Loughran. Inevitably.

Mr. Raker. And give the lands to large concerns?

Mr. Loughran. Inevitably. With such legislation as that we would preserve the evils of the huge range; we would preserve the evils of the 100,000-acre range, on which in the wintertime the brutal owner takes no precaution against the loss of his cattle through hunger and cold, simply because it is cheap for him to produce cattle upon a large range, and he does not care one way or the other; he would rather lose 100 head of cattle than go through feeding them during the winter.

Mr. Raker. That is magazine stuff that you are giving us now.

[Laughter.]

Mr. Loughran. Let us see if it is—

Mr. Raker. That does not apply to any extent—

Mr. Loughran (interposing). Just a moment. I do not know whether you have ever been through eastern Oregon in the winter or not.

Mr. Raker. I have; many times.

Mr. Finney (interposing). Let me correct that, Mr. Raker. This is a public sale proposition; it is not a question of acquiring these lands by application.

Mr. Loughran. But there will be sales under this bill.

Mr. Finney. My point is that it has to be offered at public sale.

Mr. Loughran. But if offered at public sale under the act of 1905, as amended by this legislation, then there will be no limitation upon the amount anybody may purchase. That is the point, is it not?

Mr. Raker. That is what I was asking.

Mr. Loughran. In connection with that phase of the matter, let me call your attention to this fact: That this bill before you now contains provisions which, with respect to persons who have already acquired lands, would do just as you say the amended bill would do under the act of 1905 with the lands undisposed of, namely, confirm their acquisition in tracts of 10,000 or 15,000 acres.

Mr. Raker. What I want to get at is, there is the land in litigation and for which patents have issued. Those parties have already acquired that land under their patents. But in addition to that there are 180,000 acres of public domain undisposed of, which would be subject to the provisions of the amended bill authorizing the Secretary of the Interior to sell and individuals to buy in unlimited quantities. We would then be establishing by this legislation a policy whereby a man could acquire any quantity of land that he might desire.

Mr. Loughran. Exactly. Your policy is inconsistent.

Mr. Raker. If it ought to be established in Utah it ought to be established in Colorado, Nevada, and other States—if the policy is a good one.

Mr. Loughran. I have recently returned from eastern Oregon. In the spring of the year I was in eastern Oregon, and I saw the remains of hundreds of cattle lying against the fences, where they had been driven by the storm and had perished.
Mr. Welling. Do you charge that the owners of those cattle allowed that to occur, intentionally and brutally?

Mr. Loughran. I say they did it through neglect on their part. I say, if you had, instead of 10,000 acres in one ownership, 10 men with 1,000 acres apiece, you would have those 10 men raising hay for their cattle, and you would have them preparing barns for the shelter of the animals.

Mr. Welling. You do not know what you are talking about.

Mr. Loughran. Then I had better desist, if I do not know what I am talking about.

The Chairman. Just a moment. In the letter from Mr. McDonald to you, which you filed with the committee, Mr. McDonald states:

We feel certain that if this bill is delayed until this session of Congress adjourns it will never again be presented, and the courts will take these lands away from these men; and it is then that we will want you to assist us on the big job of getting this land put into the forest reserve, where we feel that it properly should be, and where we feel that it can be put. The people are back of having this land placed in the forest, because they are the ones to receive the benefits.

That is signed by Andrew McDonald.

Now, you say the Indians would have to be reimbursed for this land if it was put in the forest reserve. Who do your clients contemplate shall reimburse the Indians?

Mr. Loughran. The United States.

The Chairman. The United States would buy the land and put it into the forest reserve?

Mr. Loughran. Yes. There is nothing audacious in that, in view of the fact that it is asked by gentlemen all over the country.

The Chairman. That is the viewpoint of your clients in the matter?

Mr. Loughran. Yes. That is nothing new.

The Chairman. Now tell us something about the land, as to whether or not it is forest land.

Mr. Loughran. I do not know a thing about it. It would be only hypocrisy for me to try to tell about it.

Mr. Vaile. If practicable, you would favor putting it in the forest reserve?

Mr. Loughran. I do not know. If these men have no title to it, it should be taken away, and then it is up to the administrative part of the Government, or to Congress, to determine whether the land should be put in the forest reserve, whereby it could be leased——

Mr. Vaile (interposing). For grazing?

Mr. Loughran. For grazing; yes.

Mr. Vaile. Right in line with the previous suggestion that you made, do the large cattlemen who use the forest reserves for grazing raise hay on the forest reserves?

Mr. Loughran. I do not know.

Mr. Vaile. The evils of cattle dying are not minimized by opening large tracts of forest reserve for the grazing of cattle, are they?

Mr. Loughran. I do not know that the terms of any permit impose upon the permittee any conditions as to the feeding or care of cattle. That is a matter for the Forest Service.

Mr. Vaile. Well, at least, you can raise hay on the forest reserves?
Mr. Loughran. Oh, yes; you can raise hay there.
Mr. Vaile. Just as you can on private lands?
Mr. Loughran. Yes.
Mr. Vaile. There is no greater inducement to raise hay on forest lands than on private lands, is there?
Mr. Loughran. That would depend entirely on the permittees.
Mr. Summers. Is there any objection to the Secretary of the Interior acquiring these lands and placing them in the forest reserves, there to be used by the cattlemen almost without price?
Mr. Loughran. These lands have no value, of course, you understand, except for grazing.
Mr. Summers. Only for grazing?
Mr. Loughran. Our theory is that these lands were acquired in violation of law and should be restored to the Government. Now, what should be done with these lands when they have been restored to the Government, is a matter of judgment. But I do not think it would be harmful, in view of the present liberal tendencies of the forest administration, to put them in the forest reserve.
Mr. Summers. At the expense of the people of the United States, and for the benefit of the local interests?
Mr. Loughran. I certainly would not recommend that.
Mr. Summers. Well, that is the only way the Indians could—
Mr. Loughran (interposing). I certainly would not recommend that the United States should purchase these lands and dispose of them in that way. I never have believed in the policy that men who have purchased Indian lands should have their payments deferred indefinitely and that the lands should be removed indefinitely from taxation, and in some instances, that they should be relieved entirely from the burden that they assumed in buying the lands.
Mr. Summers. Well, how would you get them into the forest reserve, since they belong to the Indians, in any other way?
Mr. Loughran. It is impossible in any other way.
Mr. Raker. Volume 33, Statutes at Large, page 1070, provides as follows:

That before the opening of the Uintah Indian Reservation the President is hereby authorized to set apart and reserve as an addition to the Uintah Forest Reserve, subject to the laws, rules, and regulations governing forest reserves, and subject to the mineral rights granted by the act of Congress of May 27, 1902, such portion of the lands within the Uintah Indian Reservation as he considers necessary.

Do you know whether any of that land was set apart for forest reserve?
Mr. Loughran. I do not.
Mr. Welling. 1,000,000 acres of it was.
Mr. Raker. Well, I was asking that for your benefit, and also for the benefit of Mr. Meritt, so that it might be explained.

What did the Indians get out of the land that was set apart for them—do you know?
Mr. Loughran. I do not know. Are there any other questions?
The Chairman. No.
Mr. Loughran. Thank you.
The Chairman. Then we will hear the next witness.
Mr. Sniffen, please state your name and connections.
STATEMENT OF MR. MATTHEW K. SNIFFEN, SECRETARY OF THE
INDIAN RIGHTS ASSOCIATION, PHILADELPHIA, PA.

Mr. Sniffen. My name is Matthew K. Sniffen. I am secretary of
the Indian Rights Association.

The CHAIRMAN. Just tell us what that association is.

Mr. Sniffen. This association aims to get rid of the Indian prob-
lem by putting the Indian on his feet and merging him in the body
 politic. That is the effect. It began back in 1833, and was largely
instrumental in having the land in severalty act passed, for example.

The CHAIRMAN. Just give us the composition of your association,
so that the committee may have full information on the subject.

Mr. Sniffen. Do you want the names?

The CHAIRMAN. No; just who composes the officers and committee.

Mr. Sniffen. The names are all on the letter-head. The honorary
president is Moorfield Storey, of Boston; the president is Herbert
Welsh of Philadelphia; the vice president and chairman of the law
committee is William Alexander Brown; the treasurer is Charles J.
Rhoades, and I am the secretary. Then there is a board of directors
of 18. I will not read their names, as they are on the letterhead.

This letter is addressed by Mr. Brown, chairman of the law com-
mittee, to Mr. Sinnott, chairman of this committee, and is dated
January 3, 1920.

The CHAIRMAN. I have not received that letter.

Mr. Sniffen. It is dated Saturday, January 3. I am delivering
it now. I will read it, with your permission [reading:]

INDIAN RIGHTS ASSOCIATION (INC.),

Hon. N. J. Sinnott,
Chairman, Committee on Public Lands,
House of Representatives, Washington, D. C.

My Dear Mr. Sinnott: It was my intention to be present at the hearing by
your committee on Senate bill 3016 "To authorize the disposition of certain
grazing lands in the State of Utah and for other purposes," to be held Monday,
January 5, 1920, at 10 a. m. Unfortunately, I am confined to my house by a
heavy cold, and I must, therefore, express myself on paper relative to the bill
in question.

This act (S. 3016) is essentially vicious both in its purpose and effect. It
is a bill to nullify just and righteous laws passed for the protection of the
Government and for the promotion of the general welfare. There is not a
single provision in it which makes for the protection of the public interest in
any way. It is a bill to let down the bars for the benefit of exploiters seeking
special privilege at the expense of the public in general and of the Indian in
particular. It is incredible that the Secretary of the Interior and the Commiss-
ioner of Indian Affairs could bring themselves for a moment to consider such
a proposition, much less approve of it. The only charitable explanation to be
made of the matter is that in the enormous pressure of official business and
the numerous matters of comparatively greater and weightier importance
this bill has slipped by them by inadvertence, or has been "put over" on
them by doubtful means either without or within the department and the
bureau.

The moral aspect of the bill is the worst possible. Here are the general
land laws, passed for the protection of the public and for the promotion of
the general welfare. While they are just, they are also liberal, even though
our public domain is almost entirely gone. The attitude of our Government
toward its people as to what land remains on the public domain is probably
the most liberal of any Government on earth.

Following the general land laws, and under and subject thereto, is the act
of 1905 (33 Stats. L., 1069), for the opening of the Uintah and Ouray Indian
Reservation. Not content with the advantages to be derived under these liberal
laws, or more properly speaking, seeking advantages and special privileges to
which they have no legal or moral right under the letter and spirit of our laws, certain powerful interests put forward their agents, who go to the Land Office, take up sections of 640 acres each in their own names and subscribe under oath that they would in good faith appropriate the land to their own use and exclusive benefit, while, as a matter of fact, they were not there for their own use and benefit and were not bona fide settlers, and made this oath and took up this land not in good faith for their own benefit, but on behalf of the interests to which I have referred.

These acts being in violation of both criminal and civil law, and the perpetrators having been discovered, prosecutions are commenced against them, but not, however, as is too often the case, until too late, under the statute of limitation, to institute criminal proceedings. The offenders finding themselves in the toils of the law, together with the "higher up" who got them into their present predicament, now look around for some means of escape.

The most cursory glance at this proposed legislation creates the unescapable inference that it was drawn for the benefit of these offenders. Certainly it contains no provisions for the benefit of the Government. All of its provisions are either for the repeal or nullification of the existing laws in so far as they affect these cases or provide for the taking of them out of the hands of those whose duty it now is to conduct prosecution and placing them in the hands of an already overtaxed official, whose duty it will not be to conduct prosecutions, but who will have the power, without trial, hearing, or investigation of any sort, to remit in whole or in part the damages, fines, and penalties to which, under the law, the offenders would be subject.

Is it to the public interest, or the interest of either the Department of Justice or the Department of the Interior, or of any official of either, to procure the passage of this act? Is it an act to promote the general welfare or one which can command the sympathy and interest of any element of our population? Is there anyone under the shining sun that has any interest or inducement in the world in such a piece of legislation except those who find themselves in the fix that these accused persons (and the interests they represent) are in?

There is another vitally important aspect to this matter. Section 9 of article 1 of the Constitution of the United States provides, among other things, that "no bill of attainder or ex post facto law shall be passed." The authorities tell us that "ex post facto laws are such as create or aggravate crime or increase the punishment or change the rules of evidence for the purpose of conviction" after the act which is made a crime by the law has been committed. In other words, it is legislation which relates backward for the purpose of either creating a new crime or of more certainly insuring a conviction of what already is a crime under existing law. While this act can not under this definition be classed as ex post facto law, as a matter of fact it is such in spirit, and in enacting such a law, even in relation to a matter of much less importance than the act in question, Congress will be going upon exceedingly dangerous ground.

What would become of the stability of our laws if legislation of this character was to become general? It would simply mean the reign of special privilege. The law would stand for nothing in the eyes either of the general public or of predatory interests, for it would be changed to suit the will of whoever for the time had the power to affect or alter legislation. I have no hesitation, therefore, in declaring that this act is a violation in spirit at least of the provision of the Constitution which provides that no ex post facto law shall be passed.

In conclusion, let me call your attention to the fact that it is only because the attention of the public mind has been centered on matters of comparatively larger and greater importance in the affairs of the State, Nation, and world that this bill has ever come to occupy the exceedingly dangerous position that it does to-day. If public attention should be attracted to it, it would die on the spot. I can not imagine any other reasonable explanation for its passage by the Senate and its favorable report by your honorable committee than that in the pressure of other matters it has hitherto escaped attention. While the material interests at stake may not be large in this day of billions and tens of billions, the morals of the question are of the first importance. I therefore hope that the previous favorable report by your committee on this bill (S. 3016) may be reconsidered and reversed.

Very truly, yours,

W. M. ALEXANDER BROWN,
Vice President and Chairman Law Committee,
Indian Rights Association.
Mr. Mays. Where does Mr. Brown live?

Mr. Sniffen. In Philadelphia.

Mr. Welling. Did Mr. Brown himself prepare that letter, or was it prepared by counsel?

Mr. Sniffen. Mr. Brown prepared it himself; he is a lawyer.

Mr. Vaile. Are the Indians now actually occupying and using the lands involved in this bill?

Mr. Sniffen. I do not think they are. My understanding is that it is surplus land, waiting to be sold.

Mr. Vaile. Their interest, therefore, would be in getting the best value out of it that could be obtained, would it not?

Mr. Sniffen. That is my understanding; yes, sir.

Mr. Vaile. If it should appear, as a matter of fact, that higher prices could be obtained by the sale in larger lots than in smaller lots, would that not be an advantage to the Indians?

Mr. Sniffen. I think so.

Mr. Vaile. Then, how would the Indians whom your association so ably represents be injured by the passage of this bill?

Mr. Sniffen. Because the passage of the bill takes the matter out of the hands of the courts and puts it in the hands of an executive, who can be subject to other influences; that is a possibility that has to be reckoned with; and I think the Indians would be safer in waiting for a decision of the courts than in trusting entirely to the executive.

The Chairman. Well, after the courts acted this land would go back to the executive to administer, would it not?

Mr. Sniffen. The courts would probably place a valuation on it.

The Chairman. No; the courts would declare these patents canceled, and then it would be land again to be administered by the Interior Department. Would not that be the status of the land?

Mr. Sniffen. I should judge so; yes.

Mr. Vaile. In a case where title has been acquired by those who have purchased from the Government, and where suit is brought to cancel that title, the money which was paid for the land is returnable to the purchaser, is it not?

Mr. Raker. Not under the law.

The Chairman. No.

Mr. Sniffen. Not under that law.

Mr. Vaile. Well, do I understand that that rule would apply where the only fraud involved is the fraud consented to, if I may use that expression, by the department in allowing larger purchases than the law permitted?

Mr. Raker. It is only in a clear case, where the party has lost his right, that the land is recovered; but when there is any suggestion of fraud, my recollection is that they never pay the money back to the purchasers.

Mr. Vaile. But where the only fraud consists in acquiring a larger amount of land than authorized by law, would not the purchaser receive back what he had paid?

Mr. Raker. My recollection is that when there is any taint of fraud the money can not be returned.

Mr. Finney. I will say that no patent was issued in the Uintah Reservation for more than 640 acres, the maximum amount allowed
by law. That is, Jones, or Smith, or Brown did not receive a patent for more than 640 acres directly. I believe it is the contention of the Government's bill that they procured and induced other people to buy these lands and transfer them, subsequently, to the men who now hold title to large blocks of land against whom suits have been instituted. I think, if it were shown in the suit that the patentees have procured their lands by fraud and the courts set the patents aside on that ground, the money would not be repayable under the present law.

Mr. Raker. Well, solely to get the record straight, has this bill that is on the calendar been rereferred to the Committee on Public Lands?

The Chairman. Yes.

Mr. Raker. So that there may be no question on the floor of the House, in connection with the resolution now before the committee, House resolution 412, I ask that we consider it in connection with the other measure (S. 3016) and the hearing of the other testimony; because, if we do not consider it for 10 days, it is a privileged matter, and I think we ought to have the record show that we are considering it in connection with the bill before the House. Would that be considered in order, Mr. Chairman?

The Chairman. That resolution has been referred to the department for report.

Mr. Raker. I know; but without some action by this committee in taking it up for consideration, it will have a privileged status.

The Chairman. Well, it has a privileged status now.

Mr. Raker. No; but we have a right to take it up.

The Chairman. Well, we do not want to take it away from the privileged status. On your theory it would take it away from the privileged status that it has in the House at the present time.

Mr. Raker. Surely we are the Committee on Public Lands, and have this resolution before us; and I do not feel that the resolution ought to go before the House while we are considering it.

Mr. Taylor. Is that the Crampton resolution?

Mr. Raker. Yes; that is my theory on the matter; and I ask that this resolution be considered in conjunction with the hearings we are now having.

Mr. Mays. Has that resolution been referred to this committee?

Mr. Raker. Yes. It is a resolution (H. Res. 412) that the Secretary of the Interior be directed to send forthwith to the House of Representatives all available information with reference to any fraud, collusion, misrepresentation, or deceit in connection with the attempt of various persons to acquire title to lands in the former Uintah Indian Reservation in Utah in amounts contrary to law, or to eliminate competition in the public sale of such lands at auction by the United States.

Now, we are considering the whole subject, and of course we can dispose of the resolution and report it out favorably or otherwise, when we are through with the hearings which involve this very question.

The Chairman. I have been looking for that law upon the retention of the funds paid for the lands, to which Mr. Finney referred. I have it here.
Mr. Finney. Is that the act of March 3, 1908, regarding repayments?

The Chairman. Yes; I have it here if you want to refer to it. We amended it later, but the original law is here.

Mr. Finney. Yes.

Mr. Vaile. I would like to go into this matter more fully with Mr. Sniffen.

Mr. Raker. Before you do that, may we take up the matter of this resolution?

The Chairman. That is not for me to say. We have one matter before the committee at the present time.

Mr. Vaile. And we are holding hearings on that at present.

Mr. Raker. All right.

Mr. Vaile. Mr. Sniffen, do you know anything about the lands involved in this bill—I am referring not only to those upon which suits have been started, but the other lands which would be affected by it?

Mr. Sniffen. I have never been there myself.

Mr. Vaile. Well, you heard Mr. Mays's suggestion a few minutes ago, did you not, that for 15 years these lands have not been sold rapidly at all; that there has been very little movement of these lands?

Mr. Sniffen. Yes. They had some land on the ceded portion of the Crow Reservation in Montana that had been on the market for a number of years, and just a couple of years ago there was some special legislation by which practically all of that land has been disposed of now.

Mr. Tallman. Do you know how much we got for that?

Mr. Sniffen. I think it was an average of $2.50 or $3 an acre at that time.

Mr. Tallman. Do you realize that when we had the first sale we sold about 200,000 acres for about $80,000 at public auction, with the limitation, and they took the best of the land; and about two years ago we sold about 80,000 acres without the limitation for about $200,000?

Mr. Sniffen. Of course, the best land is supposed to go first.

Mr. Tallman. Yes; and the left-over land brought three or four times as much some years later without the limitation. Are you aware of that fact?

Mr. Sniffen. Yes; there were no limitations.

Mr. Tallman. Not in the latter case.

Mr. Sniffen. Of course, the country was more settled in the later sales, and that made quite a difference.

Mr. Vaile. Well, I am very much interested in the welfare of the Indians, but I am somewhat at a loss to see how they will be benefited by limiting sales of land which they do not use, instead of by stimulating sales of land which they do not use. If you can explain that so that I will be clear in my mind about it, I will be indebted to you.

Mr. Sniffen. That involves a question of law. There is a statute which provides that these filings shall not exceed 640 acres, and as long as that remains I can not explain why the land is not taken up more rapidly.
GRAZING LANDS IN UTAH.

Mr. Vaile. Well, is it not obviously because it can not be sold in those small tracts?

Mr. Sniffen. The idea of Congress in enacting that law was to give the small landholder something like a fair chance for a living. Now, if Congress deems it wiser to let down the bars and say that 640 acres is too small a tract, they ought to increase the amount to 6,000 acres, or whatever amount they think best. But Mr. Brosius has some data that bears on your question which he will present when he makes his statement.

Mr. Vaile. But the facts seem to be that in 640-acre tracts the lands do not move; they do not have purchasers.

Mr. Sniffen. Of course, that depends on two things—the question of the land's location and the question of supply and demand.

Mr. Vaile. Now, looking at it from the standpoint of the Indians and bearing in mind that these are lands that the Indians themselves do not use, that the evidence up to date seems to show that they do not move in 640-acre tracts and that there is a reasonable probability that they will move in larger tracts—

Mr. Sniffen (interposing). How much would you have in mind?

Mr. Vaile. Would you have an unlimited quantity?

Mr. Sniffen. That would be at the discretion of the Department of the Interior; but leaving the question of the limitation of the size out for a minute the question is, if the Indians do not themselves use the lands, if the lands have not moved to purchasers in 640-acre tracts, and if it seems likely from the evidence before us that they will move in larger tracts to purchasers, what is the objection to having sales in larger tracts, viewed from the standpoint of the Indians?

Mr. Sniffen. There is no objection, if you can sell the lands for the Indians and get a larger price for them.

Mr. Vaile. And that is the thing which, on the evidence, influenced the committee in acting on this bill.

Mr. Sniffen. Well, as Mr. Loughran pointed out, the bill involves two things: One is the moral question and the other is the amount of land that is available for a single purchaser; and if you want to change those laws why not do it by a general act?

Mr. Vaile. Well, now, from an economic standpoint, are you speaking from the white man's point of view or from the point of view of the Indians?

Mr. Sniffen. Both.

Mr. Vaile. Well, the Indian is benefited only as he gets some value from the land, either from the use of it or from the sale of it to somebody who can use it.

Mr. Sniffen. Sometimes when the Indian gets too much money it is more of a curse than a blessing to him.

Mr. Vaile. Well, this is not oil land or mineral land which will produce fabulous wealth; so that the detriment of great wealth is not likely to occur from the sale of this land, is it?

Mr. Sniffen. No.

The Chairman. What, in your judgment, should be the chief concern—the interest of the Indian?

Mr. Sniffen. The interest of the Indian and the moral element involved in the bill.
The Chairman. Well, which predominates, in your mind?
Mr. Sniffen. Well, usually a question of morals is considered to
predominate over everything else. It is a moral question as to the
treatment of the Indians that should predominate as to a policy of
legislation.

The Chairman. It is your opinion that we should invoke the pen-
alties of the law against violators of the law, is it?

Mr. Sniffen. It is treading on dangerous ground to take those
matters out of the courts, it seems to me, just as expressed by Mr.
Brown in his letter and by Mr. Loughran in his statement; and if
the course of justice takes a regular routine and if there is no—

The Chairman (interposing). If the course of justice takes the
regular routine, the lands will be turned back to the administration
of the Interior Department in case these parties are found to have
violated the law: they will be turned back where they were—

Mr. Vaile (interposing). And where they will be subject to any
disadvantage arising from that kind of administration; disadvan-
tages which you and Mr. Loughran have suggested but have not, to
my mind, very clearly shown as yet; they would be turned back into
the Interior Department, would they not, if the purchases were de-
clared illegal?

Mr. Sniffen. Yes.
Mr. Vaile. And the only difference would be that they would be
subject to disposal in tracts of 640 acres or less, in which size they
can not find purchasers.

Mr. Sniffen. Not if you pass a general law that increases the
amount that is available.

The Chairman. For sale to any one purchaser, do you mean?

Mr. Sniffen. For sale to one purchaser; yes. I think there are
tracts where 640 acres is not sufficient, depending on the character of
the soil. But, as I said, Mr. Brosius has some information that I
would like for him to submit to you on that question.

The Chairman. What is your view as to putting this land in the
forest reserve?

Mr. Sniffen. I have not seen that land; but on general principles
there is the danger of running to the extreme in creating too large
forest reserves. I have seen some so-called forest-reserve land that
had a few mesquite trees or a little sagebrush on it, that did not
properly belong to the forest.

Mr. Vaile. Every western Member has seen that.

Mr. Sniffen. Yes; you have yourself; it looks splendid on paper,
but it does nobody much good.

Mr. Vaile. It is valuable principally for grazing?

Mr. Sniffen. Yes; and gives a large tract which is grazed on,
usually at so much per head.

Mr. Vaile. And that is valuable chiefly for grazing. And aban-
doning the standpoint of the Indian for a moment and judging from
the standpoint of the public interest, if it is chiefly valuable for
grazing, do you not think it should be in private ownership rather
than public ownership, subject to taxation for the support of schools,
etc.?

Mr. Sniffen. Yes; it is developing the community when in pri-
vate ownership; and the more the community is developed the
greater the benefit to the Indians.
The Chairman. Do you know the purchase price paid for the 64,000 acres involved in these suits?

Mr. Sniffen. I do not know.

Mr. Loughran. I think it was 70 cents an acre.

Mr. Tallman. It was an average of $1.96 an acre.

Mr. Finney. It ranged from 50 cents to $7 an acre.

Mr. Loughran. Yes; I believe that is correct.

Mr. Raker. I think the gentleman from Colorado made a little misconstruction of this statute. Have you gone into the general rights of the Indians on this Uintah Indian Reservation?

Mr. Sniffen. No; Mr. Brosius can tell about that.

Mr. Raker. Under the provisions of the act disposing of the lands, it allots to each Indian head of a family 80 acres of land suitable for cultivation and capable of irrigation and 40 acres of such land to every other member of the tribe; then the balance of it can be disposed of; it is turned over to the United States and becomes public domain; the Indians are not residing on it.

Mr. Sniffen. It is public domain in one sense, that the Government disposes of it.

Mr. Raker. Yes; it is public domain under the law setting it aside; the Indians have no title to it.

Mr. Sniffen. Yes; it seems to me they still have the title because the Government is trustee to dispose of it for them.

Mr. Raker. Well, they have an interest in it; if it is sold they get so much; but it is public domain.

Mr. Sniffen. Yes.

Mr. Raker. And it is there for Congress to dispose of as it sees fit, like all other public domain.

Mr. Meritt. Pardon me. I am Assistant Indian Commissioner. I think you are in error. The land is not public domain in the sense that outside people can use the land as they see fit, the same as public domain. The Indians have an equitable interest in that land; the title, I think, is vested in the United States.

Mr. Raker. That is what this act says; I was relying on the provisions of the act. It says it shall be public domain, the same as other public domain.

Mr. Meritt. This land is not public domain, however. We lease the ceded land and get returns from that land and turn the lease money over to the Indians; therefore it has not the same status as public domain.

Mr. Raker. It says in this act:

That nothing herein contained shall impair the rights of any mineral lease which has been approved by the Secretary of the Interior, or any permit here-tofore issued by direction of the Secretary of the Interior to negotiate with said Indians for mineral lease; but any person or company having so obtained such approved mineral lease, or such permit to negotiate with said Indians for a mineral lease on said reservation, pending such time and up to 30 days before said lands are restored to the public domain.

Mr. Finney. I think that meant restored to the public domain for purposes of disposition under the public-land laws. If you will read further you will find that the proceeds, after payment of certain expenses, are all to go to the Indians. So that the Indians have an interest in the lands, and the Government is acting as trustee for the lands and must account to the Indians for the proceeds; and the
Government can not take those lands and give them away, or put them in a forest reserve, without being responsible to the Indians for the value of those lands.

The Chairman. How much does a homesteader pay for the land?
Mr. Finney. $1.25 per acre, fixed by law.

Mr. Raker. But there is no limitation as to the price on the sale of the land?

Mr. Tallman. There is no minimum fixed by law; there is a minimum of 50 cents an acre fixed by the Secretary of the Interior.

Mr. Raker. I was trying to get at where he got the authority to fix any limitation.

Mr. Tallman. That was under the law authorizing him to sell it. He determined that he would not sell any of it for less than 50 cents an acre.

Mr. Finney. Under that same legislation he would have had the right to fix a limitation of 640 acres which might be sold in future sales.

Mr. Raker. I was trying to find out whether these are lands of the public domain, or of the Indians.

Mr. Tallman. These are ceded Indian lands; and the beneficial interest in these lands belongs to the Indians; it does not make much difference whether the title technically stands in the United States or not.

Mr. Taylor. Have the Indians already received the money that these men paid for the lands in suit?

Mr. Tallman. Yes.

Mr. Taylor. And they have had the use of it?

Mr. Tallman. Yes. First the lands were allotted, and then some were set aside for grazing by the Indians; some were put in the forest reserve; and then by these acts the balance was to be disposed of, first at homestead entry, for five years, at $1.25 an acre; and that was construed also to allow the operation of the mining laws; and then, after the five years were up, the Secretary of the Interior was authorized and directed to offer the remainder at public auction.

Mr. Taylor. Did the Indians during that five years, or did any of these Indian rights associations, or the Indian Commissioner, ever object to that bill or to what would happen at the expiration of five years if you took any steps to carry that out?

Mr. Tallman. I do not know about that; I was not running it then; but I do not know of any such objection.

Mr. Taylor. Did any of them object at the time of these sales, or before this suit was brought, to the Government disposition of the lands?

Mr. Tallman. Not that I am aware of.

Mr. Mays. The fact is that these lands sold for grazing purposes bought a somewhat higher price than the agricultural lands brought, is it not?

Mr. Tallman. Yes. About 300,000 acres were homesteaded in five years——

The Chairman (interposing). I suggest that we hear this witness now, and go on with Mr. Tallman later.

Mr. Raker. Yes. I thought the witness understood more about this than he appears to. You are here representing the Indian side of the matter, are you, Mr. Sniffen?
Mr. Sniffen. Yes.

Mr. Raker. Well, is it your theory that the lands would be disposed of so cheaply that the Indians would be robbed?

Mr. Sniffen. I am also here as a citizen of the United States.

Mr. Raker. That is permissible and proper and commendable. But still, I am asking, are you fearful that the Indians will be robbed as a result of this legislation?

Mr. Sniffen. Well, such things have happened.

Mr. Raker. Not in this particular instance. I want you to point out wherein you think the Indian will be robbed by the pending legislation.

Mr. Sniffen. I think Mr. Brosius can tell you that.

Mr. Raker. I am asking if you know?

Mr. Sniffen. No; I do not. Mr. Brosius has gone more into that than I have.

Mr. Raker. Then you have not any point to call the attention of the committee to where you believe, since your investigation, that if the legislation passes the Indian will be deprived of any property or payment that he should receive?

Mr. Sniffen. Not personally.

Mr. Raker. That is all.

Mr. Loughran. But, of course, Mr. Raker, the Indians would be deprived of the money paid under these patents, provided the bill is enacted and these patents are permitted to stand. In other words, if the court decrees cancellation of the patents the money paid in acquisition of those patents would still remain in the Indian fund, and thereafter the lands would be sold again and an additional amount be paid to them. I believe that is right.

Mr. Raker. I just asked that of the gentleman as a means of getting his opinion of it; that was all; but as a matter of fact he has not investigated it and does not really know the purpose of the bill, which he frankly and candidly admits.

And then I wanted further to find out whether this was legislation to dispose of the public domain, or whether it was legislation relating to Indian affairs. As to those two things the gentleman——

Mr. Loughran. There seems to be some confusion——

Mr. Raker (interposing). Just a moment. The gentleman in both instances preferred to refer the question to his associates.

(Thereupon, at 1 o'clock p.m., the committee adjourned until Tuesday, January 6, 1920, at 10 o'clock a.m.)
STATEMENT BY MR. S. M. BROSIUS, AGENT INDIAN RIGHTS ASSOCIATION, WASHINGTON, D. C.

Mr. Brosius. I am the Washington agent of the Indian Rights Association, whose headquarters are located in Philadelphia.

Mr. Chairman and gentlemen, the act under consideration proposes "to authorize the disposition of certain grazing lands in the State of Utah, and for other purposes."

The proposed legislation would set aside laws previously enacted affecting the disposition of certain surplus lands formerly embraced within the limits of the Uintah and Ouray Indian Reservation, Utah, and remove the safeguards now existing, which were enacted to protect the Indian and the public against wrongful disposition of this Indian property. A somewhat lengthy statement upon the merits of this act was issued by the Indian Rights Association, and, I trust, was received by each member of this committee. The statement bears date of November 10, 1919. I have here a copy of that statement and I would like to ask at this time to have it go in the record because it gives in detail some matters which I will not cover in this statement.

The Chairman. Without objection that will go in in connection with your remarks. Will you hand it to the reporter?

(The statement referred to is printed in the record in full, as follows:)

INDIAN RIGHTS ASSOCIATION,
295 DREXEL BUILDING,

SHALL FRAUD BE LEGALIZED BY LAW?

We respectfully urge your careful and prompt consideration of the provisions of proposed legislation embodied in Senate bill No. 3016, entitled "An act to authorize the disposition of certain grazing lands in the State of Utah, and for other purposes," which, having passed the Senate, has been favorably reported to the House of Representatives from the Committee on the Public Lands of that body.

In brief, this act proposes to withdraw from the operation of existing statutes enacted for the protection of the Indians and the public, alleged illegal transactions in connection with the sale of lands formerly comprising a part of the Uintah and Ouray Indian Reservation, in the State of Utah, and in lieu thereof to vest discretionary authority in the Secretary of the Interior, the effect of which will be that violators of law will be enabled to secure a settlement of their transgressions of statutes by a political tribunal rather than in a judicial forum.

The act of 1905 (33 Stat. L., 1069) provided for the sale in an orderly manner of certain of the ceded Indian lands in tracts not exceeding 640 acres to any one person. Through alleged conspiracies it developed that in several instances many thousands of acres of this land were purchased, by the use of dummys in bidding, for the final benefit of one person in direct violation of law.

These nefarious transactions were protested against by the residents living in the vicinity of the lands involved, and investigation by the General Land Office resulted in the recommendation that suits be instituted by the Department of Justice to recover the lands and so far as possible within the law to punish the guilty parties. Accordingly 13 suits were filed and are now pending in the United States District Court for the District of Utah, charging "that in pursuance of said unlawful and fraudulent schemes and for the purpose of rendering the same effectual" the several defendants were connected with schemes in violation of the statutes for the purpose of defrauding the United States of its title and possession of said lands.
These alleged fraudulent transactions were effected notwithstanding the fact that each of the defendants had subscribed under law to an oath that he would in good faith appropriate the land to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract in any way or manner by which the title to the lands would inure to the benefit of any person except himself. (20 Stat. L., 8.)

The penalizing provisions of the crimes act can not be invoked against the defendants in the pending causes, being barred by the statute of limitations.

The mandatory stipulations of law under existing statutes directed to be enforced by the courts in the interest of good government should not, through influence, be supplanted by weak and compromising measures to be carried out at the discretion of an executive department, which, in the nature of our institutions, is more likely to be influenced by politicians. These defendants should be held amenable to existing law providing for the forfeiture of purchase money already paid, and be required to reconvey title of the lands to the Government for the direct benefit of the Indians for whom the Government is acting as guardian in this transaction. The Indians are vitally interested as beneficiaries in the enforcement of existing law intended to safeguard their rights. The alleged conspiracies discovered regarding the purchase of these Indian lands tended to neutralize and lessen competition in bidding at the time of the sale. The procurement by purchase in larger tracts than the statute authorized will tend to bring the herders and cowmen employed by the wealthy stockmen in closer contact with the Indians in whom they are not so vitally interested as are the small landowners and settlers who would desire to improve the conditions among the Indians, his neighbors, and fellow citizens.

Senate bill No. 3016, in question, proposes to repeal all laws applicable to this alleged fraud—laws which Congress in its wisdom found desirable and necessary to protect the people against just such transactions as the one under consideration.

The propositions embodied in the bill are astounding:

First. The statute limiting individual purchases to title to 640 acres of land is thus withdrawing authority for the Government to prosecute the cases now pending in the United States district court against these defendants for the recovery of the lands fraudulently secured.

Second. The Secretary of the Interior may repay the purchase money to the defendants in suit.

Third. The Secretary of the Interior may validate all such transactions in entirety by confirming the sales.

Fourth. The Secretary may further, under discretionary power granted, determine the present value of the lands and confirm the sales to the alleged excessive and illegal holdings upon payment by the transgressors of the difference between the sale price and present value.

Under such proposed authority the alleged transgressors may escape punishment with the stolen lands while the public is deprived of the opportunity to purchase at lawful restrictions and regulations. In other words, authority is granted by the bill in question to condone the aforesaid wrong and confirm the alleged frauds by permitting the guilty to escape punishment and retain title to large tracts of land in excess of the acreage allowed honest bidders and bona fide purchasers, thus offering a premium for unlawful dealings, to the detriment of those who desire to obey the laws of the land.

The alleged conspirators have requested of the court additional time within which to make answer to the indictments against them. In the meantime they make their appeal to Congress presumably hoping to secure immunity from the legal consequences incident to the frauds charged against them.

The reports submitted by the committees of the Senate and House of Representatives fail to state the full facts relative to effect of the proposed legislation. The fact that 13 suits are now pending in the Federal court in Utah is not disclosed by the reports. This and other essential features pertaining to the matter should have been incorporated in the reports from the Interior Department for the information of Congress. In failing to call attention to these facts, the Indian Department has shown a remarkable indifference to the interests of its wards and the unscrupulous efforts that are being made to exploit them.

As already stated, mandatory laws to be enforced by the courts should not give way to discretionary power invested in political appointees.
The history of Senate bill No. 3016 is illuminating: September 16, 1919, introduced by Hon. Reed Smoot, chairman of Committee on Public Lands, and referred to the Committee on Public Lands.

September 22, 1919, reported favorably by the Committee on Public Lands.

September 22, 1919, passed the Senate.

September 23, 1919, reported to the House of Representatives and referred to the Committee on Public Lands.

October 10, 1919, reported favorably from the Committee on Public Lands of the House and placed upon the calendar of Committee of Whole House, Calendar No. 117.

We solicit your influence in aiding to defeat this proposed legislation.

Respectfully submitted.

HERBERT WELSH,
President Indian Rights Association.

S. M. BROSUS,
Agent, McGill Building, Washington, D. C.

For a better understanding of the questions before the committee, I wish to recall the history of legislation leading up to the present time.

The act approved May 27, 1902, provided for——

The CHAIRMAN. Will you give the number of the statute, together with the number of the page?

Mr. BROSUS. Yes, sir: 32 Statutes, 243; Kappler, volume 1, page 753, which provided for securing consent of the Indians of the Uintah and Ouray Reservation, Utah, to allotment of their lands in severalty, and the restoration of all unallotted lands on that date to the public domain and opened to settlement under the homestead laws at $1.25 per acre.

The Indians did not agree to this proposed division of their lands under the act of 1902, and further legislation was secured, bearing date of March 3, 1903 (32 Stats., 982; Kappler, vol. 3, p. 18).

This act provided that in the event the Indians did not consent to the terms of the act relating to allotment and sale of their surplus lands within their reservation by June 1, 1903, the Secretary of the Interior was empowered to arbitrarily allot the lands in severalty to such Indians and turn the surplus lands into the public domain for homestead settlement under provisions of the former act approved in 1902.

It should be noticed that in this instance the Indians were under duress, for they well understood that if they did not agree to allotment as provided by the act of Congress, the Government would force allotments upon them and dispose of the surplus lands without securing their consent. We have always understood that consent was given by the Indians with great reluctance. The time for disposing of the surplus lands was fixed by the act of 1903, as of October 1, 1904.

The act approved March 3, 1905 (33 Stats. 1048; Kappler, Vol. 3146) provided that all lands of the ceded reservation not disposed of under former laws should be sold at public auction to the highest bidder, in tracts of "not more than 640 acres to any one person."

All these various statutes provide that the proceeds derived from the sale of the lands should be applied by the Secretary for the benefit of the Indians.

Every step taken by the Government was as trustee for the Indians, the Government assuming no responsibility whatever for the adequacy of the purchase price when the lands were disposed of.
Under such conditions the guardian Government as trustee was and is charged with the greatest responsibility to see that every detail of the transactions covering the sale was carefully guarded in the interests of its wards, the Uintah and Ouray bands of Indians.

It is now charged that at the time of the sale of the lands at public auction collusion was resorted to for the purpose of securing an excess of 640 acres for any one person as stipulated in the statute. We submit that such combinations at the time of the sale would naturally deter the small stockman, who was a prospective bidder, from offering bids at the time the lands were disposed of at the public auction. Such conditions would lessen competition and cause the lands to be sold at a lower figure than they would command under circumstances in which no such combinations were present.

The Chairman. Do you want to finish your statement before we ask you any questions?

Mr. Brosius. I would rather get through with my statement. It will only take a few minutes, and then I will be glad to answer any questions I can.

The stockman of limited means at his disposal would quite naturally settle upon lands he might purchase in much larger numbers than would transpire in a case were these persons of limited means were driven out of the competition at time of sale. Such small farmers and stockmen who would make the lands their home would no doubt have a greater interest in the welfare of the Indians than the cattle barons, who merely run their stock over the lands in charge of hired laborers.

These are strong factors in determining the question as to whether or not the pending legislation should be adopted by Congress, for we find by examination of the pending act that the Secretary of the Interior would be authorized to confirm the illegal sales already made in which the lands, or many of them, will fall into the hands of large landowners, if we may believe the reports of the inspecting force of the General Land Department, as has been stated already to your committee.

Aside from the claim that the Indians' interests are of prime importance since they are the owners of the lands to be sold, the act now being considered is strikingly unjust to those small stockmen who were not aligned with the alleged combination to secure more than the 640-acre tract for one person. Gentlemen of the committee, it seems almost unnecessary for me to urge on behalf of these men of limited means that the wrong done by the alleged combinations as stated should not now be confirmed by rendering it possible by this act before you to validate these illegal transactions in the discretion of the Secretary of the Interior. There should be no discretion lodged in any executive official to do this thing.

From these deductions in the matter as indicated, if this proposed act is adopted by Congress, the stockman of small means having been practically deprived of fair and open competition in bidding for purchase of the lands at the former sale, may not and probably will not be accorded an opportunity to bid in the future. The positive provisions of law should stand unrepealed, and these lands in question again offered for sale so that the prospective bidder will go to the sale unhindered by any cabal or combination against him and the Indians receive all that the land is now worth.
Nor are we left to surmise or in doubt as to the amount of land necessary for the men with limited capital especially to prosper with a limitation of 640 acres as now provided by law. One of the ablest officials in the Indian Service is now superintendent over the Indians at Uintah and Ouray Agency, Utah, the Indians directly concerned in the benefits to be derived from the sale of the lands in question. I hesitated to ask the superintendent to give me his opinion upon the merits of the pending act under consideration by your committee, since his superiors in the Indian Bureau have approved the proposed act. We did, however, request his opinion as to the practicability of stockmen with small means, whose herds would be limited, to make a comfortable living upon 640 acres for one person. The superintendent replied that in his "opinion much of this land would prove attractive to small sheep and cattle men in tracts of this size."

Mr. Tillman. Who is that superintendent?

Mr. Brosius. Albert H. Kneale; and I will leave it to Mr. Meritt as to whether or not he is one of the best superintendents in the service.

Mr. Meritt. Mr. Kneale is recognized as a very good superintendent.

Mr. Brosius. The superintendent vouched for the reliability of Mr. Joseph C. Crandall, of Tabiona, Utah, as to the size of tracts desirable for the small stock owner.

Mr. White. What you mean by that is that if one of the higher officials in the department has an opinion, the man in the field would not feel like expressing his opinion against the opinion of his superior.

Mr. Brosius. I hesitated to ask for his opinion.

Mr. White. I supposed that every man in the service had a right to speak his judgment and tell the facts.

Mr. Brosius. I am sorry to say that isn't the case. I have had considerable dealing with the Government, and it has come to my knowledge frequently that the people who do come into conflict with the higher officers in the Indian Service, the people on the reservations, they are the very people who suffer. They are dismissed, and the higher official is retained for this reason: It is the natural thing to do; it is easier to get a small official in the service than it is to fill the higher positions, appoint a superintendent. I am very sorry to say that is the case.

Mr. White. That is wrong—

The Chairman. Judge, Mr. Brosius desires to finish his statement first and then answer any questions that might be asked.

Mr. White. Pardon me.

Mr. Brosius. I am glad you called my attention to it. This hearing before your committee being set for the 5th instant, it was necessary to telegraph Mr. Crandall, and we requested him to ask others to give their opinion in the matter.

(The replies received by Mr. Brosius are as follows:)

Roosevelt, Utah, January 4, 1920.

Samuel M. Brosius,
Agent Indian Rights Association,
McGill Building, Washington, D. C.

Your telegram December 30, 1919, received 12:30 p.m. January 3, 1920. I have been in the sheep business for the last five years and know for a fact that 640 acres per individual of grazing land to be sufficient for the stockman hav-
ing a small herd. In the past five years I have had access to less than that amount of grazing in the Uinta Indian land that was bought by a few individuals. Was offered for sale again, in my opinion it would be bought by hundreds instead of being owned by a few. Letter following.

J. C. CRANDALL, Tabiona, Utah.

Roosevelt, Utah, January 3, 1920.

SAMUEL M. BROSIIUS,
Agent Indian Rights Association,
McGill Building, Washington, D. C.

With reference to your telegram J. C. Crandall I know to be a fact that 640 acres per individual of grazing to be sufficient for the small herd owner. My belief is founded on experience.

R. M. MICHIE, Tabiona, Utah.

Roosevelt, Utah, January 4, 1920.

SAMUEL M. BROSIIUS,
Agent Indian Rights Association,
McGill Building, Washington, D. C.

I am a small sheep owner and know that 640 acres of grazing land per individual to be sufficient land for the owner of a small herd.

ROBERT W. MAXWELL.

Roosevelt, Utah, January 4, 1920.

SAMUEL M. BROSIIUS,
Agent Indian Rights Association,
McGill Building, Washington, D. C.

Your telegram of December 30 to J. C. Crandall has been read by myself and in answer I will state it a fact that 640 acres of grazing land per individual will furnish sufficient for the small stock owner.

ROLLIE S. WADDELL.

Roosevelt, Utah, January 3, 1920.

SAMUEL M. BROSIIUS,
Agent Indian Rights Association,
McGill Building, Washington, D. C.

In my opinion, 60 acres of grazing land is ample ground per individual for a small sheep or cattle owner.

JOEL L. JOHNSON, Tabiona, Utah.

Roosevelt, Utah, January 4, 1920.

SAMUEL M. BROSIIUS,
Agent Indian Rights Association,
McGill Building, Washington, D. C.

In answer to your telegram to J. C. Crandall, I will say that the stock owners of this locality in the past have done nicely on less than 640 acres of grazing land per individual. In my opinion, if this land is reopened for sale it will readily sell.

JEFF H. LEFEBRE, Tabiona, Utah.

We hope to be able to supplement these statements in the near future, but the distance is a barrier to prompt action in securing statements to inquiries.

Proper laws are provided for punishment of persons violating the provisions of the homestead act, under which the lands are disposed of. It is an almost unheard-of procedure to release from the penalties provided by law, by later statute, when the violator are discovered, as now alleged.
GRAZING LANDS IN UTAH.

As stated in the printed letter sent out by the Indian Rights Association, the law should be enforced against the offenders as charged in the indictments prepared by the Department of Justice; positive provisions of law should not be supplanted by discretionary power vested in the Secretary of the Interior.

The Indians who are the owners of the land involved retain title until such time as they are lawfully disposed of, and they should receive every dollar which might under lawful procedure of sale be secured for them. We are advised that in the past three years the lands under consideration have increased in value three or four fold. I get that on good authority.

As indicated by Senator Smoot before the committee, he conferred with the gentlemen of the Department of the Interior, and that, no doubt, had something to do in the formation of this proposed act or bill passed by the Senate.

Gentlemen of the committee, the equities seem to be all with the Indians and the public who seek these lands for settlement. We urge that Senate bill No. 3016, now before your committee, be adversely reported by you.

The CHAIRMAN. What is the size of the small sheep owner or small cattleman referred to in this telegram?

Mr. Brosius. Well, I can not tell you that. It is the man, I would judge from experience I have had in life, that it would be the man who could or who had some $5,000 and started out in business. He might purchase a few hundred head of sheep or a few head of cattle. That is the man as distinguished from the large man who goes into the business wholesale of leasing large tracks, we will say, for instance, of Indian reservations, possibly 50,000 acres.

The CHAIRMAN. Do you know of anybody in the business who only has 2,000 head of sheep?

Mr. Brosius. That would be a small number.

The CHAIRMAN. Without expressing my opinion of the merits of the bill, it seems to me that these telegrams are absolutely ridiculous to anyone who knows anything about western conditions to say they could do anything on 640 acres of this kind of land.

Mr. Brosius. I have not been on the land in question. I have been on the reservation two or three times, but I do not know that I have been on the land in question.

Mr. Mays. Can you tell us how many sheep can be grazed on a section of this land?

Mr. Brosius. No, sir.

Mr. Mays. If you could graze 100 head, could a family be sustained on that number?

Mr. Brosius. Well, I would hardly think so.

Mr. Mays. You realize also that they have to have a herder, who herds the sheep, and that these small flocks would have to have a herder to protect the sheep from predatory animals?

Mr. Brosius. With the small man, he would look out for his own sheep. Of course, the sheep would be looked after by some of the members of the family of the small man. Some of the members of the family also herd the sheep for the Indians. They also do that.

Mr. Mays. If they had to hire a herder, how long would it take his wages to absolutely wipe out the whole flock?
Mr. Brosius. I don't think they would have to have a herder.

Mr. Mays. If you pay a herder seventy-five to one hundred dollars a month and if you had 100 sheep that would take about 7 or 8 or 10 sheep a month to pay the herder and he would soon own the herd, would he not?

Mr. Brosius. Possibly; but that is assuming that there must be a herder.

Mr. Mays. He must either hire a herder or herd the sheep himself?

Mr. Brosius. As I said, take among the Indians and some of the farmers, some of the members of the family often go out and tend the sheep, and with small stockmen that would happen, or they could band together and afford to hire a herder.

Mr. Mays. They could not afford to hire a herder for their individual flocks?

Mr. Brosius. I think that is so.

Mr. Mays. Nor could they afford to give their own time.

Mr. Brosius. No; I suppose some member of the family could tend the sheep. I know the conditions among the Indians and I know the conditions among the small stockmen and they have looked out for those small herds themselves largely. I lived in Kansas, and I know the conditions among the small stockmen.

Mr. Mays. You realize this is quite different land from the land in Kansas.

Mr. Brosius. Oh, from eastern Kansas. The land in eastern Kansas is very fertile.

Mr. Mays. This is different from western Kansas.

Mr. Brosius. It must be some 30 years now since I was in western Kansas. Thirty years ago conditions in Kansas were very different.

Mr. Wellin. What is a small herd, what do you mean by that term?

Mr. Brosius. Well, the limit or amount that a man on a small acreage with a small capital could afford to buy, or could afford to graze.

The Chairman. We call a small herd a herd of 1,200, 1,500, or 1,800; that is a small sheepman in the West.

Mr. Brosius. Where you run 10,000.

The Chairman. They can not afford to run a smaller number than that. They can't afford to hire a herder.

Well, have you anything further?

Mr. Summers. Do you know whether or not water is available on every section or near every section?

Mr. Brosius. I do not know about that.

Mr. Summers. Do you think it would be possible for a farmer to go on to a section of that land and establish a home and maintain a herd, if he could find a water supply and everything sufficient to care for the herd, and support a family on that section?

Mr. Brosius. I do not know about that.

Mr. Summers. My understanding is that this is isolated land away from civilization somewhat, so that it would not be possible for the head of the family to work for a neighbor, or work on an adjacent ranch or things of that kind, because they are not there as I understand the situation; so that it would practically mean that
man must take his family on to the section and live from the herd
that he could maintain on the section.

Mr. Brosius. I can't answer your question in regard to that par-
ticular point.

Mr. Tillman. Mr. Crandall's telegram indicates that that land
would be readily bought if offered for sale in 640-acre tracts.

Mr. Brosius. Yes, sir.

Mr. Welling. It has been offered for 15 years at least.

Mr. Brosius. No; it has been sold at public auction, as I under-
stand it.

Mr. Welling. Hasn't it been offered in 640-acre tracts?

Mr. Summers. For nine years, I believe, and then it was offered
for sale at public auction.

Mr. Mays. How long has that been going on?

Mr. Brosius. The law is dated 1905. When the auction was I do
not know. It was some time following that.

Mr. Mays. It is all open for purchase or homestead now and has
been for 14 years.

Mr. Brosius. That would be in small tracts.

Mr. Mays. Six hundred and forty acres or less.

Mr. Welling. Do you know how much land there is for sale out
there?

Mr. Brosius. No; only as reports indicate.

Mr. Welling. What do the reports indicate?

The Chairman. One hundred and eighty thousand acres.

Mr. Brosius. One hundred and eighty thousand acres.

Mr. Welling. But do they show the people who purchased these
lands? They were bought in 640-acre tracts.

Mr. Brosius. But you must remember that on these sales some of
this land was sold to dummies, who entered into an agreement to
buy the land and then sell it. The best lands were taken first.

Mr. Vaile. Yes; but a very large part of this land hasn't been
sold; hasn't sold rapidly.

Mr. Brosius. If this land were put on the market again, it would
have a better value.

Mr. Vaile. But, as I understand it, Mr. Brosius, this is miscel-
naneous land; as I understand, the balance of this land could be dis-
posed of in 640-acre tracts or less. That wouldn't be affected,
would it?

Mr. Brosius. Well, if the land embraced in this litigation was also
offered for sale again——

Mr. Vaile. Is it proposed only to apply to this land that is in
litigation?

Mr. Brosius. Any land; but that would be the land that would be
most desirable.

Mr. Vaile. Conceding that it might be sold in 640-acre pieces,
how about the rest of the land?

Mr. Brosius. Possibly, on account of the rest of the land being
poor land, it might be necessary to sell it in larger practs. Let the
land be put up for sale and held for a certain length of time, say,
three years, and then that that was not sold could be sold in larger
tracts.
Mr. Vaile. It does not seem to be necessary to be held up for three years when we know it won't move.

Mr. Brosius. Well, that is a supposition. I do not know about that.

Mr. Mays. You have seen several Indians, haven't you?

Mr. Brosius. Forty-five years ago I was in the Indian Service.

Mr. Mays. Forty-five years?

Mr. Brosius. Yes, sir.

Mr. Mays. Do you know of any Indians that are complaining about this?

Mr. Brosius. I haven't heard any.

Mr. Mays. Haven't heard any complaints?

Mr. Brosius. The first information as to these things comes through our association. It is my work. I don't wait to hear from the Indians. The Indians oftentimes do not know about conditions and do not know who to appeal to. They would not appeal to the Government, because the Government has decided to do this. So they do not know who to appeal to. If they do not find somebody on the outside of the Government that is interested in them they do not know who to appeal to.

Mr. Mays. Have they appealed to you?

Mr. Brosius. They have not.

Mr. Vaile. These last telegrams you read; are they from actual stockmen—farmers?

Mr. Brosius. They so state; and I want to add again, to impress upon you, the character of Mr. Crandall is vouched for by Mr. Albert H. Kneale, superintendent over the Indians at Uintah and Ouray Agency, Utah.

Mr. Vaile. Are these men running stock—cattle and sheep—on these ranges?

Mr. Brosius. Well, I don't suppose they are. They are not in position to. They have been deprived of the privilege.

Mr. Mays. How have they been deprived?

Mr. Brosius. All of the land has been taken by these other people, because they did not have a fair opportunity to bid under the conditions.

Mr. Mays. Isn't it a fact that they would like to have these lands thrown into a forest reservation?

Mr. Brosius. I don't know.

Mr. Vaile. Would it not be true that the success of a small stock raider or sheep raider on a small tract necessarily depends on the proximity of a forest reserve where the sheep could be grazed?

Mr. Brosius. Well, it would be very much better for the small sheep men. I agree to that.

Mr. Vaile. Would that not be true as to 640 acres?

Mr. Brosius. Why, they could lease some Government land.

Mr. Welling. Mr. Brosius, the organization you represent, as I understand, is a charitable organization, an uplift organization, that is interested in getting everything they can that is really legitimate for the Indians.

Mr. Brosius. Seeing that the Indians are fairly treated.

Mr. Welling. Now, as you very well know, 180,000 acres of this land was really withdrawn; it was segregated from the Indian reser-
Grazing Lands in Utah.

Mr. Brosius. I do not believe that they are.

Mr. Welling. Then, isn't it a fact that these cattle barons that you describe here are roaming their herds over that 180,000 acres, not paying the Indians a solitary copper for it, and don't you think that it would be a good thing for it to be sold so that something at least would be received by the Indians?

Mr. Brosius. I think it would. As I said a moment ago, the lands could be opened up, and if they did not sell in tracts of 640 acres you could pass an additional act providing in three or five years from this date any lands that were not sold could be offered in larger tracts, say 1,000 acres.

Mr. Welling. Does it not appear that they have had a reasonably fair time—15 years?

Mr. Brosius. It may be.

Mr. Welling. The lands were offered in 1910; they were offered again in 1912; and they were offered again in 1917. Every effort was made to induce people to buy them; why do you want an additional three years?

Mr. Brosius. Well, the lands have increased in value now, and on account of the charge that everybody did not have a free opportunity to buy at the former sale. I think the only fair, equitable distribution of the whole matter would be to again offer the lands for sale. I have no objection to returning the money to the gentlemen purchasing the lands. Let them have their money back, but in justice to the Indians, let this land be again put up for sale. I think that is the fair way to settle this. If the committee desires, Congress could return the money under the homestead act. If the committee is so disposed, they could provide that this money could be returned to the purchasers and then offer the lands for sale.

Mr. Mays. These gentlemen bought a total of 61,000 acres of land—all of the people involved in this legislation—while there were over a million acres of this land offered.

Mr. Brosius. Yes.

Mr. Mays. And prior to that time anybody could take up 160 acres as a homestead, and the best part would naturally have been taken up as homesteads, and then these sales were held, and everybody was invited to come in and buy. You say these men, because they bought in the aggregate 61,000 acres, that they deprived other people from buying.

Mr. Brosius. That would be the natural result of such conditions. I know that if I were attending a sale of lands, and saw a combination there that could overbid me and get the lands and there was a combine against me, I would naturally drop out, unless I was a fighter.

Mr. Vaile. Do you charge that there was a combination?

Mr. Brosius. No; I do not. I think the Department of Justice so charges in the bills against the purchasers of the land.

Mr. Barbour. Has that suit been tried?

Mr. Brosius. It has never been tried—I am not supposed to know the business of the Department of Justice—the Government filed suit against some 15.
Mr. Barbour. Has the time expired?
Mr. Brosius. For criminal procedure. They can come to Congress to get relief.
Mr. Barbour. How long have the suits been pending?
Mr. Brosius. Since May or June, I think.
Mr. Raker. Mr. Brosius, you have not been over the land?
Mr. Brosius. I have been over the reservation. I do not know that I have been over this particular land.
Mr. Raker. Do you know whether this 61,000 acres is fit for farming?
Mr. Brosius. I do not.
Mr. Raker. Do you know whether or not there is any water available, or whether it is possible to get any water on this land for irrigation purposes?
Mr. Brosius. I do not know. I suppose there is some man here who would know. I imagine there must be some water available.
Mr. Raker. Possibly your views are not in accordance with the original statute, allowing homesteading to be made on the land on 640 acres, or 640 acres each; what would be your views?
Mr. Brosius. What would be my views? My views would be this: I think Congress could very properly amend the act and the committee, if it were so disposed—
Mr. Raker (interposing). Leave out the reference to the committee. Let's get out on the subject of the land. What are your particular views in the matter of the 180,000 acres of land? What is your opinion in connection with homesteading 640 acres?
Mr. Brosius. It might be necessary to increase the acreage.
Mr. Raker. I am not holding you down to 640 acres; state what you think should be done?
Mr. Brosius. If the land—
Mr. Raker (interposing). I say, the 180,000 acres hasn't been sold and is public land. What are your views with reference to amending the law so that it could be homesteaded in tracts of 640 acres?
Mr. Brosius. It could be homesteaded.
Mr. Raker. That is what I say. Suppose the committee should decide that 640 acres should be homesteaded?
Mr. Brosius. I do not quite get the question, because I had supposed that the 640 acres applied now.
Mr. Raker. But, if it does not apply, what would be your views if the law was so amended with regard to this 180,000 acres as to permit homesteads of 640 acres each?
Mr. Brosius. I think it would be all right if you consider that that would be sufficient—I am rather inclined to believe—you are probably in possession of the law—but 640 acres can be taken up now as a homestead. That is the present law, I think. I may be mistaken about that.
Mr. Mays. They pay the Indians $1.25 an acre for these lands under the act—
Mr. Brosius (interposing). I see your point: It is a matter of negotiation with the Indians.
Mr. Raker. I did not say anything about negotiating with the Indians. We will pass that question. Do you know anything about
the climatic conditions of the country? Do you know whether or not they can raise grain, wheat, oats, barley, and other crops?

Mr. Brosius. Some grains can be raised.

Mr. Raker. Is it subject to frost in the spring?

Mr. Brosius. Yes; I think so; but they can raise profitable crops on some. I can't go into detail about that.

The Chairman. What is the rainfall there?

Mr. Brosius. That I can not tell.

Mr. Raker. Now, with reference to a question you just answered a moment ago.

Mr. Merriam. The rainfall averages 9 inches, according to our records.

Mr. Brosius. The rainfall is very light. It requires irrigation on nearly all of that land.

Mr. Raker. Is there anyone here that is able to give the committee any information relative to whether or not this land is susceptible to irrigation?

Mr. Brosius. This particular land?

Mr. Raker. The land about which we are talking; I am talking about no other land.

Mr. Brosius. I am not; my impression is that it is not.

Mr. Raker. Now, in answer to a question of a moment ago, the question was that this land should be disposed of and that it would be to the advantage of the Indians; do you know whether or not any of this land that has been listed for the last 10 years has been sold?

Mr. Brosius. That I do not know.

Mr. Raker. Now, you stated that this land has increased in value from three to fourfold.

Mr. Brosius. Yes, sir; so I am advised.

Mr. Raker. Then, that being the case, the Indian has been benefited, if the land is sold properly, as he will get about four times as much now as he would have gotten 10 years ago, if that is true.

Mr. Brosius. I have reasons to believe that it is true; I have been so advised.

Mr. Raker. Do you know anything about the care of the Indians in the meantime, whether or not they have had sufficient money to provide for their necessary wants?

Mr. Brosius. I think they have. They have large funds under control of the department here.

Mr. Raker. Then, as a matter of fact, the sale of the lands now instead of 10 years ago, if your statement is borne out regarding the increase in value three or four fold, will benefit the Indians; the Indians have been benefited by the lands not having been sold?

Mr. Brosius. I would suppose so.

Mr. Raker. Well, if those statements are true, would not that be the ultimate deduction?

Mr. Brosius. That would be the logical conclusion.

Mr. Raker. What difference would it make whether you had any personal interest in coming here or whether you were as citizen appearing here with reference to this proposed legislation, or whether you were appearing on behalf of some Indian relief or protective association; would that make any difference?

Mr. Brosius. I do not quite understand.
Mr. Mays. I do not understand that this witness has any personal interest at all. He is only appearing here in the interests of the association.

Mr. Brosius. That is all.

Mr. Mays. That is what I understand in that respect.

Mr. Brosius. The Indian question is a national question which is of interest to us all.

Mr. Mays. You want to see proper legislation enacted?

Mr. Brosius. Yes, sir.

Mr. Loughran. I want to ask Mr. Brosius if it is a fact that his attention to this matter is devoted exclusively to the proposed ratification by the secretary of these alleged fraudulent sales and not to the first provision of the act which relates exclusively as to what shall be done hereafter with regard to this land remaining unsold; in other words, was it not your idea to oppose this act because of the provision therein designed to ratify and confirm the alleged fraudulent sales?

Mr. Brosius. That seems to be the purport of the bill.

Mr. Loughran. Now, then, are you here attempting to advise the committee as to what ought to be done with regard to the disposition of the lands remaining unsold, or are you here for the purpose of protesting against the provisions in the act designed to perpetuate the fraud which the Government is alleged to have permitted?

Mr. Brosius. I certainly claim the latter, because I make no claims as to knowledge regarding these particular lands.

Mr. Loughran. In your remarks you referred to a statement made here yesterday by Senator Smoot; you also referred to the title of the act; you realize that there are two prongs, or two branches, or two objectives of this legislation. Do you know that one is to provide for the disposal in the future of those lands remaining unsold and the other has reference to those purchases now the subject of the pending suits?

Mr. Brosius. Yes, sir; repeal of the former law.

Mr. Loughran. I want to get at whether you realize the dual character of this measure?

Mr. Brosius. I think I do.

Mr. Loughran. Now, as to the title of this act, to authorize the disposition of certain grazing land in the State of Utah and other purposes. Is the title of that act consistent with the purposes of the act as set out in line 9 of page 1 to line 13, inclusive, of page 2?

Mr. Raker. We don't want to get off the track or don't want to get anyone off the track. As I understood the witness he is not here to advise the committee as to what might be wise as to the acreage which would be proper to dispose of under the different clauses of the bill, but he is here representing the association—

The Chairman. Just a moment. We would like to be pretty liberal with you, Mr. Loughran, but we do not want to get into an argument. If you desire, you will have an opportunity to make a rebuttal argument. Of course we can't turn over the matter to you.

Mr. Taylor. Judge Raker asked with regard to the applicability of the 640-acre homestead law with regard to this barren land. That law provides that where the lands are considered as such a character that 640 acres are required to support a homesteader that they may
be taken as that kind of land, and where they are not so considered there is no discretion—

Mr. Raker. Required to support a family.

Mr. Taylor. Yes, sir; in other words if the land is worthless it comes under that provision and if the land is worth anything it will come under some other law, either under the 320 or the 160 acre law. So we should determine as to whether this is 640-acre stock land. If that is the character of this 180,000 acres of land, and there have been no men that would take chances, not any men who could make a living on 640 acres; if it is going to be of any use, made of any benefit to the Indians. I think it will have to be either sold or be turned into a forest reserve. Then the Government would have to pay the Indians for every acre put into a forest reserve. In that way the Indians will get something and the sheep men will get free land to graze or have land to pay so much per head for grazing; but that does not develop a country in any way.

We want to do the best for the development of the country and for the Indians themselves and everybody else and this land ought to be sold and the proceeds go into the Treasury and the land go on the tax rolls of the counties for the purpose of building schools, roads, and building up the country, and it would be best not to put it into a forest reserve if we could do anything else with it.

Mr. Brosius. As indicated, I am not posted on that phase of the case. My thought was largely to call the attention of the inadvisability of repealing the present law regarding this case.

Mr. Taylor. Do you know the details as to what are the facts concerning this land; we have had a lot of generalities, but I would like to get down to the facts; I want to know just what the situation is and I think the other members of the committee do, too.

Mr. Brosius. I do not know.

Mr. Barbour. Do you know who made the charges?

The Chairman. The Department of the Interior made the charges.

Mr. Brosius. My understanding is that the Department of the Interior sent out investigators and they found irregularities existed under this sale in 1905.

Mr. Barbour. They are pretty acute at that sometimes.

Mr. Brosius. And I understood from the reports of the Department of the Interior to the Department of Justice that under the statutes nothing could be done under the criminal statute, but that the statute did apply for six years with reference to the forfeiture of the purchase price of the lands.

The Chairman. The fraud charge sets out complete charges against one Jones, a copy of which was sent to me by the Attorney General's office.

Mr. Brosius. They are set out in every bill.

The Chairman. I have a copy of the complaint sent to me by the Attorney General.

Mr. Taylor. Ought we not to complete the case by putting into the record one of these?

Mr. Brosius. I think we should.

Mr. Taylor. When this matter comes up on the floor of the House, it should be in the record.
Mr. Brosius. Might I ask that a copy of that complaint be inserted in the record?

The Chairman. Without objection, that will go in.

(The paper referred to is printed in the record in full following testimony of Mr. Nebeker.)

Mr. Raker. What about the report upon which proceedings were instituted and the direction of the Secretary of the Interior that suit be brought?

Mr. Brosius. They might supplement that, I understand, by a later report. I think that it is very essential that that be incorporated.

The Chairman. I want to ask you, Mr. Brosius, about the last clause of the bill, which gives the Secretary of the Interior, in his discretion, authority to accept a reconveyance of the lands involved in such proceeding and to repay to the purchaser or his assigns the purchase money paid therefor, or to validate—

Mr. Brosius (interposing). And confirm the sales.

The Chairman. And confirm the sales. What are your views as to the merit of that provision?

Mr. Brosius. I don’t like that, as mentioned in my remarks. I do not think it is fair, if there has been, as has been charged, any roundabout work out there and wrongful work in the sales that have taken place. I think the sales ought to be canceled and you could pay back the money if you saw fit. I do not object to that.

The Chairman. That would be in violation of the law.

Mr. Brosius. No; you could provide in the law that that should be done. That is up to Congress. I think that could be done and then the land put up and sold again; but not vest in any executive of the department this power. They should be controlled under the present law.

The Chairman. You object to this becoming a law, on behalf of the Indians?

Mr. Brosius. I would object in favor of the public, also.

Mr. Elston. Do you know whether or not these purchasers have improved this land since that time?

Mr. Brosius. That I do not know.

Mr. Elston. And developed the country, thereby increasing its value.

Mr. Brosius. I suppose they have; but they should not profit by their own wrongs. That is one of the elementary principles of law. If it was wrong in the beginning, then they can’t complain if they suffer.

Mr. Elston. Maybe they didn’t know.

Mr. Raker. Your theory is that if as a matter of fact they did perpetrate a fraud upon the Government and knew they were perpetrating it at the time that you would return the money to them?

Mr. Brosius. Ordinarily, I would not think so; but these men have purchased this land and may make the claim that the Government officials are the ones that were in error.

Mr. Elston. It isn’t what they claim. I put the question that if a fraud was committed and they knew at the time that they were committing a fraud in obtaining this Government land by reason of a fraud; do you think that Congress would be justified in passing
Mr. Brosius. I do not think that it would be good practice; but the statute now provides that if the money is to be returned they can come to Congress, thereby intimating that Congress might be called upon to return money but not return the land. The land must come back to the Government. That is an act of Congress that if, in the wisdom of Congress, Congress sees fit to do so that might be done. That is in the homestead law.

Mr. Barbour. Have these original purchasers sold any of these lands?

Mr. Brosius. That I do not know. They are represented here.

Mr. Barbour. Have patents been issued?

Mr. Mays. They have paid taxes for several years on the land.

Mr. Brosius. Of course, nobody could actually purchase more than 640 acres—

Mr. Barbour. Was there an understanding or an agreement made or entered into prior to the taking up of the land?

Mr. Brosius. That is charged by the Department of Justice. That ought to be a matter of record with this committee—the charges in this case—and I hope it will be.

Mr. Barbour. Is there any reason, Mr. Chairman, for urging this bill now to clear up these titles while litigation is pending? That would stop the litigation.

The Chairman. Well, I think that litigation is pending but isn't progressing.

Mr. Barbour. If this legislation is enacted, it will dispose of this litigation.

Mr. Loughran. In order to get a better understanding of your statements made heretofore as to what your interests are and how you are concerned as a special agent—-

The Chairman. We are not going to get into an argument with you. Mr. Loughran—

Mr. Loughran (interposing). I am asking you [addressing the witness] to make a statement—-

The Chairman. Just a moment; you may cease.

STATEMENT BY MR. R. T. BONNIN.

The Chairman. Just state to the reporter your name, those whom you represent, and your affiliations.

Mr. Bonnin. R. T. Bonnin. I appear here because I am interested more from the standpoint of the Indian getting what is due him; and I want to state that I formerly lived in the Uintah Basin. I was there for some 14 years and believe that I understand the character of this land that is in question. And, in connection with
Grazing Lands in Utah.

That, it appears to me that this land, since it has been sold, is now held, as before, by some large, big corporations or individuals; by the big stockmen who have this range. I believe that if the facts were brought out it would be found that they have bought and acquired this land as stated by Senator Smoot yesterday; they bought up the land wherever there was any water, passed up the land that was back of it, and consequently they control the range. The rest of the range is of such a character that it cannot be watered easily and consequently this 180,000 acres is standing idle and don't move. It is not desirable land. I do not believe that it will sell readily because of that fact; there is no water on it. And, while some men say that if it were offered for sale again in 640-acre tracts that it might sell more readily. I believe that they failed to state in that connection that that would work out satisfactorily, provided these other titles were canceled and then certain water privileges were released that they could get hold of. I think that so far as—

The Chairman (interposing). What do you mean by water privileges, Mr. Bonnin?

Mr. Bonnin. By that I mean water holes that are now held by them—by the men who purchased the land in accordance with what Mr. Smoot said yesterday.

The Chairman. Are the water holes on the acquired land?

Mr. Bonnin. That is my opinion.

The Chairman. Do you know anything about that?

Mr. Bonnin. Well, I do know that along the streams where there is water and where the land borders on a stream those pieces of land have been taken up. Aside from that there are a few isolated sections out among the homesteaders that might not be taken up, being small pieces of 80 acres or 160 acres that would be of such a character that it is not desirable.

Mr. Mays. No doubt you mean by that streams that are dry most of the year.

Mr. Bonnin. Not necessarily. I think that there are streams there that have water in them the entire year.

Mr. Vaile. These lands have been subject to homestead and were subject to homestead for about five years before these sales took place and about 300,000 acres of land was homesteaded, and probably the land along the streams were taken up by homesteaders and these large owners acquired them from—bought them from—the homesteaders.

Mr. Bonnin. No; I do not think so.

Mr. Vaile. If that is true, of course, there would be no effect in setting aside these sales.

Mr. Bonnin. I think the facts will bear me out. From the Duchesne River to the west there has not been much land homesteaded; from the Duchesne River to the east, in the eastern part, much of this land has been homesteaded. Along these little streams there may be a few homesteads.

Mr. Mays. In the State of Utah one does not acquire water rights because a stream passes through his land. They have to acquire the water rights from the State Government.

Mr. Bonnin. I understand that quite clearly; and I do not mean that the man who owns this land controls the stream necessarily and
controls the water holes, still he can prevent the little stock owner from trespassing on his land and getting to water.

Mr. MAYS. Prevent him from getting to a public stream?

Mr. BONNIN. Yes; they can not prevent a man from going himself and getting a drink, but I think the State law is such that he can not drive his herd over the land.

Mr. MAYS. Are you acquainted with this land?

Mr. BONNIN. I have been over the land myself.

Mr. MAYS. Is it subject to irrigation?

Mr. BONNIN. No; with the exception of a small part of it.

Mr. RAKER. I wonder if we can't have a map.

Mr. BONNIN. I think the Land Office can furnish a map. I did have a map.

Mr. WHITE. Is this land of such a character that it could be turned into a forest reserve? What is the character of the land remaining unsold; is it more or less isolated, or is it near a forest reserve where the land can be available for the use of the Government?

Mr. BONNIN. There might be certain tracts—

Mr. WHITE. But, generally, it is so isolated, isn't it; or does it lay consecutively so that it can be used as a forest reserve?

Mr. BONNIN. I do not believe it could be termed forest land, anyway.

Mr. WHITE. Are there any forests on it?

Mr. BONNIN. Nothing but sage brush.

Mr. WHITE. Now, with regard to this land that has not been taken up by homesteading or by purchase, who is getting the benefit of this land at this time; that is, of the range? Is it the property owners, stockmen, owning these lands adjacent to this land, or does the Indian get anything from it?

Mr. BONNIN. I think in the larger tracts they benefit the big stockmen; that the big stockmen are the ones that are benefited from this land.

Mr. WHITE. Do they pay anything for the use of this land?

Mr. BONNIN. No; it is public domain.

Mr. WHITE. It is not public domain in the ordinary sense. It is ceded land.

Mr. BONNIN. It has been always regarded as public domain.

Mr. WHITE. Is anybody leasing this land?

Mr. BONNIN. I think in connection with that Mr. Meritt mentioned some yesterday, but I lived there for 14 years and during my time I do not recall any leases. They did lease parts of the Indian lands which are separate tracts from this public domain that I am talking about now.

The CHAIRMAN. When were you there last?

Mr. BONNIN. I left there in February, 1916.

The CHAIRMAN. February, 1916; do you know these particular tracts that are in question?

Mr. BONNIN. No; I can't pick out the particular pieces of land. I know in a general way.

The CHAIRMAN. You know the 180,000 acres?

Mr. BONNIN. I know that it is isolated and that there are no purchasers.
The Chairman. What is the nature of this land?
Mr. Bonnin. It is spotted. Some of it is bench land. Then again there are valleys.

The Chairman. Now, what is your opinion as to the value of this remaining land for grazing or agricultural purposes?
Mr. Bonnin. Well, it wouldn't run uniform. I think generally the Government has gotten a fair price for the land. I believe that a dollar and a quarter an acre would probably have covered it all the way through. I do know of small tracts that sold as low as 80 cents an acre, and then it was brought under an irrigation system which made the land much more valuable.

The Chairman. Now, how many head of stock could you run on an average 640-acre tract of land?
Mr. Bonnin. Well, in the raw state it takes a large acreage to run any stock on.

The Chairman. How many head of sheep could be run on 640 acres?
Mr. Bonnin. I do not know just how many.

The Chairman. Well, just approximately?
Mr. Bonnin. Well, I believe I would say on 640 acres a man might if he had a farm——

Mr. Summers (interposing). How many head could he run year after year?

Mr. Bonnin. If you based it on this isolated land, I do not believe a man would want to live on it or could make a farm. I think in connection with what Mr. Grosius said, a man might own a farm on a stream, where he had taken up 160 acres, and in 1905 or soon thereafter, in connection with his farm he might like to have some place where he could run his sheep, but I do not believe that would work out.

The Chairman. What is a small stockman or cattleman; how many sheep do you call a small flock?

Mr. Bonnin. I would say 100 head.

The Chairman. Well, are there any men running 100 head in that vicinity?

Mr. Bonnin. Well, I will say yes.

The Chairman. How many men are running herds as low as 100 head?

Mr. Bonnin. I believe those numbers could be gotten exactly from the Indian Bureau.

The Chairman. Well, how many do you have in mind?

Mr. Bonnin. Well, I would say 500, just as a guess.

The Chairman. Five hundred separate individuals running 100 head?

Mr. Bonnin. One hundred head or more.

The Chairman. What do you mean by “more”?

Mr. Bonnin. Under 300 head.

The Chairman. Within what limits?

Mr. Bonnin. One hundred to 300 head. These men also have farms.

The Chairman. Those are farmers who have a few sheep, but they are not men solely engaged in the sheep business?
Mr. Bonnin. The sheep business, of course, is a business itself and these lands are being controlled by the big sheepmen, who have obtained the desirable land. I have known personally—

The Chairman (interposing). The case you refer to is not a case where people make a living principally by raising sheep?

Mr. Bonnin. No, sir.

The Chairman. But they make their living on the farm and sheep are a side line?

Mr. Bonnin. Exactly.

The Chairman. How do these men operate who have 100 sheep?

Mr. Bonnin. They graze their sheep on the forest reserve during the summer. In the springtime this lower land is used, which brings in a lot of land. It is used mostly in the spring and fall and during the winter.

The Chairman. During the spring and fall.

Mr. Bonnin. During the spring, fall, and winter time.

The Chairman. These lands in question are used, but they are not used during the entire grazing season?

Mr. Bonnin. No, sir.

The Chairman. They are used during the spring for grazing?

Mr. Bonnin. Yes, sir.

The Chairman. Then the sheep are taken into the forest reserve and brought out in the fall?

Mr. Bonnin. Brought out in the fall.

The Chairman. Then during the fall and winter they range over these lands?

Mr. Bonnin. Over these lands; yes, sir.

The Chairman. That is the way they operate?

Mr. Bonnin. That is the plan of the sheepmen.

The Chairman. That is the way the men operate who only have 100 sheep.

Mr. Bonnin. Not the way the men with only 100 head of sheep operate. There is a difference. There are a number of them—I was speaking of the 500 men who came in and leased Indian lands, and in connection with their lease they had a permit to run so many stock on the Indian grazing lands, and in that way they club together and hire a herder.

Mr. Elston. The question in my mind is that there is only 60,000 acres of this land out of a much larger area involved in these particular claims. What are your views as to the best manner of solving this problem?

Mr. Bonnin. My personal view is this: If possible have the Government get back the title to this land—

Mr. Elston (interposing). You mean all of this land?

Mr. Bonnin. The land in dispute.

Mr. Elston. The 60,000 acres?

Mr. Bonnin. The 60,000 acres. It might be more readily divided into parts which would permit water on each range and allow it to be sold in that way.

Mr. Elston. You say in the absence of any particular knowledge as to how much water there is on the 60,000 acres—you don't know how much water there is?

Mr. Bonnin. I have not taken any measure.
Mr. Elston. Or to what degree this 60,000 acres controls?
Mr. Bonnin. That could be ascertained.
Mr. Mays. That would involve a larger acreage than 640?
Mr. Bonnin. Yes, sir.
Mr. Mays. In other words, you would vest the title to these lands in the Government and then sell them out just as they were sold before in larger tracts than 640 acres?
Mr. Bonnin. I believe it should be divided in parcels with water on them and then this land be sold, thereby disposing of this 180,000 acres of land, or whatever the exact amount may be, and thus get the money for the Indians by disposing of that 180,000 acres which otherwise may not be disposed of.

The Chairman. In that connection, would it be fair to take the land away from these gentlemen who have purchased it from the Government or the Indians and who have paid their money for this land and then sell the land again in larger tracts than 640 acres to sheepmen at the highest possible prices for the land?

Mr. Bonnin. I say that it should be determined whether these men have perpetrated a fraud and if they have that the land should be returned to the United States. In that event I think that the best disposition could be made of the land as outlined.

Mr. Mays. You would do legally just what these men have done fraudulently, as you claim?

Mr. Bonnin. No; I do not believe I would do that at all.

Mr. Mays. In other words, sell the land in larger tracts than 640 acres.

Mr. Bonnin. I would handle this so as to be best for all concerned.

Mr. Mays. Don't you know as a matter of fact that it is practically impossible for a family to sustain itself if it limits itself to 640 acres?

Mr. Bonnin. Now, in that connection I would like to say that I was out there during the time of the opening up of the country to homesteaders generally, and it was believed that it was proposed to sell 640 acres, and the people would take up a homestead and then go out and buy 640 acres of land for grazing purposes.

Mr. Mays. There is nothing to prevent them from doing that.

Mr. Bonnin. No; but they didn't do it; they were not able to do it under the conditions.

Mr. Summers. They were not able to take advantage of the opportunity to increase their holdings by 640 acres. Would they be in any better condition if it were opened up again, to take advantage of it?

Mr. Bonnin. Financially, of course, they are in much better condition than they were then.

Mr. Summers. The geographical situation has not changed?

Mr. Bonnin. No; the geographical situation hasn't changed.

Mr. Summers. Well, then, it would be practically impossible for them to take advantage of the situation.

Mr. Bonnin. Only if a man had increased his financial standing. Some of those men who were not able at the time might be able to bid at this time.

Mr. Summers. There would still be the geographical difficulties.

Mr. Bonnin. No; it might be redivided.
Mr. Summers. Now, Mr. Bonnin, if you have testified here, I do not know it, but the discussion shows that these men hold 60,000 acres of this land—a very large area—and it is held in such a manner as to prevent anybody from having access to water, and that the balance of this land—180,000 acres—can not be used with the 60,000 acres remaining as it is. If it is allowed to go back to the Government and is sold over again, do you see any great wrong in it being purchased by these gentlemen, by this bill permitting a reappraisal of the land, and the Secretary of the Interior placing a value upon it? Now, that is only a supposition. It is stated that the holding of this 60,000 acres of land prevents the 180,000 acres having water available, or that the 60,000 acres monopolizes all of the water. Now, if that is true, there is a question in my mind as to whether there would be any great wrong by a provision in this bill making a reappraisal.

Mr. Bonnin. In that connection I would like to ask if it would be wise to leave it to the discretion of the Secretary of the Interior to decide as to whether the present state would remain or whether it would be changed. If the present state should remain and these sales should be confirmed, it would be in that connection in the face of the evidence given by some of the witnesses, it would appear to me that it confers a favor on a few people.

Mr. Elston. Well, we are not doing that in this bill; we are taking the whole thing up on a new theory and permitting the Secretary to review this whole business, to reinvestigate, and to make reappraisals and to do justice. We assume that justice will be done. There is no reason to suppose otherwise than that the Secretary of the Interior will accord justice and will make the proper investigations and will do justice. I think that is a proper assumption.

Mr. Bonnin. It is.

Mr. Elston. I do not think there is any question about that. Now, assuming that the bill will do justice and under this act he makes reappraisals of the property and that he will have the good of the public in mind, as I assume he will, and I am sure he will, do you see any great harm in the bill?

Mr. Bonnin. Well, on that assumption, where things are put in the hands of the Secretary of the Interior to handle, it is naturally presumed that he will take care of the Indians' interest, which he has always done in the past——

Mr. Elston. Now, if he does that, if he does justice, under this bill, and these men submit themselves to him by bringing it up as a new deal, assuming that he will do justice under the discretion vested in him by this act, and makes a readjustment of this thing under the light of present conditions and values, do you feel that he can do it properly and administer justice?

Mr. Bonnin. Well, I do not know that it would be handled properly in the first place. Evidently the Secretary's office made some mistake, or this could not have come up this time.

Mr. Elston. Well, I am putting in the assumption that there might have been a mistake, or a mistake was made, and this bill will open up the whole matter; and assuming that the Secretary will advise that there has been a mistake made, if any has been made, and that he wants to correct it, if any were made, does this bill provide a good method for readjusting the whole matter?
Mr. Bonnin. Of course, it probably is not entirely clear to my mind, but it would seem rather strange that the matter should be taken out of the hands of the court provided in the former bill and now put in the hands of the Secretary, in the hands of one man. I feel that that is not handling the matter in a business way. We usually prefer to have more than one man in position to confer with each other before taking action on things of this nature. I do not think it ought to be left to one man. Influence might be brought to bear that would result in another mistake. Leave it to the courts. They are so organized as to be able to better handle matters of this kind.

Mr. Taylor. You know that the Bureau of Indian Affairs, in the Interior Department, looks after the matters pertaining to the Indians?

Mr. Bonnin. To a certain extent, but I will say this in connection—

Mr. Taylor (interposing). Whatever has been done by the Secretary of the Interior has been done after conferring with the Bureau of Indian Affairs.

Mr. Bonnin. Well, of course, that is just like any organization; affairs are usually put down upon a minor head in the organization.

Mr. Taylor. Well, of course, the Secretary can't do all things.

Mr. Bonnin. I realize that and consequently feel that it should not be put up to him.

Mr. Taylor. Is it your idea now, in the light of subsequent events during the last 15 years' observation, to auction or sell the land wholesale, or in bulk—take the whole 180,000 acres of worthless land around the water holes and dispose of it all at once wholesale, in a wholesale way, rather than in a retail manner, as has been done in the past?

Mr. Bonnin. I feel so; yes, sir.

Mr. Taylor. You think that the mistake was made originally and that if the land had been allotted so that there would have been water available into suitable sheep ranches that it would have been sold to good advantage?

Mr. Bonnin. To good advantage.

Mr. Taylor. And you would now take away from these gentlemen this property, which they have been improving for 15 years, and allot the whole business all over again and that you feel that you would get a lot more money for the Indians?

Mr. Bonnin. That is the idea.

Mr. Taylor. Is there any fair way to do that, do you think? What is the modus operandi; what do you think that Congress ought to do, since these people have paid for these lands and who, we must assume, are good citizens?

Mr. Bonnin. They, I believe, are.

Mr. Taylor. What do you think would be just to them and also to the Indians and the Government of the United States?

Mr. Bonnin. I do not want to appear as desiring to beat anybody out of anything; but at the same time I feel that the Indian Bureau should look out for the interests of the Indians, and I know that matters of this kind are always given consideration and attention by them. The Indians themselves do not realize these things until
after it is too late, undoubtedly. I doubt whether there are any Indians in Utah that know anything about the pending bill now.

Mr. White. How many Ute Indians are out there?

Mr. Bonnin. About 1,200.

Mr. Taylor. Do you think it is to the advantage of the Government of the United States and to the taxpayers of this country that this committee should adopt the policy of putting a lot of absolutely worthless land into the Forest Reserves and paying the Indians for it?

Mr. Bonnin. I don't think that would be the way.

Mr. Taylor. They have already put a lot of this in Colorado into Indian Reserves and are paying them interest from it and the people of the United States are footing the bill.

Mr. Bonnin. Well, perhaps that is true.

Mr. Mayes. Do you know the lawyers involved in this case?

Mr. Bonnin. I don't know. I know Mr. Murdock, Mr. James M. Murdock.

Mr. Mayes. Do you know them as good citizens or bad citizens?

Mr. Bonnin. I have known them always as gentlemen, good men.

Mr. Mayes. Men trying to build up the country?

Mr. Bonnin. Men of character.

Mr. Welling. Were you ever in Utah?

Mr. Bonnin. I was there.

Mr. Welling. I recall you being in my office, as an officer from Utah. I believe you stated to me that you were of Indian blood yourself?

Mr. Bonnin. Yes, sir.

Mr. Welling. Are you a member of the Ute tribe of Indians?

Mr. Bonnin. I am not.

Mr. Welling. You were not entitled to an allotment of land out there in the Indian Reservation?

Mr. Bonnin. I was not.

Mr. Welling. Your work out there was in the nature of employment on the reservation, was it not?

Mr. Bonnin. Yes, sir.

Mr. Welling. In contact with the whole situation, and being particularly interested in the Indians there, your whole purpose was to conserve his rights and to see that they were conserved. I want to know what your attitude, the attitude of the Indians were toward the white men who were settling around there at Verne and at Roosevelt, that you know about?

Mr. Bonnin. I think they were on very intimate terms. I have known different families of both whites and Indians to express themselves in warmest terms toward each other.

Mr. Welling. Was that in that locality?

Mr. Bonnin. Yes, sir.

Mr. Welling. And you expect that none of these men would want to openly and wantonly rob these Indians of their rights?

Mr. Bonnin. Not knowingly; sometimes we might not knowingly do that. But, out there at one time, they had water rights, all of the white people put their water rights together and tried to beat them in the courts to get priority of the water rights. In that they were friendly, but if they could beat them to the water they were going to do it.
Mr. WELLING. As a matter of fact, the State of Utah gave the Ute Indians water rights there, and when they hadn't made beneficial use of it they extended the time and extended it again.

Mr. BONNIN. Yes, sir. In addition to that I take a peculiar position than those of you who are of the States, because I contend that at the time of the opening that we all admitted, all within those boundaries belonged to the Indians. The water was there. At the time it was opened the Indians asked that they be protected in their water rights, to all of their allotment. They only got 40 acres and 80 acres to the head of a family. They asked for 160 acres. In that they asked that their water be protected. It was not done. They had to go into the State courts to get their water rights. For that reason I have always taken a stand for the Indians. I felt the United States Government didn't do what it should for the Indians. I believe the men of Utah were looking out for the homesteader.

Mr. WELLING. Only last winter the Legislature of Utah made an additional extension of five years to those Indians for their water rights, very much to the chagrin of those white men who would like to have the water.

Mr. BONNIN. I am very glad to hear it.

Mr. WELLING. There is a perfectly friendly feeling between the Indians on the Ute Reservation and these white men settling around there.

Mr. BONNIN. I don't dispute that at all.

Mr. RAKER. What is the number of settlers on the reservation? You say there are between six and seven hundred settlers on the reservation?

Mr. BONNIN. I don't know how many.

Mr. RAKER. Well, 500?

Mr. BONNIN. I don't know. I think that every 160-acre tract that could be taken at all has been taken up.

Mr. RAKER. Are there some little towns around there?

Mr. BONNIN. Quite nice thriving towns.

Mr. RAKER. Any railroads?

Mr. BONNIN. No railroads.

Mr. RAKER. How far is the nearest railroad?

Mr. BONNIN. Eighty miles.

Mr. RAKER. What is the nature of these products raised on this Indian reservation?

Mr. BONNIN. General farming; they raise hay, alfalfa, wheat, oats, gardens like they would pretty near any where.

Mr. RAKER. Orchards?

Mr. BONNIN. Orchards.

Mr. RAKER. Are the people prospering pretty well who have taken up these lands under the homestead law?

Mr. BONNIN. Apparently make a very good living.

Mr. RAKER. On 160 acres?

Mr. BONNIN. Yes, sir.

Mr. RAKER. The land is advancing in value every few years?

Mr. BONNIN. I haven't been out there but I get that information.

Mr. RAKER. Well up to 1916?

Mr. BONNIN. Yes, sir.
Mr. Raker. What was your business while you were there?

Mr. Bonnin. I was employed in the capacity of property clerk, for the property.

Mr. Raker. You became familiar with the land in riding over it, being over it in different ways at different times?

Mr. Bonnin. Yes, sir.

Mr. Raker. Are there any places where the waters of the streams could be dammed up, and any of this land that has been deeded as well as the 180,000 acres, irrigated?

Mr. Bonnin. I couldn't answer that as to any particular piece of land.

Mr. Raker. Taking the tracts of land not under cultivation, under farms, are there any areas where the water could be stored and irrigated?

Mr. Bonnin. That would be hard for me to say. There have been sites picked out by the Geological Survey.

Mr. Raker. Are there waters for that purpose?

Mr. Bonnin. There are always flood waters we claim that run to waste.

Mr. Raker. What is the character of this land? Is it sagebrush land?

Mr. Bonnin. Most of it.

Mr. Raker. Large sagebrush?

Mr. Bonnin. Large, black sagebrush.

Mr. Raker. Is that good land where you can get water on it?

Mr. Bonnin. If you can get water on it it is all fine, with the exception, of course, where there are breaks.

Mr. Raker. Of course, there are breaks and some points where there is juniper on it, and even that juniper land, where the juniper is taken off, it is good land, but rough?

Mr. Bonnin. Yes.

Mr. Raker. Is that general tract of land pretty well broken up?

Mr. Bonnin. I should say it is.

Mr. Welling. You don't mean to give the judge the opinion that it is susceptible of being improved?

Mr. Bonnin. No; I said this a while ago that all the lands east of the Duchesne River had been taken up for homestead, some of them haven't been developed for lack of water, but going west of the Duchesne it becomes rougher till we get to the foothills; and while we might find some tracts of 500 to 1,000 acres that are pretty good, most of it is pretty rough.

Mr. Summers. These lands you speak of in the west—

Mr. Bonnin. Southwest.

Mr. Summers (continuing). Are rough?

Mr. Bonnin. Yes, sir.

Mr. Summers. Is the land which is involved in this 60,000, is any of that susceptible of irrigation?

Mr. Bonnin. I don't know where that is.

Mr. Raker. Well, take the other lands, the public lands, 180,000 acres, does that produce native grasses?

Mr. Bonnin. There isn't any native grass out there to any extent till you get up into the mountains. In the sagebrush, the grass is very scant.
The Chairman. What do you think is the average value of the land per acre?
Mr. Bonnin. $1.25 an acre, I think, is a pretty fair price.

The Chairman. That is the present market price at this higher valuation of land that exists to-day?
Mr. Bonnin. I didn’t quite understand that.

The Chairman. That is the present value of the land you are referring to?
Mr. Bonnin. Yes, sir; at the time I was there that is about the price I would average it at if I had to make an appraisement.

The Chairman. What is it worth to-day?
Mr. Bonnin. If lands have doubled or trebled in value in that basin, they ought to have gone up accordingly.

The Chairman. Do you know whether or not they have doubled or trebled in value?
Mr. Bonnin. I don’t know, I rather doubt that they have doubled.

Mr. Raker. You spoke in your statement about those lands being obtained through some improprieties, call it fraud, actual or constructive, or whatever it was. Just what in your mind, as you understood it, did it consist of?
Mr. Bonnin. I haven’t heard the charge or read enough of it to know, but from just what I have heard it was bought by individuals and later on was sold and went under the control of one man, one or possibly more.

Mr. Barbour. Were the patents issued to this land?
Mr. Bonnin. I don’t know whether they were or not.

Mr. Barbour. I mean after the sale.
Mr. Bonnin. Undoubtedly they were. Whether there was any understanding or not previous to the purchase I could not say. I wasn’t present at any of these sales.

Mr. Raker. Do you know anything about the method of conducting these sales at the time they were actually conducted?
Mr. Bonnin. The sales were conducted away from the reservation on the railroad and I didn’t go over there. I didn’t know anything about it.

Mr. Raker. They weren’t conducted on the reservation, but were conducted some miles away?
Mr. Bonnin. Some miles to the railroad.

Mr. Raker. Have you heard the matter discussed as to how the work was handled?
Mr. Bonnin. No, sir; I have not.

Mr. Raker. Have you heard it discussed since?
Mr. Bonnin. No, sir; not until I came to this meeting.

Mr. Raker. Is there any feeling on the part of the homesteaders or settlers that are there on the ground that are there taking their homesteads and are living there against these men that purchased land at the public sale?
Mr. Bonnin. That I don’t know, I never heard of any myself.

Mr. Taylor. There was no complaint made at the time about any collusion of these sheep men having their herders buy 640 acres or something of that kind?
Mr. Bonnin. I didn’t hear any of it.
Mr. Taylor. Nobody made any complaint at that time until our friend here had this correspondence and worked up this propaganda he referred to yesterday?

Mr. Bonnin. No, sir; incidentally I have been interested in all legislation affecting Indians and I have at least read the bills to see whether they were going to affect the Indians to their discredit or not, and naturally when Mr. Larkin mentioned it to Mr. Broaches, I immediately—

Mr. Taylor (interposing). You have been out there a number of years and you never heard anybody complain about it and these people went in here and improved their land?

Mr. Bonnin. Of course, while it was handled under the Interior Department, the Indian agent down there or superintendent had nothing to do with it. Our office had nothing to do with it. I doubt very much if our office in Washington had anything to do with it. It seems to me it was handled by another branch of the Government.

Mr. Taylor. It was generally talked of, wasn't it?

Mr. Bonnin. Well, I don't know, I imagine they did.

Mr. Taylor. It wasn't secret, was it?

Mr. Bonnin. No, sir; it was published in the papers. In the sales, they had three town lot sales, they were conducted on the town lots.

Mr. Mays. Wasn't there generally a feeling of suspicion against the people that invested their money in this land?

Mr. Bonnin. I never happened to hear of it. I believe in that connection the men interested in that land were more men around Heber and in that section.

Mr. Welling. You think in that connection if there had been you would have heard about it.

Mr. Bonnin. I might have and might not.

Mr. Welling. You didn't hear Mr. Neal say anything about it?

Mr. Bonnin. I don't know that it was ever brought to his attention.

Mr. Taylor. Have you got any concrete proposition that you thing is fair? What is your best judgment about this thing candidly as between these citizens and in the light of what you know about it, the Indians and the Government of the United States, whether Congress ought to do anything or what ought to be the outcome? What is your judgment as to what we ought to do?

Mr. Bonnin. Judging from what I have heard, my understanding is that if this thing should go to the courts these men would not suffer any criminal prosecution or anything of that kind.

Mr. Taylor. You can't send them to jail?

Mr. Bonnin. They will not suffer in that respect, and if any fraud should be found and that money is paid in, I believe they will have used all these lands all these years, their money ought to be paid in.

Mr. Taylor. You think the committee ought to suspend action on these bills until the courts try these cases?

Mr. Bonnin. Either that or have the Department of Justice investigate these things and bring them into the courts. If these men are going to suffer from it then they can appeal to Congress. That
may be the very reason they are appealing to you. I don't know.

Mr. Pope, Mr. Murdock, the men here, I regard as personal friends of mine. I wouldn't like to see them suffer. At the same time if they did anything wrong I couldn't help them suffering from it any more than they could help me.

Mr. Taylor. Don't you assume from the provisions of this bill the Bureau of Indian Affairs of the Interior Department could be empowered and would do what is right to adjust this whole matter? In other words, fix it up what was fair to the people of the United States and the Indians and have it closed up in some systematic way rather than to have the litigation prolonged?

Mr. Bonnin. Along that line it would be all right in my mind as far as the Indians are concerned if they could bring it about to take possession of this, the balance of the 180,000 or whatever it is, so that it wouldn't be choked to the extent that it would be worthless land.

Mr. Taylor. I was just trying to get your viewpoint as to what you candidly on behalf of the Indians think should be done.

Mr. Bonnin. I think if the matter was carried out in my way as far as the Indian side of it is concerned, do as I said before, give the title back in the name of the Government and divide it off into zones and offer it for sale. I imagine these same men would be the ones to buy it.

Mr. Taylor. The purpose of this suit is to get the title back into the Government?

Mr. Bonnin. That is my understanding.

Mr. Barbour. Mr. Chairman, what is the object of having this proposed suit pending now? The mere fact that fraud is charged by the Department of Justice agents doesn't amount to anything with me, because I have had considerable experience with those charges. But I don't understand why this bill should be rushed in here now after 14 or 15 years while there is a suit filed.

The Chairman. That is not a question for the chairman to answer. Representatives of the Interior Department are here.

Mr. Barbour. I am not addressing this to you for you to answer it but for somebody to answer it; I don't care whether you answer it or somebody else answers it.

The Chairman. Their representatives are here.

I received a telegram just now from William Alexander Brown which I shall read to the committee. [Reading:]

PHILADELPHIA, PA., January 6, 1920.

Hon N. J. Sinnott,
Chairman Public Lands Committee,
House of Representatives, Washington, D. C.

Having been informed by Mr. M. K. Sniffen, secretary Indian Rights Association, that during the hearing yesterday on Senate bill 3016 a member of your committee inquired whether my letter on said bill had been prepared for me to sign. I wire to say that it was written at my own direction. Being confined to my home by a severe cold Mr. Sniffen called on Saturday morning, 3d instant, and I dictated the letter to him. He afterward typed it and I signed it. All this was done without my knowing even of the existence of Patrick H. Loughlan, Esq., much less of his views or arguments on this bill. I have an abundant supply of original matter on this bill that it would give me the utmost satisfaction to lay before your committee if I were not providentially hindered from being present.

WM. ALEXANDER BROWN.
Mr. Raker. Where is he located?
The Chairman. Philadelphia.
Is there anyone else here who wishes to be heard? If not we will go to something else.

Mr. Larkin. May I submit the other statements, the petitions from the counties of Duchesne and Wasatch, in Utah, and ask that they may go into the record.

The Chairman. Yes, sir.

(The papers referred to follow:)

Tabiona, Utah, December 27, 1919.

Congressmen James H. Mays and M. H. Welling

House of Representatives, Washington, D. C.

Gentlemen: We, the undersigned, citizens of the State of Utah and the county of Duchesne, respectfully protest against the passage of Senate bill No. 3016. Our reasons for said protest are based upon the injustice that would be done the bona fide farmers and homesteaders of this community by allowing these fraudulent land sales to be ratified.

Jas. H. Moore, Tabiona, principal of school; W. W. Wadby, Tabiona, farmer; Jacob Gines, Tabiona, farmer; George Casper, Tabiona, farmer; W. H. Williams, Tabiona, farmer; M. R. Michie, Tabiona, farmer; O. T. Hicken, Tabiona, stock-raiser farmer; John L. Johnson, Tabiona, farmer; Nephi Moon, Hanna, farmer; Abram Gines, Tabiona, farmer; Foster Rhoades, Hanna, farmer; Oscar T. White; Owen Wright; Otto Kofford; William Gines; Jesse H. Le Fevre, farmer; John H. Jones, Tabiona, farmer; Rawlins Thacker, farmer; Wm. Jones, farming; J. C. Crandall; Claude Waggstaff; Alma W. Waggstaff; Lorenzo W. Clark; Chas. E. Webb; T. A. White; Wm. Thompson; W. J. Lougy, farmer; Ralph Hardy; Bert White, farmer; R. F. Crandall, Tabiona, sheep owner; Oscar Y. Giles, farmer; Vitor Borbieri; H. J. Jones, farmer; F. E. Worthen, Tabiona, farming; R. W. Maxwell; H. A. Hardy; Mark Hayden; Howard Jones; Lambert Michie; Carl Gines, farmer; Laurence Maxwell; Wm. Sizemore; Arthur W. Maxwell; Ervan Clegg; J. E. Hicken.

Petition.

Congressman James H. Mays

House of Representatives, Washington, D. C.

Sir: We, the undersigned, respectfully protest against any legislation being passed by Congress calculated to ratify the unlawful land sales and purchases made at Provo, Utah, and at Duchesne, Utah. We are informed that there is a bill now pending before Congress known as Senate bill 3016, which is meant to ratify the said sales. We protest against the passage of such bill. We feel that it would be unfair to the farmers and homesteaders of the community to pass such a bill.

To the Hon. JAMES H. MAYS and M. H. WELLING,

House of Representatives, Washington, D. C.:

GENTLEMEN: We, the undersigned, being citizens of Wasatch County, State of Utah, having been informed there is a bill now pending before Congress known as Senate bill 3016, which proposes to ratify the unlawful land sales made at Provo, Utah, and Duchesne, Utah; we feel that such a bill would be extremely unjust to the farmers and homesteaders of this community.

We recommend that you use your influence to kill this bill.


PETITION.

To the Hon. JAMES H. MAYS and M. H. WELLING, House of Representatives, Washington, D. C.

GENTLEMEN: We, the undersigned, being citizens of Wasatch County, State of Utah, having been informed that there is a bill now pending before Congress known as Senate 3016, which proposes to ratify the unlawful land sales made at Provo, Utah, and at Duchesne, Utah, we feel that the courts should be allowed to handle these matters, and that injustice would be done the farmers and homesteaders by the passage of such a bill.

We respectfully ask you to use your influence to kill this bill.

M. J. Casper, Charleston, Utah; J. H. Price, Charleston, Utah; H. F. Price, Charleston, Utah; Jos. B. Turner, Charleston, Utah; John W. Simmons, Charleston, Utah; S. A. Simmons, Charleston, Utah; Archie Boren, Charleston, Utah; Geo. B. Wright; Robert Daybel; John Wright, Charleston, Utah; Louis Wright, Charleston, Utah; A. E. McAfee, Duchesne, Utah; M. S. McAfee, Charleston, Utah; D. V. McAfee; James Ritchie, Charleston, Utah; Wm. N. Casper, Charleston, Utah; J. Parley Edwards, Charleston, Utah; Marion Elliott, Charleston, Utah; J. S. Brown, Charleston, Utah; Wm. Winterton, Charleston, Utah; Edward Winterton, Charleston, Utah; Geo. W. Simmons; Elisha Webster; Harlley Carlile, Charleston, Utah; Wm. H. Winterton; W. D. Wright, Charleston, Utah.

STATEMENT OF HON. FRANK K. NEBEKER, ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES, WASHINGTON, D. C.

Mr. NEBEKER. I am here at your request, Mr. Chairman. I am not here to be sponsor for the bill or opposing it. I would like to remain as long as I can be of assistance to you or the committee. If not, I have some very important work I can do and I would like to go back to the office if I can not be of assistance.

The CHAIRMAN. I wrote the Attorney General some time ago asking if he approved or disapproved of the bill, and he did not make a direct answer to that, and in view of that I thought it well to invite the Attorney General's Office to have a representative here and make a statement before the committee, giving the Attorney General's viewpoint of the bill.

Mr. NEBEKER. I can give you that viewpoint. It is simply this. It is pending legislation in which the Attorney General represents the Government. The Department of Justice believes that the bills of complaint are well founded. Matters have been brought to our attention, especially to my own predecessor before I took this particular position, which I understand appealed to him, matters related to the extenuating circumstances connected with the purchase of these lands. That matter, however, goes to the question of whether the bills are good. In other words, they are not defensive. Our view is that granting all that those defendants in those suits
claim in reference to the circumstances under which they were pur-
chasers, notwithstanding all those matters, the Government can re-
cover those lands. We think that those matters do not constitute a
defense. As to whether these extenuating circumstances are of
such a character as to appeal to you gentlemen and Congress as a
case for the relief that they are praying for is a matter in which we
do not feel that we are particularly concerned. That is our
theory.

We are not in a position to aid you on the facts, because we have
not made an investigation of those facts. I might say these bills
were filed directly by the United States Attorney in this case, becaus
of our having received, as my file indicates, having received infor-
manation shortly before the statute of limitation expired, and it was sent
directly to him to prepare and file the bill.

One-fourth of what I hold in my hand is all that the Department of
Justice has of the facts in the case. I do want to make it under-
stood that the Department of Justice is interposing no objections
will not feel at all that they should criticize any act of Congress
if they feel that the acts are as one man to another, the relief should
be granted as prayed for in this bill.

The CHAIRMAN. Mr. Nebeker, the bill that we have shows that
there are some thirteen thousand and odd acres involved in the suit,
but I understand that there are more than that involved in the suit
is that true?

Mr. NEBEKER. I don't know. I had supposed that this was all
that was involved in the suit.

The CHAIRMAN. Would it embarrass the Department of Justice if
it were to go ahead, to have it disclosed before the committee—of
course, that makes the matter public—all that you have or that the
Department of the Interior has of these fraudulent transactions? Of
course, the defendants would know that.

Mr. NEBEKER. Most assuredly. I think if we
had any objections I
think it is a matter of record.

The CHAIRMAN. Could you furnish us with that information?

Mr. NEBEKER. We haven't it in our department, I think the investi-
gation was made by the Department of the Interior. All the facts
obtained have to be obtained by us.

The CHAIRMAN. Do you think those facts could be obtained without
any embarrassment to the department?

Mr. NEBEKER. I don't recall anything now that would be embar-
rassing to the department at all.

The CHAIRMAN. Have you a sample of the complaint with you
now?

Mr. NEBEKER. Yes, sir.

The CHAIRMAN. In what case is it?

Mr. NEBEKER. The Thomas Jones case.

Mr. BARBER. Are they all the same?

Mr. NEBEKER. Yes, sir; I think so.

The CHAIRMAN. Have you an extra copy that you could leave with
the committee?

Mr. NEBEKER. I could send you up one, would that do?

The CHAIRMAN. Yes, sir; that would do.

Mr. NEBEKER. Yes, sir. I have the Lindsay case.
The Chairman. The allegations are about the same.
Mr. Nebeker. I thought so in running through them hastily. Just
those two apparently is all I have.
Mr. Barker. Is it the intention of the department to go ahead with
the trial of these cases unless the act is passed relieving them?
Mr. Nebeker. Yes, sir; indeed we would have no other course.
Mr. Raker. What is the status of the defendants of all these cases
in the court now?
Mr. Nebeker. I understand that they have entered a technical ap-
pearance and my predecessor obtained a stipulation for an extension
of time in which to plead on the assumption that an application
would be made to Congress for relief.
Mr. Raker. When does that time expire; any definite date?
Mr. Nebeker. I don’t know. Mr. Evans represents the defendants,
and I think that is correct.
Mr. Barker. What would terminate that agreement?
Mr. Nebeker. The Government, I understand, could terminate that
at any time.
Mr. Raker. Have you got a copy of that with you now that it may
appear in the record after filing the complaint?
The Chairman. Copy of what?
Mr. Raker. The stipulation.
The Chairman. Yes, sir.
Mr. Nebeker. May I say that we feel that the bills are well
founded and the Government will be able to recover these lands.
I don’t want to be understood as saying that in my opinion any
culpable fraud involving moral turpitude could be established on
these defendants.
The Chairman. You allege the grossest kind of fraud on the part
of the defendants?
Mr. Nebeker. Yes, sir; I think that is true, but we don’t have to
prove it.
The Chairman. You have perjury and the making of false affi-
davits.
Mr. Nebeker. I am aware of all that, but what I am saying, I
don’t think actual culpable fraud needs to be proved to recover
these lands.
The Chairman. What do you call culpable fraud?
Mr. Nebeker. Well, I should say anything that involved deceit,
representation; what we all of us generally agree—
The Chairman (interrupting). Do you distinguish culpable fraud
from constructive fraud?
Mr. Nebeker. Yes, sir.
The Chairman. Is that what you have in your mind?
Mr. Nebeker. Yes, sir.
The Chairman. Is there anything else in this case but culpable
fraud?
Mr. Nebeker. My own information of the facts in the case is so
limited. I can’t tell you whether there is or not. There may be.
There may be just simply constructive fraud.
The Chairman. What would be constructive fraud in this case?
Mr. Nebeker. Constructive fraud would probably be the pur-
chase of the land through others, with the belief that their action

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was regular; a misconstruction of the law, a misunderstanding of the law, in entire good faith, openly, without any desire or disposition on their part or attempt on their part to mislead or to cheat the Government, but simply getting more land in effect.

Mr. Barber. That would be actual fraud.

Mr. Nebecker. But I think it would be of a constructive character.

Mr. Raker. If a man is told that he is entitled to 160 acres and he obtained more than that, the man who took that affidavit knew that, and he was buying this land for himself and nobody else, it would be not only constructive fraud, but it would be perjury.

Mr. Nebecker. Yes, sir.

Mr. Barber. Isn't it necessary for the Government, in cases of this kind, to prove actual fraud?

Mr. Nebecker. No; the Government recovers if there is fraud in law, so to speak.

Mr. Barber. In my opinion, that would be an actual fraud.

Mr. Nebecker. It is a matter of definition and is usually construed as constructive fraud.

Mr. Raker. How could a man advise an intending purchaser or prospective purchaser that he could take the land and the law said he couldn't, and they swore they were not buying it for someone else, but for themselves, that would relieve them of fraud?

Mr. Nebecker. No, sir. You mean anyone buying for themselves or anybody else?

Mr. Raker. I mean anyone authorized to dispose of it.

Mr. Nebecker. I don't think so.

The Chairman. That is not conceded by the Government?

Mr. Nebecker. No, sir.

The Chairman. On the contrary, it is denied.

Mr. Nebecker. I don't know, in fact, what is claimed in that regard.

Mr. Raker. But if it was stated and it was proven to be a fact, would that of itself relieve the purchaser of the land?

Mr. Nebecker. It would not, because no person is authorized to do that. They don't have power to do it.

Mr. Barber. These bills of complaint ask that the patents be canceled?

Mr. Nebecker. They do.

Mr. Barber. Discussing the evidence, I had in mind a ruling made by Judge Welborn of the Southern District of California, in a case in which I was an attorney for several of the defendants, he laid down a rule that in cases of this kind where the Government seeks to cancel a patent the evidence must be of the strongest kind—that is, it must be equal to the evidence required to convict in a criminal case.

Mr. Nebecker. That isn't the rule. The rule is the evidence must be "strong and convincing." Judge Bledsoe's opinion in the Southern Pacific case laid down the rule correctly.

Mr. Barber. The judge just referred to stated the rule that it must be equal to the evidence to establish conviction in a criminal court to have the patent set aside.

Mr. Nebecker. That isn't the rule.

Mr. Raker. By reason of the fact that the committee does not swear its witnesses, by reason of the fact that it is only hearing vol-
untary witnesses and has not gone into the whole matter and will not be in a position unless it gets all the witnesses that the Attorney General's Office gets on the trial of its case, the kind and character of legislation, is it your opinion that it would be better to enact this legislation to relieve these men, which the bill would by repealing the limitation on the 640-acre tract, and authorize the Secretary of the Interior to deal with the land than for the Attorney General's Office to proceed with the bills now pending to final determination. Which is the better policy for the Government to pursue?

Mr. Nebeeker. I think candidly the better policy for the committee to do is to determine this matter now and in Congress. You are representing the public in a way in that capacity.

Mr. Vaile. In a sense, this committee sits as a court of equity.

Mr. Nebeeker. In a sense; yes, sir. I think you would have about as much light on the subject as the courts would have after a trial of the case, and if that evidence appealed to you gentlemen and it would seem fair and just that the relief measure of this bill should be adopted, I can't see any objection.

Mr. Raker. That being the situation, of course, you would have no hesitancy in submitting to the committee witnesses and the names of witnesses and the record testimony by which the committee could get all the facts as well as the law on the same, and in addition to that could give the committee the benefit of your personal presence and full investigation on this subject, would you?

Mr. Nebeeker. I have no objections whatever, and let me say here it would take some time for the Government to furnish this committee with a list of witnesses, because that is something the department doesn't have here. That is in the hands of the district attorney for the district. The investigation is not complete, they may not have very much information of that kind. However, let me say that the Department of Justice will be glad to put itself in the hands of this committee in order that it may do justice.

Mr. Raker. Well, if the department does that, it will require the committee's time to meet the ends of justice; the documentary evidence that is brought out and the evidence did show that there is a technical violation of the law and no intention of doing wrong to anyone, the committee might give them relief in order that we do justice to these—the Government and the purchasers of these lands at these sales.

The Chairman. Could you give the gist of the Government complaint in a brief way, showing what the frauds consist of? It is set out in a broad way, but it could be boiled down into a few words.

Mr. Nebeeker. I haven't read the complaint; I read them several weeks ago. I would say from the impression that lingers in my mind, it is this: That Mr. Lindsay, one of the defendants, was the owner of 640 acres of land.

The Chairman. Of this land?

Mr. Nebeeker. Not of this land, but of land bought from the Government.

The Chairman. I would like to develop that point. I would like to know if a person already holding land from the Government could acquire such additional land from the Government as would make up 640 acres.
Mr. Nebeker. He could only acquire such an additional amount as would make up the 640 acres. In other words, if he were the owner of 640 acres he was not qualified as a purchaser.

The Chairman. That general limitation applies to this land, the general limitation of the law prohibiting one from acquiring over 640 acres?

Mr. Nebeker. I thought so, sir. And then my recollection of the bill is that it charges that in order to purchase the land for which he was not qualified to purchase he got members of his family or others to become ostensible purchasers, file their applications, claim they were purchasing the lands for themselves.

The Chairman. They were really dummies?

Mr. Nebeker. Yes, sir.

The Chairman. And he made the affidavits?

Mr. Nebeker. I don't know. The affidavits I suppose would have to be made by those dummies. I don't know. I should think it would be quite likely; but these people bought for him and, as soon as patents were issued, transferred to him. Stripped to the backbone, that is about what the charge amounts to. Of course, there are some phrases used with reference to motives and purposes and all that, but it is sufficient to say that that was done in order to entitle the Government to recover those lands.

The Chairman. How does this differ from the so-called famous Oregon land-fraud cases?

Mr. Nebeker. I don't now recall, Mr. Chairman.

The Chairman. It is alleged there that parties secured dummy entrymen of timber claims with the object and design of transferring them to some one who furnished the money to pay the Government the $2.50 an acre.

Mr. Nebeker. If that is all there was to it they would seem to be entirely the same. I am not familiar with that litigation.

Mr. Mays. Referring to that illustration which you just gave where a man procured members of his family, we would say, to buy the maximum amount of land in each, we would suppose that that man had a herd of 500 sheep in which all the members of the family were interested more or less in common. Would you consider that that involved a very high degree of moral turpitude for members of the family to buy it to be used as a pasturage for the herd, in which all the family were interested in common?

Mr. Nebeker. Well, I wouldn't say that that in and of itself would, but yet I feel this way, that if the people themselves knew as much about the legal phases of it as a lawyer would know, knew that in effect it was a violation of a Federal law, it was obtaining property from the Government that they were not entitled to obtain, in other words, if they had the information a lawyer had, that then that thing would be culpable. I know, though, from my experience that people don't appreciate those things as lawyers do, so consideration has had to be made in numerous instances to take care of that.

Mr. Mays. Suppose, as we have had to happen in this case, representatives of the department were out there making efforts to sell this land and failed, to sell in tracts of 640 acres, should tell such a gentleman as that that "it is all right for your son to buy 640
acres, it is all right for your wife to buy 640 acres, it is all right for your son-in-law to buy 640 acres;" and he believed it?

Mr. NEBEKER. Then there wouldn't be any moral turpitude in that at all. Certainly this man that was giving the advice was in position to know the law better than the man who was purchasing the land.

The CHAIRMAN. He could go further than that. He could go out and point out a 640-acre tract—I could—to a purchaser and say "I would be willing to pay so much money for that land from some one who has title"—indicate that he would be willing to buy, but he couldn't enter into an agreement with that prospective purchaser to buy that land after he had received the patent. Isn't that the decision of the Supreme Court, a man goes out and indicates to anyone I would be willing to pay so much money for a piece of timberland after some one has title, but I couldn't agree with that prospective purchaser to buy it from him after he had secured title?

Mr. NEBEKER. Yes; that distinction does exist in the law; but, of course, if that pointing it out was done under such circumstances as to indicate that it was to bring about an understanding between the parties that he would buy and the other would sell—

The CHAIRMAN (interposing). It would be up to the jury to determine whether there was a meeting of the minds?

Mr. NEBEKER. Yes, sir.

Mr. RAKER. This case here of the United States district attorney against Joseph or Thomas Jones, the United States district court in and for the district of Utah, presents a wholly different case from that presented by the Attorney General. This presents a case where a man got the power of attorney as agent and himself went to the sale and bid on the land as agent for these parties when, as a matter of fact, as alleged in the bill, it was understood he was buying it for another man, and he thus bought the land at the sale for about $5.

The CHAIRMAN. He was getting it for himself?

Mr. RAKER. No; for another party.

The CHAIRMAN. Getting it for himself, but transferred to another party?

Mr. RAKER. Yes. And the party he was acting for—he was just using their names.

The CHAIRMAN. Did these parties make any affidavits themselves or representations, or was Lindsay the only one who made the representations? I don't gather from this complaint anyone but Lindsay made any representations or misrepresentations.

Mr. RAKER. Yes; here it is in paragraph 8 here. It says:

8. That before receiving final receipt and cash certificate for the purchase price of said lands as agent for said purchasers said William H. Lindsay, in each and every case with respect to the lands hereinbefore described in paragraph 2 of this bill of complaint, subscribed to an oath before the receiver of the United States land office at Vernal, Utah, in words and figures as follows:

"Oath.—I, the undersigned, do solemnly swear that the above-named purchaser has not purchased and will not purchase from the United States in his own right at this sale any lands the area of which when added to the area of lands purchased by him at the former sale of Nintah lands in November, 1910 (if any), would exceed 640 acres.

(Signed) WILLIAM H. LINDSAY.

"Agent for (whatever named person he was pretending to act as agent)."
Which said oath in each instance was false and untrue in this particular: That, as heretofore alleged, the said William H. Lindsay was, with respect to said lands, the real purchaser of said lands and had, prior to said sale of October 12, 1912, completely disqualified himself from becoming a purchaser of any lands at said sale.

The CHAIRMAN. That is the same thing I was directing my question to a while ago, to the maximum number of acres one could obtain.

Mr. MAYS. Who was your predecessor in office?

Mr. NEBEKER. Mr. Francis J. Kearful.

Mr. Raker. And here he says in paragraph 9 that:

9. That in ignorance of the fraud of said William H. Lindsay, as hereinbefore alleged, and in full reliance upon the representations of said William H. Lindsay, plaintiff on the dates heretofore mentioned issued its patents to the persons hereinafter mentioned issued its patents to the tracts of land hereinbefore described:

On June 28, 1913, its patents to Andrew A. Lindsay for tracts 1 and 2; on June 28, 1913, its patents to Mary Lindsay for tracts 3 and 4, and on June 28, 1913, its patents to William Lindsay for tracts 5 and 6. That said patents would not have been issued or delivered by the United States, its officers or agents, had the United States been heretofore advised of the fraud being practiced upon it by said William H. Lindsay.

The CHAIRMAN. You will find the gravamen of this charge in paragraph 7, Judge.

Mr. Raker. I will read paragraph 7.

7. That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, A. D. 1912, appear at said sale at Provo, Utah, representing himself to be the agent of one Andrew A. Lindsay, of Heber, Wasatch County, State of Utah; that representing himself as such agent, said William H. Lindsay bid 60 cents an acre, or $192 for 320 acres of said land, said land being tract 1 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $192 of the funds of William H. Lindsay, but falsely representing the same to be the funds of said Andrew A. Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to Andrew A. Lindsay a cash certificate, showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay, did, on the 12th day of October, A. D. 1912, appear at said sale representing himself to be the agent of one Andrew A. Lindsay, of Heber, Wasatch County, State of Utah; that representing himself as such agent, said William H. Lindsay bid 60 cents per acre, or $192 for 320 acres of said land, said land being tract 2 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $192 of the funds of William H. Lindsay, but falsely representing the same to be the funds of Andrew A. Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office, at Vernal, Utah, issued to said Andrew A. Lindsay a cash certificate, showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, A. D. 1912, appear at said sale representing himself to be the agent of one Mary Lindsay, of Heber, Wasatch County, State of Utah; that representing himself as such agent, said William H. Lindsay bid 70 cents per acre, or $224 for 320 acres of said land, said land being tract 3 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $224 of the funds of said William H. Lindsay, but falsely representing the same to be the funds of Mary Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to said Mary Lindsay a cash certificate, showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay, did, on the 12th day of October, A. D. 1912, appear at said sale representing himself to be the agent of one Andrew A. Lindsay, of Heber, Wasatch County, State of Utah; that representing himself as such agent, said William H. Lindsay bid 60 cents per acre, or $192 for 320 acres of said land, said land being tract 4 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $192 of the funds of said William H. Lindsay, but falsely representing the same to be the funds of Andrew A. Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to said Andrew A. Lindsay a cash certificate, showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, A. D. 1912, appear at said sale representing himself to be the agent of one Mary Lindsay, of Heber, Wasatch County, State of Utah; that representing himself as such agent, said William H. Lindsay bid 70 cents per acre, or $224 for 320 acres of said land, said land being tract 5 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $224 of the funds of said William H. Lindsay, but falsely representing the same to be the funds of Mary Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to said Mary Lindsay a cash certificate, showing the receipt of said money.
day of October, A. D. 1912, appear at said sale representing himself to be the agent of one Mary Lindsay, of Heber, Wasatch County, State of Utah; that representing himself as such agent, said William H. Lindsay bid 60 cents per acre, or $192, for 320 acres of said land, said land being tract 4 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $192 of the funds of said William H. Lindsay, but falsely representing the same to be the funds of said Mary Lindsay. That on April 26, 1913, Charles De Moisy, register of the United States land office at Vernal, Utah, issued to said Mary Lindsay a cash certificate, showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, 1912, appear at said sale representing himself to be the agent of one William Lindsay, of Heber, Wasatch County, Utah; that representing himself as such agent, said William H. Lindsay bid 70 cents per acre, or $224, for 320 acres of said land, being tract 5 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $224 of the funds of William H. Lindsay, but falsely representing the same to be the funds of said William Lindsay. That on April 26, 1913, Charles De Moisy, register of the United States land office at Vernal, Utah, issued to said William Lindsay a cash certificate, showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, 1912, appear at said sale, representing himself to be the agent of one William H. Lindsay, of Heber, Wasatch County, Utah; that representing himself as such agent, said William H. Lindsay bid 65 cents per acre, or $208, for 320 acres of said land, being tract 6 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $208 of the funds of William H. Lindsay, but falsely representing the same to be the funds of said William Lindsay. That on April 26, 1913, Charles De Moisy, register of the United States land office at Vernal, Utah, issued to said William Lindsay a cash certificate, showing the receipt of said money.

That in truth and in fact the said William H. Lindsay was not the bona fide agent of said Andrew A. Lindsay, Mary Lindsay, or William Lindsay, and said William H. Lindsay was fraudulently and unlawfully using the names of said persons solely for the purpose of defrauding the United States of its title and possession of said lands and obtaining for said William H. Lindsay more lands that he was in law entitled to purchase; and the said persons for whom said William H. Lindsay alleged and pretended that he was purchasing said lands paid no money whatsoever for said lands, did not desire to purchase said lands in their own right, but permitted the use of their names as aforesaid with the prior understanding, agreement, and intention upon their part and upon the part of said William H. Lindsay that upon the issuance of United States patent to said lands the said persons and each of them should transfer all of their right and interest thereto to the said William H. Lindsay.

The Chairman. I understand from this that the principals or the supposed bona fide principals made no representations at all in the Land Office or signed any affidavits of applications.

Mr. Nebeker. I don't know. I suppose that Lindsey signed as agent for these supposed principals.

Mr. Raker. There is another thing, section 11:

11. That said William H. Lindsay was not a bona fide purchaser for value of said lands, or any of them, under the deeds set forth in paragraph 10 hereof, but secured title to said lands solely as the result of the frauds, deception, and unlawful conduct as hereinafter alleged.

Now, section 12 reads:

12. That said defendant, Thomas Jones, was not a bona fide purchaser in good faith for value of said lands, but took the same with full knowledge of all of the fraud herein alleged.

The Chairman. Mr. Nebeker, you say you think there will be no controversy over the facts. Is all this admitted by these 131, the defendants?
Mr. Nebeker. Outside of the characterizations I think, the construction placed upon it, I understand so.

The Chairman. Does Lindsey admit that he did all these things alleged in your bill of complaint, your bill?

Mr. Nebeker. Well, of course, I don't know Lindsey. I never heard him say what he would admit, but I took it that this was taken practically from the record, and I would rather assume that there wouldn't be very much dispute on the facts. In other words, I got the impression that the defense relied upon in the case was that these people did these things in entire good faith and without any intention to cheat or defraud anybody, and perhaps upon the connivance or complacency of some Government official, and they claim to have done that in good faith.

The Chairman. How could a man in good faith claim to be the agent of several parties when in fact he was not and he was the principal himself?

Mr. Nebeker. He couldn't in good faith claim it.

The Chairman. Do you think it wise or is it the policy of the Attorney General's office, assuming that these allegations are true, to condone a thing of that kind.

Mr. Nebeker. The Attorney General's office would not condone it.

The Chairman. I understood you to say a while ago that you thought this was a wise thing to enact this legislation.

Mr. Nebeker. Oh, I said that if after a thorough examination and investigation on the part of this committee it would seem to be a matter that would call in all justice and fairness for the relief provisions of the bill, the Attorney General's Office would not feel a duty to criticize it.

The Chairman. I was not saying that with a view of criticizing you.

Mr. Nebeker. If I felt responsible at this point of passing upon this question myself, this legislative question as I conceive it to be, I would want to have vastly more information than I have at the present time or that the department has.

The Chairman. We want more information than you have?

Mr. Nebeker. You will have more information than we have by the time you get through the investigation, I suppose.

Mr. Barber. Have the depositions of these witnesses been taken?

Mr. Nebeker. I don't think so. Have they Mr. Evans?

Mr. Evans. No, sir. I might suggest a number of the witnesses that are here will clear up, we think, a great many of the matters that have been inquired about, but in view of the manner in which you have taken up the matter you have got men who know very little about the situation. Our witnesses will go on the stand and tell what they knew about it.

The Chairman. For our present purpose we have got to assume the allegations of the Attorney General's bill are true and somebody has got to go on the floor and defend that.

Mr. Raker. Is Mr. William H. Lindsay here?

Mr. Evans. No; Mr. William H. Lindsay is not here.

Mr. Raker. Is Mrs. Mary Lindsay here?

Mr. Evans. No, sir; none of the witnesses are here.

Mr. Raker. William H. Lindsay is not here?
Mr. EVANS. No.
Mr. RAKER. And none of the parties named in the bill of complaint is here?
Mr. EVANS. Not with respect to the bill against Lindsay; no.
Mr. RAKER. Mr. Thomas Jones is not here?
Mr. EVANS. No; he is not here.
The CHAIRMAN. You are going to furnish an extra copy of all the complaints?
Mr. NEBEKER. Which one?
The CHAIRMAN. Well, the samples, the Jones’s.
Mr. RAKER. I read from Jones’s. William H. Lindsay has a case himself, but Lindsay bought it in a certain way and held it.
The CHAIRMAN. All we care to have is to have in the record all the allegations of fraud.
Mr. NEBEKER. I will be glad to glance them through and send you copies.
(The matter above referred to follows:)

DEPARTMENT OF JUSTICE,

Hon. N. J. SintonT,
House of Representatives.

My DEAR Mr. SintonT: In compliance with your request I am handing you herewith copy of bill of complaint in the case of United States of America, plaintiff, v. Thomas Jones, defendant, No. 5601.

It may be of some assistance to you to suggest that the bill of complaint in this case and the one in the case of United States of America, plaintiff, v. William H. Lindsay, defendant, No. 5600, contain practically the same allegations.

From the two bills it appears that William H. Lindsay, acting ostensibly as agent for Andrew A. Lindsay, Mary Lindsay, and William Lindsay, respectively, bid for and purchased six tracts of 320 acres each. These tracts are numbered 1 to 6, inclusive. Tracts numbered 1 to 4, inclusive, are alleged to have been conveyed by William H. Lindsay after procuring conveyance from the ostensible purchasers, to Thomas Jones, the defendant named in bill No. 5601. It was for the purpose of setting aside the patent to these four tracts that the suit was brought against Thomas Jones. The suit against Lindsay was brought for the purpose of setting aside the patent to the other two tracts (5 and 6) retained by him.

For the Attorney General.
Respectfully,

FRANK K. NEBEKER,
Assistant Attorney General.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF UTAH.

UNITED STATES OF AMERICA, PLAINTIFF, V. THOMAS JONES, DEFENDANT. BILL OF COMPLAINT NO. 5601.

To the Hon. Tillman D. Johnson, judge of the above entitled court:

The United States of America, plaintiff herein, by William W. Ray, United States Attorney for the District of Utah, acting under the authority and pursuant to the direction of the Attorney General, brings this its bill of complaint against Thomas Jones, a citizen and resident of the State of Utah, defendant herein, and complains and alleges:

1. The jurisdiction of this court depends upon the fact that the United States is party plaintiff herein.

2. That on the 26th day of April, 1913, plaintiff was the owner in fee, in the possession and entitled to the possession of the following described tracts of land situate in Duchesne County, State of Utah, to wit:
The north half of section 33, township 2 south, range 10 west, Uintah special meridian, containing 320 acres, and hereinafter referred to as tract 1.

Also the south half of section 33, township 2 south, range 10 west, Uintah special meridian, containing 320 acres, hereinafter referred to as tract 2.

Also the south half of section 34, township 2 south, range 10 west, Uintah special meridian, containing 320 acres, hereinafter referred to as tract 3.

Also the north half of section 34, township 2 south, range 10 west, Uintah special meridian, containing 320 acres, hereinafter called tract 4.

Also the north half of section 35, township 2 south, range 10 west, Uintah special meridian, containing 320 acres, hereinafter referred to as tract 5.

Also the south half of section 35, township 2 south, range 10 west, Uintah special meridian, containing 320 acres, hereinafter referred to as tract 6.

That all of said lands were on said date part of the public domain of the United States, and open to sale and entry only in conformity with the act of Congress approved March 3, 1905, and the rules and regulations of the Secretary of the Interior made in conformity therewith.

3. That prior to August 28, 1905, said lands were a part of the lands theretofore reserved by the United States as the Uintah Indian Reservation. That under the provisions of the act of Congress approved March 3, 1905, said lands with a large quantity of other lands theretofore a part of the said Indian reservation, were, on August 28, 1905, opened to settlement and entry as provided by said law and the rules and regulations of the Secretary made in accordance with and pursuant thereto. That inter alia the said act of Congress approved March 3, 1905 (33 Stat. L., 1069), provided:

"That all lands open to settlement and entry under this act remaining un disposed of at the expiration of five years from the taking effect of this act shall be sold and disposed of for cash under rules and regulations to be prescribed by the Secretary of the Interior and not more than 640 acres to any one person."

4. That prior to April 26, 1913, one William H. Lindsay had, under said act of Congress approved March 3, 1905, and the rules and regulations of the Secretary of the Interior made in conformity therewith, purchased from the United States, and the United States had issued its patent to said defendant for 640 acres of the unallotted and unreserved lands of this class above referred to, and said William H. Lindsay was thereby, on April 26, 1913, and continuously thereafter disqualified and prohibited from purchasing directly or indirectly from the United States any of said lands.

5. That the lands hereafter particularly described in paragraph 2 as tracts 1, 2, 3, 4, 5, and 6, in this bill of complaint were, under the laws of the United States and in conformity with the rules and regulations of the Secretary of the Interior made pursuant thereto, duly and regularly offered for sale by the United States at public auction to the highest bidder at Provo, Utah, on October 12, 1912, and other dates subsequent thereto.

6. That on and prior to the 12th day of October, 1912, William H. Lindsay formed and devised a plan and scheme to obtain title from the United States to the lands hereinafter described, contrary to and without compliance with the laws of the United States applicable thereto, and with the fraudulent intent and purpose of unlawfully obtaining for himself title to a large acreage of said lands, when he was disqualified and prohibited by law from becoming a purchaser of said lands, or any part thereof, which said scheme was formed and to be executed with the unlawful intent and purpose to defraud the United States of its title, possession, and use of said lands; that said plan as scheme so formed by said William H. Lindsay was to be carried out and executed in the following manner: That is to say, that with respect to the lands heretofore particularly described said William H. Lindsay was to induce and procure other persons, qualified under the laws of the United States to become purchasers of said lands at said sale, to permit William H. Lindsay to appear as bidder at said sale, and to represent himself to the United States as the agent of such persons so secured and induced, and to permit William H. Lindsay to use their names in the purchase of said lands in quantities not in excess as to each purchase of the amount of said land which any qualified individual under the law could purchase in his own right for his own use at said sale, said William H. Lindsay to pay the purchase price of said land to the United States from his own personal funds, but to represent and hold out to the United States that the funds so paid were the funds of the person for whom he was acting as agent, and that said fictitious purchase thereafter and after issuance of patent by the United States to said lands:
said fictitious purchaser, and without consideration, for the transfer of said lands, to convey the same and the legal title thereto to the said William H. Lindsay; that in truth and in fact the said William H. Lindsay was to be and was the real purchaser of said lands, and the names of the persons for whom said William H. Lindsay was to appear as agent were to be and were used only for the purpose of deceiving and misleading the United States, its officers and agents, and to permit the said William H. Lindsay to fraudulently and unlawfully secure the transfer of the United States title to a large area of land which he could not otherwise obtain.

7. That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, A. D. 1912, appear at said sale at Provo, Utah, representing himself to be the agent of one Andrew A. Lindsay of Heber, Wasatch County, State of Utah; that representing himself as such agent, said William H. Lindsay bid 60 cents an acre, or $192 for 320 acres of said land, said land being tract 1 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $192 of the funds of William H. Lindsay, but falsely representing the same to be the funds of said Andrew A. Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to Andrew A. Lindsay a cash certificate showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, 1912, appear at said sale representing himself to be the agent of one Andrew A. Lindsay, of Heber, Wasatch County, State of Utah; that representing himself to be such agent said William H. Lindsay bid 60 cents per acre or $192 for 320 acres of said land, said land being tract 2 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $192 of the funds of William H. Lindsay, but falsely representing the same to be the funds of Andrew A. Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to said Andrew A. Lindsay a cash certificate showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, 1912, appear at said sale representing himself to be the agent of one Mary Lindsay, of Heber, Wasatch County, State of Utah; that representing himself to be such agent said William H. Lindsay bid 70 cents per acre, or $224 for 320 acres of said land, said land being tract 3 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $224 of the funds of said William H. Lindsay, but falsely representing the same to be the funds of Mary Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to said Mary Lindsay a cash certificate showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, A. D. 1912, appear at said sale representing himself to be the agent of one Mary Lindsay, of Heber, Wasatch County, State of Utah; that, representing himself as such agent, said William H. Lindsay bid 60 cents per acre or $192 for 320 acres of said land said land being tract 4 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $192 of the funds of said William H. Lindsay, but falsely representing the same to be the funds of said Mary Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to said Mary Lindsay a cash certificate, showing the receipt of said money.

That in pursuance of said unlawful and fraudulent scheme and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, 1912, appear at said sale representing himself to be the agent of one William Lindsay, of Heber, Wasatch County, Utah; that, representing himself as such agent, said William H. Lindsay bid 70 cents per acre, or $224 for 320 acres of said land, being tract 5 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $224 of the funds of William H. Lindsay, but falsely representing the same to be the funds of said William Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to said William Lindsay a cash certificate, showing the receipt of said money.
That in pursuance of said unlawful and fraudulent scheme, and for the purpose of rendering the same effectual, said William H. Lindsay did, on the 12th day of October, 1912, appear at said sale, representing himself to be the agent of one William Lindsay, of Heber, Wasatch County, Utah; that, representing himself to be such agent, said William H. Lindsay bid 65 cents per acre, or $208 for 320 acres of said land, being tract 6 above described, and then and there said William H. Lindsay paid to the agent in charge of said sale the sum of $208 of the funds of William H. Lindsay, but falsely representing the same to be the funds of said William Lindsay. That on April 26, 1913, Charles DeMoisy, register of the United States land office at Vernal, Utah, issued to said William Lindsay a cash certificate, showing the receipt of said money.

That in truth and in fact the said William H. Lindsay was not the bona fide agent of said Andrew A. Lindsay, Mary Lindsay, or William Lindsay, and said William H. Lindsay was fraudulently and unlawfully using the names of said persons solely for the purpose of defrauding the United States of its title and possession of said lands and obtaining for said William H. Lindsay more lands than he was in law entitled to purchase; and the said persons for whom said William H. Lindsay alleged and pretended that he was purchasing said lands, paid no money whatsoever for said lands, did not desire to purchase said lands in their own right, but permitted the use of their names as aforesaid with the prior understanding, agreement, and intention upon their part, and upon the part of said William H. Lindsay, that upon the issuance of United States patent to said lands the said persons and each of them should transfer all of their right, title, and interest thereto to the said William H. Lindsay.

8. That before receiving final receipt and cash certificate for the purchase price of said lands as agent for said purchasers, said William H. Lindsay, in each and every case with respect to the lands hereinbefore described in paragraph 2 of this bill of complaint, subscribed to an oath before the receiver of the United States land office at Vernal, Utah, in words and figures as follows:

"Oath.—I, the undersigned, do solemnly swear that the above-named purchaser has not purchased, and will not purchase from the United States in his own right at this sale any lands the area of which, when added to the area of lands purchased by him at the former sale of Uintah lands in November, 1910 (if any), would exceed 640 acres.

"WILLIAM H. LINDSAY,

"Agent for (whatever named person he was pretending to act as agent)."

Which said oath in each instance was false and untrue in this particular: That as heretofore alleged the said William H. Lindsay was with respect to said lands the real purchaser of said lands, and had prior to said sale of October 12, 1912, completely disqualified himself from becoming a purchaser of any lands at said sale.

9. That in ignorance of the fraud of said William H. Lindsay, as hereinbefore alleged, and in full reliance upon the representations of said William H. Lindsay, plaintiff on the dates hereinafter mentioned issued its patents to the persons hereinafter mentioned to the tracts of land hereinbefore described.

On June 28, 1913, its patents to Andrew A. Lindsay for tracts 1 and 2; on June 28, 1913, its patents to Mary Lindsay for tracts 3 and 4; and on June 28, 1913, its patents to William Lindsay for tracts 5 and 6. That said patents would not have been issued or delivered by the United States, its officers or agents, had the United States been theretofore advised of the fraud being practiced upon it by said William H. Lindsay.

10. That in pursuance of the unlawful and fraudulent scheme hereinbefore set forth, and in accordance with the prior understanding between themselves and the said William H. Lindsay, said Andrew A. Lindsay and Mary Lindsay, his wife, and William Lindsay and Mary Lindsay did, without consideration for such transfer, deed, assign, transfer, and convey unto the said William H. Lindsay title to the lands hereinabove described and patented to said individuals, said deeds being dated February 24, 1914. That on February 25, 1914, said William H. Lindsay and Nellie Lindsay, husband and wife, deeded and conveyed to Thomas Jones, defendant herein, all that part of tracts 1, 2, 3, and 4 hereinabove described, lying north of a line commencing at the northeast corner of section 34, in township 2 south of range 10 west of Uintah special meridian; and running thence south along the section line to the top of the ridge dividing Little Dry Canyon and Big Dry Canyon; thence westerly along the said ridge to a point intersecting the half section line dividing the east
and west halves of section 33, in said township and range; thence along the
center of said ridge westerly and northwesterly to a point where the said
ridge widens into what is known as the Table Mountain; thence leaving the
center of said ridge and following the top of the northeasterly edge of said
Table Mountain, leaving on the northeast of said line all of the slope of said
mountain, and running to a point on the westerly line of said section 33; thence
north to the northwest corner of said section 33; thence along the section lines
on the north of said sections 33 and 34 east 160,13 chains to the place of be-
ginning, and containing an area of 400 acres, more or less.

That said William H. Lindsay was not a bona fide purchaser for value of
said lands, or any of them, under the deeds set forth in paragraph 10 hereof,
but secured title to said lands solely as the result of the frauds, deception,
and unlawful conduct as hereinbefore alleged.

12. That said defendant, Thomas Jones, was not a bona fide purchaser in
good faith for value of said lands, but took the same with full knowledge of
all of the fraud herein alleged.

13. That the said Thomas Jones, defendant herein, now claims to be the
owner in fee and is in the possession of all of the land described in paragraph
10 of this complaint as having been conveyed by said William H. Lindsay
to said Thomas Jones on the 25th day of February, 1914.

Wherefore plaintiff prays a decree of this honorable court that defendant
surrender and deliver up for cancellation the deed of conveyance under
which he claims title to said land, and that the same be canceled; that
plaintiff's title to said lands be forever quieted and confirmed against all
claims of whatsoever nature of the defendant or any person or persons claiming
under or through him.

And may it please the court to grant unto plaintiff a writ of subpena,
therein and thereby commanding said defendant, Thomas Jones, to be and
appear before this honorable court on a day named therein, and then and there
true answer make to the matters herein alleged, but not under oath, answer
under oath being specifically waived, and then and thereby to abide such
decree as the court shall make in the premises and as shall be agreeable
to equity and good conscience.

Plaintiff further prays for general relief and its costs herein.

United States Attorney for the District of Utah,
Attorney for Plaintiff.

(Thereupon, at 12.30 p. m., the committee recessed to meet again
at 1.30 p. m.)

AFTERNOON SESSION.

Pursuant to recess, the committee met at 1.30 o'clock p. m.

The CHAIRMAN. The committee will come to order. Who is the
next witness on the part of the Government? Judge Finney, let us
hear from you.

Mr. FINNEY. I would like to have four or five minutes, Mr. Chair-
man, then Mr. Meritt, the Acting Commissioner of Indian Affairs,
who is here, will be heard, if it pleases the committee.

The CHAIRMAN. Of course, we all know who you are, Judge Fin-
ney, but we would like to have it in the record, and will you state
your name and your position?

STATEMENT OF MR. EDWARD C. FINNEY, OF THE BOARD OF
APPEALS IN THE INTERIOR DEPARTMENT.

Mr. Finney. My name is E. C. Finney, and I am a member of the
Board of Appeals of the Interior Department. I would like a few
minutes, Mr. Chairman, to put the matter in the record in more
consecutive form, and it is possible I may repeat myself a little in
doing so. These lands were first opened in 1905, under a law of that
year, a million acres being reserved for forest purposes, and some
small areas go out in the town-site and mineral purposes, and 179,000 acres being included in the grazing reserve, leaving an area open that year of about a million acres. For three years they remained open for disposition, under the homestead and town-site and mining laws, and during that time possibly 300,000 acres were disposed of under the homestead law, the entrymen being required to pay $1.25 an acre for the land and being required to live upon it for a number of years, according to the law.

The act of 1905 provided that at the end of five years any of the United States mineral lands remaining undisposed of should be disposed of at public auction in tracts of not less than 640 acres, and only 640 acres to one person. I should say not more than 640 acres.

After the expiration of the five years the Department of the Interior offered the lands for sale, in 1910, and disposed of 183,000 acres at public auction. Another sale was held in 1912, and 136,000 acres were disposed of; and a third sale occurred in 1917, and about 200,000 acres of the lands were disposed of; or a total of 520,000 acres of land.

Mr. Raker. How many acres did you say?

Mr. Finney. Five hundred and twenty thousand acres of land all together. So far as we know, no single individual bought in his own name more than 640 acres, the maximum amount; but it was subsequently alleged in reports of special agents that these lands had been indirectly acquired for the benefit of certain stockmen, sheepmen there, in larger areas; that is to say, persons who bought at these public sales soon thereafter transferred the lands they had bought to certain sheepmen. On the allegations contained in the agents' reports, the Department of the Interior recommended to the Department of Justice the institution of suits to set aside patents in certain cases; and there were 13 cases on that recommendation, as was stated this morning, and the United States Attorney General brought suit in the United States court in and for the district of Utah, which suit is still pending. That occurred, I think, in May or June of 1913. Last summer or last fall some gentlemen representing the purchasers—and, by the way, some of the lands had passed from the original patentees and are now held by third parties—and last fall some of the gentlemen representing the purchasers came to Washington to secure the introduction of this bill; that is, for relief for the purchasers and to find a method of settling the matter. They talked with officers of the department, including Commissioner Sells of the Indian Office and the Commissioner of the General Land Office and myself, and the matter received the personal attention of Secretary Lane; and a report was made up upon the pending bill—that is, 3016—by Secretary Lane on September 19, 1919, to the Senate committee. It is a short report. Subsequently letters have been written; one was written to Representative Raker on October 27, 1919.

Mr. Raker. The chairman has that letter, I believe.

Mr. Finney. And setting forth quite fully the facts regarding the land suit.

Mr. Mays. Don't you think, Mr. Chairman, that it would be well to make that letter a part of the record?
The Chairman. I think so. There are several matters here which ought to go into the record. It should be made a part of the record, and without objection it will be done.

(The letter above referred to is here printed in full in the record, as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, October 7, 1919.

Hon. JOHN E. RAVER,
House of Representatives.

My Dear Mr. RAVER: In reply to your letter of September 30, 1919, you are advised that the Uintah Indian Reservation, Utah, formerly embraced 2,357,286 acres, which were reserved, opened to disposition, or disposed of as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Embraced in forest</td>
<td>1,010,000</td>
</tr>
<tr>
<td>Embraced in town sites</td>
<td>2,100</td>
</tr>
<tr>
<td>Opened to homestead entry</td>
<td>1,004,285</td>
</tr>
<tr>
<td>Included in mining claims</td>
<td>2,140</td>
</tr>
<tr>
<td>Allotted to Indians</td>
<td>69,407</td>
</tr>
<tr>
<td>Under reclamation</td>
<td>60,160</td>
</tr>
<tr>
<td>Included in grazing reserve</td>
<td>179,194</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,357,286</strong></td>
</tr>
</tbody>
</table>

The lands which were opened to homestead entry remained subject to such disposition for a period of five years, during which time about 300,000 acres were entered.

The lands which were opened to homestead entry and which were not entered under the homestead laws were subsequently offered for sale to the highest bidders, the years in which the sales were conducted and the aggregate quantities sold being as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910</td>
<td>183,420</td>
</tr>
<tr>
<td>1912</td>
<td>136,441</td>
</tr>
<tr>
<td>1917</td>
<td>200,684</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>520,545</strong></td>
</tr>
</tbody>
</table>

I am not informed that more than 640 acres was, in any instance, disposed of to any one individual or corporation in its own name.

The names of the persons who it is alleged indirectly acquired title to more than 640 acres, against whom suits are pending, and the number of acres involved in the suits are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith, David</td>
<td>7,639.67</td>
</tr>
<tr>
<td>Peterson, F. A.</td>
<td>2,456.14</td>
</tr>
<tr>
<td>Thomas, Jessup</td>
<td>7,393.28</td>
</tr>
<tr>
<td>Smith, Albert</td>
<td>15,274.42</td>
</tr>
<tr>
<td>Smith, M. A.</td>
<td>4,221.84</td>
</tr>
<tr>
<td>Smith, Maud</td>
<td>3,785.70</td>
</tr>
<tr>
<td>Smith, Alice G.</td>
<td>1,231.92</td>
</tr>
<tr>
<td>Jones, Thomas, et al.</td>
<td>6,078.88</td>
</tr>
<tr>
<td>Smith, Blanche</td>
<td>2,515.66</td>
</tr>
<tr>
<td>Coleman, D. T.</td>
<td>640.00</td>
</tr>
<tr>
<td>Coleman, William</td>
<td>8,126.20</td>
</tr>
<tr>
<td>Jones, Thomas</td>
<td>400.00</td>
</tr>
<tr>
<td>Lindsay, William H.</td>
<td>1,520.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61,286.71</strong></td>
</tr>
</tbody>
</table>

S. 3016, referred to in your letter, if enacted into law, would affect the above purchases and any other sales in which more than 640 acres was secured, directly or indirectly, by any one person.

The said suits were filed in the United States District Court for Utah at Salt Lake City.

The area in said former reservation which has not been disposed of, and which is subject to sale to the highest bidders, is about 180,000 acres.

Cordially, yours,

S. G. HOPKINS, Assistant Secretary.
Mr. Finney. We also had an inquiry from Representative Cramton, who is not a member of this committee, asking for a statement of facts, and two letters were written to him—one by the Commissioner of the General Land Office and the other by Mr. Meritt, the Acting Commissioner of Indian Affairs.

Mr. Taylor. Is there any reason why Mr. Cramton is not here and has not appeared before the committee?

The Chairman. Mr. Cramton was in the gallery here this morning.

Mr. Mays. Yes; I saw him, and he advised me yesterday of his interest in the matter and said that he was very busy.

Mr. Taylor. I did not see him yesterday or to-day.

Mr. Finney. Of course the interest that the Department of the Interior has in this matter is to look after the interest of the Indians, because these lands, while they are being disposed of under the public land laws, and to that extent may be said to be in the public domain, they are being disposed of for the benefit of the Indians who receive the money collected from the sale and disposition.

Mr. Raker. You are a good lawyer, and I say that from nine years' experience—

Mr. Finney. Thank you.

Mr. Raker. And you have had a great deal of experience on the land legislation in all its phases. I would like to ask you this question: Just what is the status of the title to this land—

Mr. Finney (interrupting). I think these lands open for disposition, Judge, that the legal title to them is in the United States.

The Chairman. It is alleged in the complaint in the suit that it is owned in fee by the United States.

Mr. Finney. And when a patent issues for any of the land it comes from the United States of America.

Mr. Raker. In other words, the Indian has not the absolute title, and the only interest that the Indian has in it is that he receives $1.25 per acre for homesteading, and whatever the price that it is sold for under any of the other provisions—

Mr. Finney (interrupting). The Indian's interest is an equitable one, being simply the receipts from the land—that is, $1.25 an acre from the homesteaders, the price fixed under the law.

Mr. Taylor. Does the Government get anything for conducting the sale of the land?

Mr. Finney. Yes; the act of 1905 provided that after all expenses had been deducted that the residue should go to the Indians.

Mr. Raker. Can you find for the committee the entire amount of money up to date received by the Government, the amount of the expenses of the Government, the amount that was held out by reason of these expenses under the act, the amount of money paid over to the Indians?

Mr. Finney. We can get that from the records of the General Land Office, I think.

Mr. Raker. And will you have them put in the record, please?

Mr. Finney. Yes; I shall be glad to do so.

(The statement above referred to is printed in the record at the close of the testimony of Mr. Meritt, entitled "Memorandum concerning the Uintah Reservation, etc." (p. 117 hereof).)
Mr. Finney. As I said, our principal interest is to protect the Indians, and they, of course, are interested in the receipts from the sale of the lands.

The Chairman. Are there more than 61,000 acres of this land involved in questionable purchases, Judge Finney?

Mr. Finney. Yes; the suits which have been instituted cover approximately 61,000 acres of land, but according to the reports of our special agents a very much larger acreage is probably involved in the charges which have been made.

The Chairman. What is the grand total?

Mr. Finney. I can not say as to that, Mr. Chairman.

The Chairman. Do you know approximately?

Mr. Finney. I do not know, but I imagine it is quite a considerable portion of the 500,000 acres.

Mr. Taylor. If you do not know just how much is involved, why do you say that?

Mr. Finney. Well, it is involved. According to the reports made by special agents, a very large acreage of the land sold at these different land sales were acquired in that same manner, and it is very much more than 61,000 acres.

Mr. Taylor. And is it the intention to start other suits?

Mr. Finney. Yes, sir. These particular suits were brought in a hurry, I may explain, gentlemen of the committee, because of the six-year period of limitation, and that was about to expire.

The Chairman. And have you protected the suits in all cases, in all the other cases, against the statute of limitation?

Mr. Finney. Yes; I can answer that; the last sale only occurred in 1917, and that was for the 200,000 acres, and six years from 1917 would be 1923.

Mr. Raker. So that a large amount of land for which patents issued, if these charges are well based, and if they are accurate and if they are maintained, the statute has not run to a large acreage that is involved?

Mr. Finney. Yes, sir.

Mr. Mays. According to the special agents' report, how much of an acreage is involved in the illegal sales made?

Mr. Finney. I do not know as they have made any report on that point. The charges are pretty general.

The Chairman. What was the method of acquiring these lands by those people? Can you depict the modus operandi to the committee?

Mr. Finney. Mr. Tallman, the Commissioner of the General Land Office, who is here, is more familiar with the details than I am.

The Chairman. Now, let me ask you, Judge Finney, when this 1,010,000 acres were put into the forest reserve, were the Indians reimbursed for that in any way?

Mr. Finney. Well, I can not answer that offhand, Mr. Chairman. I will say that if they have not been reimbursed, they undoubtedly have a good claim against the Government of the United States.

The Chairman. The Government has no right to take the land away from them and put it into the forest reserve without paying them? Is that the idea?
Mr. Finney. I understand that is it, because prior to the treaty this was Indian land, and the Indians did not care to give it up.

The Chairman. You were a party to their agreement for the homesteading of those lands and the selling of the surplus?

Mr. Finney. Yes; that agreement was entered into, I believe, in 1902. There were two elements in the bill, the body of the bill relating to the undisposed lands of about 180,000 acres, and from information derived from our agents' reports and from personal knowledge of other officers of the Government, we were convinced that we could not dispose of that 180,000 acres of land to any advantage in 640-acre tracts. We felt that it was a very poor grade of grazing land, and it remained there particularly—more money would be obtained for the Indians if the 640-acre limitation were removed, and the Secretary authorized to dispose of it in such ways and at such times and under such rules as he might deem for the best, and for that reason we favor the body of the bill, which proposes to remove the limitation of 640 acres. That will leave the Secretary free to issue an order of opening, and to fix the maximum area at any amount, say, at 5,000 acres, or 2,000 acres, or 10,000 acres, whatever he thinks proper, and he may fix the minimum prices, just as in the past.

Mr. Raker. Right there, referring now to this legislation, the original act—what was the date of the last act?

Mr. Finney. The act under which these lands were opened was 1905.

Mr. Raker. 1905, and then the act of—I have it here. That is in the Thirty-second Statutes, page 263, where the Secretary is given the power to fix that minimum at less than $1.25 an acre.

Mr. Finney. Why, the act of 1905, which says that after five years the Secretary may dispose of any lands remaining, and it simply says that he may dispose of them at public sale under rules and regulations to be promulgated by him, and we get our authority under that.

Mr. Raker. What I was getting at, and what I want to be explained to the committee, the homesteader must pay $1.25 an acre, must he not?

Mr. Finney. Yes; that is because the law specifically requires that.

Mr. Raker. By reasoning from analogy, when he is authorized to sell—and I am asking for information—would not that be limited as to the minimum for which he could sell at public auction?

Mr. Finney. No; I do not think so, because the theory of Congress was that during the first five years the best lands would be taken at $1.25 an acre, and the remaining area would be of the poorer lower-grade lands and presumably not so valuable, so I view the law, that that minimum or maximum should be required. It was simply left for bidding at public sale, and the Secretary, if he thought it wise to fix a minimum, could fix it, and he fixed that at 50 cents per acre, and his authority is in that act of 1905.

Mr. Raker. It authorizes him to fix the rules and regulations?

Mr. Finney. And the agreement of the Indians, the act itself, did not fix the minimum price or flat price upon all the lands in the former reservation. It did fix at $1.25 per acre for the home-
steader, and the mining law fixed their own prices, and in that con-
nection I may say that we disposed of something over 2,000 acres of
land under the mining laws.

Mr. Raker. In the ceding of the land to the Government by the
Indians in the Ute Reservation, there was fixed no price or other
price that the Government should pay for this land?

Mr. Finney. That is my recollection, and in the act of 1905,
which authorizes these sales, it simply says that proceeds, after de-
ducting expenses, shall go to the Indians.

Mr. Raker. And there was about one and one-half million acres in
the reservation?

Mr. Finney. No; there was something over two millions.

Mr. Raker. And there was a million set aside for forest reserve,
was there not?

Mr. Finney. Two million three hundred and fifty-seven thousand
acres in the forest reserve, in the reservation, and 1,010,000 acres set
aside for forest reserve.

Mr. Raker. That was under the statute authorizing the disposi-
tion of this Indian reservation?

Mr. Finney. Yes, sir.

Mr. Raker. Did not the Government have the right to reserve
that land for forest reservation without paying the Indians?

Mr. Finney. It is my opinion that it did not. I think that the
Indians have not been paid for it, and I stated while you were out
that I did not know whether they had or not, but it is my judgment
that if they have not, they have a good claim against the United
States for it.

Mr. Taylor. Well, I argued that point quite fully one time, and I
insisted the Indians had no claim against the Government, be-
cause the Government had not passed title to an acre for the $1.25
received for the acre, and that that amount was not due until such
time as it did pass, but that the Indians might have a claim for the
use of the land for rent or grazing, but not since it had passed into
the private owner, and that was the intent of the treaty in 1880.

Mr. Raker. Was not, as a matter of fact, this land reserved by
Executive order for an Indian reservation to begin with, and not
otherwise?

Mr. Finney. I can not answer that question.

Mr. Raker. I have been trying to find that out. I never have been
able to find it out, and I have been wondering whether or not as a
matter of fact this land was not reserved by the President by an
Executive order.

Mr. Tallman. I think there were some negotiations for the land.

Mr. Finney. I rather think that this land had been occupied by
those Indians for a long time. I would not like to answer that off-
hand. Possibly Mr. Meritt can answer that and give you that in-
formation when he is on the stand.

Mr. Raker. You believe that when the Indians have land like
that and yield it to the Government, that the Indians should be com-
pensated for it?

Mr. Finney. I believe that where they are Indian lands, they
have an absolute right to be compensated, in the sense that it has
been occupied by the Indians and has been claimed for a long time
by the Indians, from time immemorial.
Mr. Raker. Then that 3,000,000 acres of land in California, involved in about 23 treaties which the Government took possession of, did not compensate them; you think that the Indians ought to get something out of that?

Mr. Finney. What sort of reservations were those, Judge Raker?

Mr. Raker. Just about like these.

Mr. Finney. Were they Executive order reservations?

Mr. Raker. No; they were owned by the Indians from time immemorial, and the Government took those lands by force.

Mr. Finney. Well, in this particular treaty, it is provided that the Indians should receive whatever money was derived from the disposition of the land.

Mr. Taylor. I think that the history of that is this, we had those Ute Indians in Colorado, and they came from Colorado and occupied the land that is in my congressional district for many years, and the people of Colorado deliberately put them out of our State and put them into Utah, and they got completely rid of the Utes in that way, but there was a treaty or an act of Congress which provided that in regard to the lands that whenever any portion of it went into private ownership the Government surrendered title to it and the proceeds should go to the Indians, and the Government put a lot of that into the forest reserve, and nobody thought that it was necessary for the Government to pay the Indians anything, and some ingenuous lawyers brought a suit against the Government and by a confession of judgment they got $3,000,000 for the Ute Indians, and those lawyers got $210,000 for fees without their even trying the case.

Mr. Raker. How could they confess a judgment? I do not understand that.

Mr. Taylor. Well, you may look it up in the record. It went through.

Mr. Mays. What did you want them over in Utah for? Why did you send them over there?

Mr. Taylor. Well, we wanted to get rid of them.

The Chairman. Are you going to explain the provisions of the bill, Mr. Finney?

Mr. Finney. I did go into the first part, which related to the limitations.

The Chairman. And that is the only change in the present law; that is, to remove the limitations?

Mr. Finney. Yes.

The Chairman. Of the 640 acres by any one person?

Mr. Finney. Yes, sir.

The Chairman. Now, in line 10, what does it mean, that it is to be sold under rules and regulations to be prescribed by the Secretary of the Interior?

Mr. Finney. Now, the provisos to the bill deal specifically with these lands that have been sold at the three public sales, and you will note that the bill on its face indicates that the validity of the purchases has been questioned because it says that "where the validity of purchases heretofore made under the act of March 3, 1905, have been or may hereafter be questioned in any departmental or court proceeding, on the ground that a larger area than 640 acres
Mr. Raker. And if that law is repealed, then, as I understand it, there will be nothing for the suits to rest upon?

Mr. Finney. I do not so understand it, Judge Raker. My understanding is that the suits will be pending and will be pending until their disposition either by judgment or dismissal, or in whatever way they may be disposed of, and they will be based upon this act.

Mr. Raker. But if the act is repealed, there is no law upon which they can base a charge of fraud.

Mr. Finney. I do not think that the repeal of this act will affect any of the issues, or will affect any of the suits brought under it.

Mr. Raker. But the question is, if they repeal the statute, it means a suit without any basis upon which to stand, and they will have to be dismissed, the suits will have to be dismissed, because there is no act upon which they can base the charges in the complaints.

Mr. Finney. I do not understand that to be the case. It seems to me that the law, as it stood at the time the purchases were made and patents issued, and the suits will control and not as it may be should this bill be enacted into a law this month or next year.

Mr. Vaile. This bill gives authority to the Secretary to settle the suits, does it not?

Mr. Finney. Yes.

Mr. Vaile. And it would not oust the courts of their jurisdiction?

Mr. Raker. The suits are pending solely by this act, and when the bill is repealed, or the act is repealed, all the suits pending, all suits not consummated by final judgment, can be dismissed at once, and it will be the duty of the court to dismiss them, because it will have no foundation upon which to proceed.

Mr. Finney. I do not agree with that view at all.

Mr. Raker. That has been held to be the law.

Mr. Finney. It is not my view of the law at all. I do not think that this repealing clause would prevent us from bringing other suits affecting the lands heretofore sold, because the sales in 1910 and 1913 and 1917 were not made under this bill; they were made under the law as it stood at the date of the sale.

Mr. Raker. But that law is repealed.

Mr. Finney. But it is not repealed as to transactions that took place under it.

Mr. Raker. The basis upon which these suits were brought, for the man could not purchase for himself more than 640 acres of this land, that law will be repealed, and he will be charged with having owned more than 640 acres of the land—

Mr. Finney (interrupting). This will relate only to future dispositions, as I view that. That is the bill taken by the Department when we made our report on the bill. If we are wrong and you are right, some things should be put in here—

Mr. Raker. I do not think that there is any deciding decision on the question as to where a statute is repealed and there are suits pending unless there is a saving clause, and I do not think that there is any doubt but the suits not finally consummated by judgment, if the law is repealed, there is no law upon which the court can act, and it is the duty of the court to dismiss the action.
Mr. FINNEY. If you are right about that, it should be put in here, some saving clause should be put in here.

Mr. TAYLOR. Isn't it plausible to say that by the repealing of the act all of the legal proceedings would be set aside as well as the illegal proceedings or the illegal purchases?

Mr. RAKER. But that is consummated in the form of a contract, consummated by virtue of a contract, and the act itself is consummated, and it is disposed of and ended, but if you should repeal an act and have suits pending upon that act, undetermined by final judgment, and the act is repealed, then it repeals the right to proceed under the act.

The CHAIRMAN. That is an answer to your argument, because it merely refers to matters that are consummated, where the validity of the purchases heretofore made, that is made and consummated.

Mr. FINNEY. He is concerned about the language in lines 8 and 9 of the bill.

The CHAIRMAN. But he says that anything that has been consummated under the act which is subsequently repealed, that in so far as the matter is consummated, that it would revert to the old——

Mr. FINNEY (interrupting). At any rate, Mr. Chairman, it would be a very simple matter to put a saving clause in there. If you are right, I think it should be in there, because there was no intention on the part of the Department, and I do not know that there was any intention on the part of the gentlemen who are the friends of the bill, to wipe out the suits, to wipe all of those suits off of the plate. The department would not favor that, because suits are now pending and suits may be brought in other cases as a knowledge of them comes to our hands.

Mr. RAKER. I thought it was the very object and purpose of the language in lines 7, 8, 9, and 10.

Mr. VAILE. Mr. Lockwood's statement here would indicate that it did oust the court of jurisdiction.

Mr. RAKER. I wanted to receive an explanation of it before we got through, so that the committee, if it proceeded along in the matter, it would have that in view so as to avoid the very question which the bill presents.

Mr. FINNEY. The intention was not to wipe the slate clean and allow the sales to stand, because otherwise there would have been no object in putting these provisos in. The purpose of the proviso is to empower the Secretary with authority to make the adjustments of these outstanding suits and——

Mr. RAKER. It would end the suits and give the Secretary power to adjust them as he might see fit.

Mr. TAYLOR. And it would give the Secretary the power to end them by adjustment.

Mr. FINNEY. That is our thought now. There are three provisions in here. One was the reconveyance of the lands, the repayment of the money, and the clause that the Secretary may validate, ratify, or confirm the sales, and, third, to examine and determine the present value of said lands and the prompt payment by the patentee or purchaser or his assigns of the difference between the amount heretofore and some ascertained value, to validate, ratify, or confirm such sales.

Now, Mr. Chairman and gentlemen, bear in mind that this whole thing is discretionary with the Secretary of the Interior. The Sec-
Secretary is authorized, in his discretion; now, he does not need, of course, to make any compromise at all, but if the Secretary considers it his duty, as I assume he will, he will look after the interests of the Indians and the United States, too.

Mr. Raker. Right in that connection, I want to ask this question, after you have heard the statement that the repeal would have upon the suit, and assuming that it would have that effect, what have you to say to this, the statute being repealed, the court ousted of jurisdiction, the Secretary of State having issued patents, his jurisdiction over the land changed by a subsequent act, which vests him with jurisdiction over the land where the patent has been issued——

Mr. Finney (interrupting). You assume first that this would repeal the law and invalidate the patent?

Mr. Raker. Yes; it would invalidate the patents, and what would be the effect on the suits now pending.

Mr. Finney. Well, if you assume that it would have this effect, and that it would write off the suits and confirm the title in the patentees, I do not think that the Secretary would have any more jurisdiction.

Mr. Raker. If the bill should do that, and if my contention is correct, although you leave the alternates in the law, would not there be authority which was simply nugatory; in other words, the Secretary, although it were attempted to give him authority, would have no jurisdiction?

Mr. Finney. If you are correct, yes; but I do not admit that you are.

Mr. Raker. I find people every once in a while who are in that frame of mind. I am just putting this up so that we may be fully advised on that feature.

Mr. Finney. I do not admit that you are correct, and the thought never occurred to me at the time we were considering this bill. The department is entirely willing to have a saving clause put in here, of course.

Mr. Raker. I had an experience, and I thought the way you did, and I finally got a law repealed, but I did not put in a saving clause, and when it came to the supreme court the gentlemen got up and presented the repealing arguments, and I was nowhere.

Mr. Finney. Well, I think, in view of the doubt which you have raised, at least it would be well to put in some such clause as that.

Now, of course, none of these cases has been actually tried. We have special agents' reports, we have charges, we have bills and complaints filed by the Attorney General, but there has been no trial of these cases, so I do not know whether these people have or have not been guilty of the offenses charged, but assuming that they are guilty as charged, it was the view of the department that some such legislation as this would be to the best interests of the Indians. In the first place, the restriction of the acreage ought to be removed as to future sales. Undoubtedly that would result in advantage to the Indians in the receipt of large amounts for the lands.

As to the sales heretofore made, it simply puts it in the power of the Secretary of the Interior to have his agents to go out there and reappraise and revalue this land and exact from these purchasers the difference between what was paid at that time for these
lands and the present value. Lands have gone up during the last 8 or 10 years, and it may be that these gentlemen will have to pay considerable sums in addition to what they have heretofore paid, and it puts up to the Secretary of the Interior, whose prime interest is looking after the Indians, and these men will simply have to walk the plank, that is all. What the Indian wants is to get as much money as he can. He does not want the land himself; he is not using it and does not intend to use it. The Indian does not care so much whether it is grazed by cattle or by sheep or whether it is in the Forest Reserve, but all that he is interested in is the receipt of the money.

Mr. RAKER. The one thing that I am interested in on the acreage is this: I have had, and I have no doubt that many of the other western members have had, communications in regard to the lands. The people out there want to know why they can not buy larger tracts; that is, tracks of 5,000 to 10,000 acres, at the minimum price of $1.25 an acre. Now, I am asking you, if you do that in this case, what lands will we have to give to the western cattle men or the sheep men or the horse men, who want the remaining lands without any restrictions as to acreage?

Mr. FINNEY. The only answer to make is that the land is not of the same kind, quality, character, and situation as this land.

Mr. RAKER. But it is hard to convince them to the contrary.

Mr. FINNEY. I do not know but that may be a very good method of disposing of some of the residue of the public domain. You know that the theory in the past of disposing of it has been in the various grades of homestead and other laws, and we have got it under the 640-acre homestead, and we are still classifying, but there are thousands of entries being made every month. It may be that after this law has been worked out that it will be up to Congress to pass another and more liberal law, possibly allowing the sales of larger tracts of land. But here is an area away up on the roof of the world, up in northeast Utah, land of very poor quality, a semiarid grazing land. I have not been out there myself, but—

Mr. RAKER. We think that we can get nearer to heaven in California than in any other place in the world. I do not want you to question that.

Mr. SUMMERS. This land may bring most dollars to the Indians in that way, I admit, but there is the question of the water holes, which predominates the whole area that has been unlawfully and illegally taken possession of by certain men, and the question arises, is it going to be to the best interest of the public for Congress practically to confirm what has already been done in the way of getting hold of these strategic points, which means that they must control all the rest of the land?

Mr. FINNEY. I did not know about the proposition of the water holes.

Mr. SUMMERS. The water-hole proposition, as I understand it, together with the stream valleys, control all of the rest. Stream valleys means everything, and it is a very important and a very big problem.

Mr. FINNEY. Well, I will say that, not having been on the land, I am only guessing, but I will venture a guess that there are very
few water holes or stream valleys that were not taken during the five years the lands were open to homestead entry.

Mr. Summers. I was just wondering whether we can not get some one who can give us definite information in regard to that, whether those things are involved in this or whether they are not.

Mr. Finney. Commissioner Tallman has a set of maps which will show the lands in detail, and how they were held and disposed of, and no doubt these gentlemen can give you some information about the water holes.

Mr. Raker. What branch of the service disposes of this land?

Mr. Finney. The General Land Office.

Mr. Raker. And the Secretary of the Interior's office, is that the General Land Office?

Mr. Finney. The General Land Office is a part of the Department of the Interior and it has charge of the disposition of the land.

Mr. Raker. Do you know anything about the statement that has been made in the hearings that the land offices advising of the manner and the method of these sales?

Mr. Finney. I only know that some people from out in Utah have made such statements to me, that such statements have been made, and I have been told by the officers of the Land Office that they did not make any such statements.

The Chairman. Mr. Finney, on the theory that this complaint is true, some of these defendants have been guilty of perjury, which is a very heinous crime, and under this bill we are not only compromising several cases, but we are also compounding a felony, are we not?

Mr. Finney. Well, the statute of limitations has run against them.

The Chairman. But it may not have run in the case of some of these other sales, and we are compromising them all. How can we justify to the public and to the House and to Congress such a condonation of a crime?

Mr. Finney. I can only answer that in private affairs and in governmental affairs too, it very often happens that the best interests of all parties concerned is to compromise a controversy. The Department of Justice has, with our approval, compromised more than one suit involving public land.

The Chairman. I am not saying that that is my viewpoint, but I want to get it before the committee in the very worst aspect that it can be put before the public.

Mr. Finney. We have approved of these compromises because we thought that it was to the public interest to do it.

Mr. Taylor. Isn't it true that in the oil cases, or in the oil laws or bill, we have a clause in there authorizing the President of the United States to compromise and adjust a great many of the suits involving millions of dollars, and has not the Senate and the House passed the bill?

The Chairman. We have a fraud clause in that law.

Mr. Finney. Congress passed last winter a so-called omnibus land bill, and many of those entries were made in violation of the law. Some of them were made by men who had exhausted their homestead rights. They signed an affidavit that they had never exercised their homestead right before, and many of them lived on the land for
three or four years and then they applied for a patent and the Land Office upon making investigation found that they had exhausted their right. We recommended a compromise with them.

The CHAIRMAN. And a great many of them did not think they were taking up a homestead in their former entry. They thought that it was a purchase.

Mr. FINNEY. Well, in many of the cases these men may not have thought they were violating the law. It seems to me that the whole thing boiled down for the consideration by Congress is whether or not it is to the best interest of the public and to the best interest of the Indians to adjust a controversy and fix a lot of land titles...

The CHAIRMAN. To bring us down to a cold-blooded proposition, if this act did not pass and the suits are prosecuted successfully, the Government will retain the purchase price heretofore paid, will it?

Mr. FINNEY. Yes.

The CHAIRMAN. And then it can also sell the land in the future?

Mr. FINNEY. I do not know whether it can sell the land or not, in the 640-acre tracts. But we have the legal authority to sell it; yes.

The CHAIRMAN. And you have the right to modify the law and to sell it in other tracts?

Mr. FINNEY. Yes; we have now.

The CHAIRMAN. And would it not be advisable to put in this bill a broad provision precluding the Secretary from attempting a compromise with anyone who has been guilty of a fraud?

Mr. FINNEY. I do not know enough about the facts of the alleged frauds to give an opinion upon that. There has been no deliberate fraud if these people acted under a mistake, and I do not know why they should be excluded from the benefit of the compromise.

The CHAIRMAN. Can you state whether or not it would be the policy of the department, in case this law is passed, to settle cases of that kind? Would it settle a case of gross, unquestioned fraud?

Mr. FINNEY. Well, I do not believe that it would. I think it would take into consideration what would be equitable, consider the equities of the parties concerned, and that it would probably settle it on an equitable basis. If the case of a willful fraud, the parties without any equities will be denied relief. Of course, the matter is in the discretion of the Secretary of the Interior.

Mr. RAKER. Well, let us say that here is John Jones, who has bought a tract of a thousand acres, and that he knew that the man who purchased it—that at the time of the sale the man who purchased it—committed perjury, committed fraud in purchasing the land. Where would John Jones come in in a case of that kind?

Mr. FINNEY. Oh, if he purchased it with knowledge that fraud had been committed, I do not know that there would be any room for equitable consideration.

Mr. RAKER. And suppose he purchased it without any knowledge of any certain fraud, but the circumstances of the case were such that he ought to be on notice?

Mr. FINNEY. I think that with that sort of a case, it is one that should have consideration.

Mr. RAKER. Is not he an innocent purchaser?

Mr. FINNEY. He might be an innocent purchaser, constructively; he might have constructive notice and not occupy the status of an innocent purchaser.
The Chairman. There could be an innocent purchaser in the case, although the transaction might be fraudulent?

Mr. Finney. If there were an innocent purchaser, I do not think that the patent could be set aside.

Mr. Vaile. There might be a purchaser who was very far removed from notice, and there might be one very close to it, and there might be one of every shade between the two.

Mr. Finney. Yes.

Mr. Vaile. There might be circumstances under which a man was legally bound to take notice, and other circumstances where he would be far more compelled—where the circumstances would be far more removed—to influence him to take notice than in another, and there might be every possibility, every possible grade leading from the veriest constructive fraud to the veriest actual fraud.

Mr. Finney. Yes.

Mr. Taylor. And the Secretary ought to have authority to settle those cases.

Mr. Finney. Yes; that is true, and that is what the bill is authorizing him to do. I have found in a pretty long experience, dealing with public lands, that the presumption that everybody knows the law is not correct. Why, they file affidavits without knowing what it is—

The Chairman. But do not all these patentees who are holding lands of more than 640 acres—is it claimed that they were ignorant of the law—

Mr. Finney (interrupting). I think they claim that they were informed that it was no violation of the law to have friends and relatives buy lands and then have them conveyed to the one person.

The Chairman. Well, I think there was a claim made that they were so informed by special agents.

Mr. Finney. Yes; that is so; that was claimed.

The Chairman. Now, what is the view of the department on that?

Mr. Finney. I do not know. I have never heard any one of the department admit having made such a statement.

The Chairman. Do they specifically deny it?

Mr. Finney. Two of the gentlemen who participated in those sales have stated to me that they did not.

The Chairman. Who are those gentlemen?

Mr. Finney. Mr. Witten and Mr. McFall.

Mr. Mills. Could they have been ignorant of those transactions. Isn't is natural that they knew of those sales where Mr. Murdock's sons and daughters and wife sold the land to him?

Mr. Finney. I do not know that that follows. They may have thought that those sons and brothers were going to keep the land. If that was the fact, there would be no violation of the law.

Mr. Mays. That will all be brought out.

Mr. Finney. Yes; that will all be brought out when we know the facts. I just want to conclude by saying that the real interest that we have is to protect the Indians' interests, because that is the prime consideration here.

Mr. Taylor. Is it your judgment, if we pass this bill, that the Department of the Interior can and will not only protect the rights of
the Government and the rights of the Indians, but the rights of the public generally as against fraud and administer this matter, and that the department is in favor of this legislation?

Mr. Finney. We believe, and Commissioner Sells believes, that the Indians would get more out of these lands under such a measure than they would get by prosecuting the suits, trying to dispose of the lands in 640-acre lots.

The Chairman. Will you tell me, Mr. Finney, what is the difference between the frauds alleged to have been committed in this case and the celebrated oil and land fraud cases, where a dummy entryman took up timber claims and afterwards transferred them to the defendants. That is the claim there—

Mr. Finney. Well, I think in those Oregon cases, these dummy entrymen were most strangers employed to go out and make entries in their names and to reconvey to some one else. In this Utah matter I think the people were probably under the impression that at the actual sale and bidding not more than 640 acres could be sold to one, but there was not any objection to a number of them buying in a tract and consolidating it. I do not believe, so far as I know about this thing, that there was a deliberate attempt to defraud anybody out of something valuable in this Utah matter as there was in the Oregon case. In that case they were defrauding the United States out of very valuable timber lands.

Mr. Raker. I do not quite get the distinction. Here is A, B, C, and D agreeing with Mr. Jones that he will act as buyer and their agent and without any compensation he will bid in this land for them, without any compensation to them will turn it over and deed it to him when he gets the title, than the case where the man like the one you suggested, the timber-land cases, for the Government in both instances gets the full value of its money.

Mr. Finney. Under the law there is no question about that being a fraud.

Mr. Tallman. In this case the price was made by the Constitution, whereas in the other cases, we have laws of restricted interests, where they got the lands for a nominal price, so that it was a clear case of the Government being defrauded to that extent.

STATEMENT OF MR. EDGAR B. MERITT, ASSISTANT COMMISSIONER OF INDIAN AFFAIRS.

Mr. Meritt. My name is Edgar B. Meritt, and I occupy the position of Assistant Commissioner of Indian Affairs. I have but very few words to say in regard to this matter. The Indians are primarily interested in this case, it seems to me. I am here not representing the parties who got this land. If there has been fraud perpetrated here, and if there has been any misconduct on the part of these parties, I am not here to excuse them. As a citizen of this country, I believe that the people should obey the law, and these gentlemen who have gotten this land would have been in a very much better position as citizens and before your committee if they had come before this committee and stated the character of these lands and gotten the legislation changed so that they could have a larger acreage than 640 acres, rather than get it the way they did.
I make that statement in order to make it clear that I am not here to defend the men who have a larger acreage than they are entitled to. I am here only and solely to represent the Indians. The General Land Office, under the practice of the Interior Department, takes charge of ceded Indian lands and disposes of them for the benefit of the Indians. It is the duty of the Indian Bureau to see that the Indians get an adequate consideration for those lands, and also to see that the proceeds from the sale of those lands are used for the benefit of the Indians.

This land was disposed of under the General Land Office, and Mr. Tallman, Commissioner of the General Land Office, therefore is in a better position to answer detailed questions regarding this matter than anyone else.

The statement made by the Indian Rights Association would make it appear to the committee that the report of the department was not given adequate consideration. I want to state to the committee that that is not the case. This bill, and the request by the chairman of the Public Lands Committee, was taken up by Commissioner Sells and other officials of the Interior Department with Secretary Lane personally and the matter was gone over in conference and the report was submitted to the committees of Congress after careful consideration.

We should bear in mind in this connection that this controversy is largely between cattlemen and sheepmen. The sheepmen have got the land and some of the cattlemen want the land, and the method that they have resorted to in order to get this land is no more honorable than the method by which the sheepmen have gotten it.

The cattlemen proposed to get this land into a forest reserve and let the public—the taxpayers of this country—pay for the land, and they use those lands for a nominal consideration.

I want to say that I don't approve of their methods in endeavoring to get hold of this land, and I will say that the Indians are very much opposed to this method of obtaining their lands. In fact, they have submitted a very vigorous protest against this proposition of including their lands in the forest reserve, and in order that their views may be understood, and for the benefit of the committee, I will read that protest into the record. This is the protest from the Indians:

We were allotted very small tracts of land in severalty: heads of families receiving 80 acres and only 40 acres each to all others, and many married men who had no children were allotted as not heads of families. It was explained that this was done because we were to be allowed a grazing reserve for the use of the tribe.

The balance of our reservation was thrown open to homestead entry. All of such land is now occupied by settlers, most of them owning 160 acres each as compared to our 40-acre tracts. Many of these homesteaders were unmarried men or women, yet they were considered as heads of families and allowed homesteads equal to others who had children. Now comes the cry from the aforesaid homesteaders that they have not enough room on their 160-acre ranches and must have our grazing lands turned over to the forestry, that they may be allowed the use of the said land for their stock.

In 1905 Congress set aside the best part of our grazing land as a forest reserve, leaving us only the foothills along the base of the mountains for our grazing lands, and the above-mentioned forest reserve has been open to homesteaders for the grazing of their stock.

We Indians have cattle and horses, beside sheep, and as we understand stock raising better than we do other things, we want to continue in that business, therefore we must retain what little grazing lands we have left.
We do not understand the rules and regulations governing the forestry and if we were placed under their supervision it would work a hardship on us, for white men would beat us to the grazing privileges just as they do now on the national forest reserve.

Mr. Meritt. Therefore, gentlemen of the committee, the Indian Bureau is not in favor of placing any of these lands belonging to the Indians into the forest reserve.

Mr. Raker. Approximately how much money is to the credit of the Ute Indians now?

Mr. Meritt. There is about $1,500,000 in the Treasury of the United States to the credit of this particular branch of Indians.

Mr. Raker. Why are not the isolated tracts sold and the remaining land kept for the Indians for grazing purposes? They have horses and they have cattle and they have sheep, and they only have 80 or 40 acres; why not keep this land for the Indians and allow them to raise their horses and their cattle and their sheep instead of putting them out on the sand dunes?

Mr. Meritt. That is exactly what we propose to do. We have reserved about 250,000 acres in a grazing reserve for the benefit of those Indians, but that land is not the land in controversy. The land in controversy is ceded land that is being disposed of to homesteaders, and a large amount of this land has already been sold and only about 180,000 acres remain unsold. This land is scattered over a considerable area and is in tracts that have not been taken up by the homesteaders.

Mr. Summers. What is the total number of Indians of that tribe?

Mr. Meritt. The total number is about 1,200 on the Uintah Reservation.

Mr. Summers. That is all, the children and everyone else?

Mr. Meritt. Yes, all of them, and there are less than 300 able-bodied men on the Uintah Reservation. The Government has expended a large amount of money, over a million dollars, belonging to the Ute Indians in the construction of an irrigation project. We are now making every effort to get that land under actual cultivation in order to preserve the water rights of those Indians. Congress, in 1906, extended the water-rights laws of the State of Utah to this reservation, and we are placed in the position in having expended $1,000,000 in the construction of this project, and to give the Indians the benefits of the lands and the water rights and the benefit of that expenditure for the irrigation project. We had to get the land under cultivation. Although the State has cooperated with the department in extending the time in which beneficial use should be made of that water, I think it is very unfortunate for Congress to pass legislation extending the State water-rights laws to Indian reservations. We should reserve the water rights for the benefit of the Indians of the reservation. They have a primary right to those waters under a decision rendered by the Supreme Court in what is known as the Winters case.

Now as to the title of these lands—

Mr. Mays. Do you consider the lands set aside as grazing reserve for the Indians ample and sufficient for the Indians?

Mr. Meritt. For their present use, yes, sir; I do.

Mr. Summers. Is the tribe increasing or decreasing in numbers? Can you tell us about that?
Mr. Meritt. It is about holding its own.

Mr. Summers. But, extending over a period of 10 years, what are the facts about that? Is the tribe increasing or decreasing in number?

Mr. Meritt. There has been a decrease in a period of 10 years, but with the exception of the year that they had influenza, they have been at least holding their own, if not slightly increasing. Up to about five years ago there was a gradual decrease in the number of the Indians, but we have brought about an improvement in health conditions, and now they are holding their own in number if not showing a slight increase.

Mr. Vail. I was going to ask whether any of the lands which would be disposed of under the provisions of this bill, and the title to which might be settled under the authority of this bill, would be required by the Indians for grazing lands?

Mr. Meritt. I think not.

Mr. Raker. In this protest which you have read here, what do the Indians mean about the white man taking all his rights? What land does he refer to?

Mr. Mays. To the forest reserve.

Mr. Meritt. He refers to the land taken in as a forest reserve.

Mr. Raker. What does Mr. Ute Indian care, if he has got enough grazing land outside of the forest reserve, whether it is taken in by the forest reserve or not?

Mr. Meritt. He does not want it taken and placed in the forest reserve. It was done arbitrarily, and at a time that the Government thought he should not be reimbursed for that land.

Mr. Raker. Mr. Ute Indian has enough grazing land for his stock, we will say, and what difference does it make to him, and what complaint would he have if the land was taken into the forest reserve?

Mr. Meritt. Well, he does not want any more of his land placed in the forest reserve. There was a proposition on foot to take a part of his present grazing reserve and place it in the forest reserve in addition to the land heretofore placed in it, but he protests against it.

The Chairman. Was he reimbursed for the lands heretofore embraced in the forest reserve?

Mr. Meritt. Yes, sir. After making a fight in the Court of Claims for reimbursement, the Ute Indians recovered a judgment of three and one-half million dollars for lands heretofore taken by the Government. The legal title is held in the United States, but the Indians own an equitable right to this land; and if this land is taken away from the Indian without compensation, he can recover a judgment against the Government of the United States.

Mr. Raker. It seems to me that if we want to do the right thing, and if we want to look after the welfare of the Indian where they say that there are 300 heads of families, and where they have got horses, and cattle, and sheep, and where the value of the land is fixed at $1.25 an acre, and under a general sale we could fix it at 50 cents an acre, if this land is in a comparatively compact bunch or comparatively compact bunches of 10,000 or 15,000 acres, wouldn't we be doing them a great favor and conferring a benefit upon them and to the country if we would just turn around and pass legislation by which all this land would go back to the Indians, and charging
them up with 50 cents or 25 cents an acre, and let them use it as grazing lands and build up their homes upon that land?

Mr. Merritt. That would be practicable if the Ute Indian would make use of the land; but we are now leasing a very large acreage of the land in the Uintah Indian Reservation in order to conserve the water rights of the Indians.

Mr. Raker. I would like to get Mr. Bonnin to answer that question, if he will, whether the Indian would be more benefited by having the land involved in this bill disposed of in the way I have just mentioned, or by having it sold for his benefit?

Mr. Bonnin. I believe that the latter would be more beneficial.

Judge Raker.

Mr. Raker. He would get the cash?

Mr. Bonnin. He would get the cash, and for the reason that while the Indian is interested in stock to a certain extent, there is not one of them who is equipped to go out and compete with the sheepmen and to go out to that tract of land in the sheep business, as has been done by some of our white men. They are not in a position to-day, and much less if that amount was taken from the amount that is now in the Treasury in order to buy this land back.

Mr. Vail. While on the other hand, with the money derived from the sales of this land, they could improve their present small farms.

Mr. Bonnin. In connection with the lands, I should like to say that there is a great quantity of land that is on the old reservation that is also lying idle, that is within 55 miles of railroad, and very little of that at all is taken up. Droves of sheep run over there in the wintertime, and it is high land and can not be watered; and, I believe, originally belonged to some other Indians. There have been several efforts to get a bill through Congress to throw it open for sale, and it met with opposition from some of the mining interests, because of the value of the claims to be had out in that section of the country, and they would be thrown open, and the mining countries would invest a lot more money in order to get control of it.

I do not know where the Indians would benefit from it any more than they would in the lands that have already been spoken of. The same Indians are interested in that land and are pushed out, and the land is worthless; and at the same time there are bands of migratory sheep running over it, and evidently somebody is reaping the benefit of it. In connection with that, in connection with the moving of those Utes over to Utah, I wish to say that Mr. Taylor has only spoken of a portion of them. They left there further back than 1880, and were moved out of Colorado into Utah very much to the displeasure of the Utes in Utah at that time; but when they pooled their funds along with Uintahs, it made it satisfactory, and it rather pacified them. And, speaking of that reservation, I think that the Utah Utes have been in there far longer than back of 1880.

Mr. Mays. Regarding Judge Raker's suggestion that they might need more lands, isn't it a fact that you have been obliged to advertise all over that western country in order to get white men to come in there?
Mr. Meritt. That is true, and we have now complaints from white men that they were persuaded to go there and we have not been able to furnish them an adequate water supply.

We have now on the Uintah Reservation under constructed works 80,000 acres of irrigable land. Of the amount actually irrigated, we have 42,327 acres of land under irrigation by lessees and white owners, and 13,036 acres cultivated by Indians. We have expended up to June 30, 1919, $889,612 for construction work, and for maintenance and operation $307,407. You will see from those figures, which are up to June 1 of this year, that the Indians at this time are utilizing only a small portion of the lands on that reservation and they have ample lands provided they will make use of them.

Another reason why it is impracticable to set aside this 180,000 acres for the Indians is because the white people have gone in there and homesteaded over a large part of that area. I think Mr. Tallman, the commissioner of the General Land Office, has maps here showing those facts.

Therefore, we think it would be for the best interests of the Indians if this 180,000 acres were sold. I think it has already been brought to the attention of the committee that under the act of 1905 the land were disposed of at $1.25 to homestead settlers, and it is presumed that they took up the best land in that area, and this remaining land is now being disposed of at the best price obtainable.

Of course, the value of land has gone up in recent years, and my understanding is that we have gotten almost $2 an acre for this remaining land.

The character of this land is such that it is impracticable for a man to go on 640 acres and maintain his family and make a good living on that limited acreage.

It has been stated by gentlemen who have made investigation of this land that it is impracticable to dispose of this 180,000 acres of land on the basis of 640 acres to the person, and I think that the act of 1905 should be amended so as to leave it within the discretion of the Secretary of the Interior as to the amount of the acreage that should be sold to any one person. If that limitation is removed, I am quite sure that we will be able to get for the Indians a larger price than can be obtained for them under the limitation.

Mr. Raker. Are there any minerals on this land?

Mr. Meritt. Not within my knowledge.

I think I would give the committee in a more concrete manner more information about the details by reading the letter that we wrote to Mr. Cramton in connection with this matter. He asked us a great many questions, and we answered them in question and answer form, and with your permission I will read it. The letter is dated November 6, 1919:

Department of the Interior,
Office of Indian Affairs,
Washington, November 6, 1919.

My Dear Mr. Cramton: I am in receipt of your letter of November 4, received to-day, in regard to procuring and submitting to you certain information in connection with Senate 3016, Sixty-sixth Congress, first session, "A bill relating to the disposition of certain grazing lands in the State of Utah, and for other purposes."

162423—20—8
The questions asked will be answered according to the order in which they appear in your letter.

1. Character of the lands:
   Answer. I am advised that the lands in question are hilly or mountainous in character, and it is believed that they would not sell for a fair price in 640-acre tracts, while on the contrary large areas would afford an opportunity to procure larger prices for the Indians by disposing of the lands to purchasers who would use them for grazing purposes.

2. To what extent are they the subject of pending litigation?
   Answer. The names of the persons who it is alleged indirectly acquired title to more than 640 acres, against whom suits are pending and the number of acres involved in the suits, are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith, David</td>
<td>7,639.67</td>
</tr>
<tr>
<td>Peterson, F. A.</td>
<td>2,456.14</td>
</tr>
<tr>
<td>Thomas, Jessup</td>
<td>7,396.28</td>
</tr>
<tr>
<td>Smith, Albert</td>
<td>15,274.42</td>
</tr>
<tr>
<td>Smith, M. A.</td>
<td>4,221.84</td>
</tr>
<tr>
<td>Smith, Manu</td>
<td>3,785.70</td>
</tr>
<tr>
<td>Smith, Alice G.</td>
<td>1,231.92</td>
</tr>
<tr>
<td>Jones, Thomas, et al.</td>
<td>6,078.88</td>
</tr>
<tr>
<td>Smith, Blanche</td>
<td>2,515.66</td>
</tr>
<tr>
<td>Coleman, William</td>
<td>8,126.20</td>
</tr>
<tr>
<td>Lindsay, William H</td>
<td>1,520.00</td>
</tr>
<tr>
<td>Total</td>
<td>61,286.71</td>
</tr>
</tbody>
</table>

Senate 3016, if enacted into law, would affect the above purchases and any other sales in which more than 640 acres was secured, directly or indirectly, by any one person.

The said suits were filed in the United States District Court for Utah at Salt Lake City.

The area in said former reservation which has not been disposed of and which is subject to sale to the highest bidders, is about 180,000 acres.

3. Was such litigation brought with the approval of the Department of the Interior?
   Answer. Yes.

4. What will be the effect of such legislation upon the interests of the Indians?
   Answer. It is believed that the interests of the Indians, if this legislation is passed, will be fully protected because the adjustment of the matters in the litigation will be left entirely to the discretion of the Secretary of the Interior.

5. To what extent has the land in this same reservation heretofore been disposed of in accordance with the present law?
   Answer. From an inspection of the records of the General Land Office and the office of the Secretary, it appears that the Uintah Reservation, Utah, formerly embraced 2,357,286 acres, which were reserved open to disposition or disposed of as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Embraced in forest</td>
<td>1,010,000</td>
</tr>
<tr>
<td>Embraced in town sites</td>
<td>2,100</td>
</tr>
<tr>
<td>Opened to homestead entry</td>
<td>1,004,285</td>
</tr>
<tr>
<td>Included in mining claims</td>
<td>2,140</td>
</tr>
<tr>
<td>Allotted to Indians</td>
<td>90,407</td>
</tr>
<tr>
<td>Under reclamation</td>
<td>60,160</td>
</tr>
<tr>
<td>Included in grazing reserve</td>
<td>176,191</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,357,286</strong></td>
</tr>
</tbody>
</table>

The lands which were opened to homestead entry remained subject to such disposition for a period of five years, during which time about 300,000 acres were entered.

The lands which were opened to homestead entry under the homestead laws were subsequently offered for sale to the highest
bidders, the years in which the sales were conducted and the aggregate quantities sold being as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910</td>
<td>183,420</td>
</tr>
<tr>
<td>1912</td>
<td>136,441</td>
</tr>
<tr>
<td>1917</td>
<td>200,684</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>520,545</strong></td>
</tr>
</tbody>
</table>

I am not informed that more than 640 acres was, in any instance, disposed of to any one individual or corporation in its own name.

6. What information is available as to the facts attending the connection of the parties by the pending suits with the land in question and the circumstances under which they have sought to acquire title to amounts of land in violation of existing law?

Answer. I am not in a position to answer this question for the reason that the records and the persons familiar with the details thereof are under the supervision of the Commissioner of the General Land Office.

7. Is it not a fact that if Senate 3016 becomes a law, it will be within the jurisdiction of the Secretary of the Interior to follow one of three courses with reference to the lands that are the subject of the pending Government suits, as follows:

1. To accept a reconveyance of the lands involved in such proceedings and to repay to the purchaser or his assigns the purchase money paid therefor.

2. To validate, ratify, and confirm such sales.

3. To examine and determine the present value of said lands and upon payment by the patentee or purchaser or his assignees of the difference between the amount heretofore paid and such ascertained value to validate, ratify, and confirm such sales.

Answer. Yes; it will be within the discretion of the Secretary of the Interior to effect a settlement on the basis of either one of the foregoing provisions, according to the circumstances arising in each particular case.

8. Is it the purpose of the Interior Department to give its approval to the vesting of such a broad discretion with reference to these pending suits?

Answer. Yes. This phase of the bill was carefully considered and received the approval of the Secretary of the Interior in his report on Senate 3016, under date of September 19, 1919. In this connection, I may add I have been advised that a short time ago the United States district attorney, who has charge of the litigation in question, now pending in the United States District Court for Utah, Salt Lake City, had a conference with Commissioner Sells as to the desirability and effect the proposed law, which, if enacted, would have upon the litigation in question, and the United States district attorney saw no objection to the passage of the bill.

Yours very truly,

E. B. Meritt,
Assistant Commissioner.

Hon. Louis C. Cramton,
House of Representatives.

Gentlemen of the committee, that is about all I have to say, except this, that as I understand it, Senate bill 3016 places this entire matter in the hands of the Secretary of the Interior to be disposed of in such manner as he may deem to the best interest of all concerned, and it is my experience, as an official of the Interior Department, that when questions of this kind are placed in the discretion of the Secretary of the Interior that he makes a full investigation of all the facts and conditions and circumstances, and so far as it is within his power renders a just decision in the matter.

Believing that, and that whoever may be the Secretary will follow that procedure, I see no objection to the enactment of this legislation, with the full understanding that I do not condone or excuse the men who got more acreage under the existing law than they were entitled to.
The Chairman. What rent do you get for the Indian lands that you rent out on the Reservation?

Mr. Meritt. We have different prices for the land. We rent usually by the head for grazing cattle. We get anywhere from a dollar up to four dollars and a half, depending upon the grazing and water conditions.

The Chairman. Do you get a dollar for the poorest land?

Mr. Meritt. I am talking about all of the Indian Reservations. I have not the figures for this particular reservation.

The Chairman. I thought that you might compare the rent you got for this land with the rent you got for other lands.

Mr. Raker. How long have you been connected with the bureau, Mr. Meritt?

Mr. Meritt. About 14 years. Prior to my appointment as Assistant Commissioner I was chief law officer of the Indian Bureau, and I have worked up through the various grades in the Indian office.

Mr. Summers. Will you tell me whether the various Smiths who have acquired large holdings are members of the same family? Does that represent one family?

Mr. Meritt. I have no knowledge on that subject.

Mr. Summers. Can you give us any information in regard to water holes and possession of water holes?

Mr. Meritt. I imagine that the homesteaders have selected the best water holes on the reservation, because this land has been subject to homestead entries for a great many years, and naturally they would be the ones to look for the water holes.

Mr. Summers. Can you give us the information as to the number of valuable watering points that are involved in that 60,000 acres?

Mr. Meritt. I have no information as to that. I will say this, however, it is not such land as could be irrigated. That question was asked this morning.

Mr. Summers. Was that question asked this morning?

Mr. Meritt. I was asking about the water holes.

Mr. Meritt. I understand, but that question was asked this morning and I thought that I would give definite information about that subject.

Mr. Summers. I was thinking of pasturage. Of course the water control is the control of all the rest of the land; the man who controls the water controls everything.

Mr. Meritt. My information is that the best land in this portion of the reservation has already been taken up by homesteaders, and this 180,000 acres is not so valuable as the land hereabove taken.

Mr. Summers. I was thinking about the 61,000 acres.

Mr. Meritt. I was thinking about the 180,000 acres.

Mr. Summers. What I am concerned with is, whether the 61,000 acres, whether those who have the 61,000 acres have usurped all of the water holes and the water points—

Mr. Meritt. Mr. Tallman has a map showing the particular land, and probably those maps would indicate the streams and the water holes. I know that he will have a great deal more information about that than I would, and he has recently been over this land in controversy.

The Chairman. How long do sheep in that section of the country go without water, do you know?
Mr. Meritt. I am not an expert, and I could not give you any expert information. I am sure that these gentlemen here can give you more accurate information than I could, but sheep can go quite a long time without water.

Mr. Raker. Could you furnish for the committee the first amount of money received by those Utah Indians on this Indian reservation, and the amount of money up to the present time, the amount of money expended, and the amount of money remaining to their credit up to the present time, and the amount of land that they hold, jointly hold, that is, belonging to the Indian reservation that they are in?

Mr. Meritt. I could furnish that information, but it would take some little time.

Mr. Raker. That is all right. It may be inserted in your statement.

Mr. Meritt. I will be very glad to include that in my statement.

(The statement above referred to is here printed in the record in full as follows:)

[Memorandum concerning the Uintah Reservation in Utah, for the use of the House Committee on Public Lands, having under consideration Senate bill 3016: "A bill relating to the disposition of certain grazing lands in the State of Utah, and for other purposes."

(1) PROCEEDS OF UINTAH AND WHITE RIVER UTE LANDS.


<table>
<thead>
<tr>
<th>Year</th>
<th>Receipts</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>1906</td>
<td>$9,769.00</td>
<td></td>
</tr>
<tr>
<td>1907</td>
<td>33,553.59</td>
<td></td>
</tr>
<tr>
<td>1908</td>
<td>34,010.82</td>
<td></td>
</tr>
<tr>
<td>1909</td>
<td>22,134.01</td>
<td></td>
</tr>
<tr>
<td>1910</td>
<td>27,466.33</td>
<td></td>
</tr>
<tr>
<td>1911</td>
<td>264,000.96</td>
<td></td>
</tr>
<tr>
<td>1912</td>
<td>84,308.69</td>
<td></td>
</tr>
<tr>
<td>1913</td>
<td>289,672.10</td>
<td></td>
</tr>
<tr>
<td>1914</td>
<td>42,932.03</td>
<td></td>
</tr>
<tr>
<td>1915</td>
<td>64,449.77</td>
<td></td>
</tr>
<tr>
<td>1916</td>
<td>31,446.87</td>
<td></td>
</tr>
<tr>
<td>1917</td>
<td>28,938.73</td>
<td></td>
</tr>
<tr>
<td>1918</td>
<td>174,590.11</td>
<td></td>
</tr>
<tr>
<td>1919</td>
<td>15,666.97</td>
<td></td>
</tr>
</tbody>
</table>

Total receipts to June 30, 1919: $1,123,590.98

(2) UTE 5 PER CENT FUND.

(Act of Apr. 29, 1874, 18 Stats. L., 41.)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount appropriated</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>Pro rata shares paid to Indians to June 30, 1919</td>
<td>59,218.98</td>
</tr>
<tr>
<td>Balance</td>
<td>440,781.02</td>
</tr>
</tbody>
</table>

The annual interest on this fund has been expended for the benefit of the Indians as provided by the above-referred-to act.
There was appropriated by the act of March 4, 1913 (37 Stats. L., 934), pursuant to a judgment of the Court of Claims of February 13, 1911, the sum of $3,305,257.19. This money belongs to the Uintah, etc., Utes of Utah, and the Ute Mountain and Southern Utes of Colorado. Appropriations have been made therefrom for the Uintah Utes as follows:

- Act of Aug. 1, 1914 (38 Stats. L., 603), for fiscal year 1915: $200,000
- Act of Mar. 4, 1915 (38 Stats. L., 1228), for fiscal year 1916: $200,000
- Act of May 18, 1916 (39 Stats. L., 152), for fiscal year 1917: $200,000
- Act of Mar. 2, 1917 (39 Stats. L., 988), for fiscal year 1918: $200,000
- Act of May 25, 1918 (40 Stats. L., 586), for fiscal year 1919: $150,000

Total: $1,150,000

Under the several appropriation acts above mentioned the amounts appropriated for the fiscal years 1915 to 1919, inclusive, for the Uintah White River and Uncompahgre Utes, aggregating the sum of $1,000,000, were expended or distributed for the purpose of promoting civilization and self-support among the said Indians. The additional sum of $150,000 appropriated under the act of May 25, 1918, supra, from the principal fund of these Indians was expendable for the construction and maintenance of irrigation systems authorized under existing law.

The Indian act for the fiscal year 1920 contains similar appropriations, viz., $200,000 for promoting civilization and self-support and $100,000 for irrigation purposes.

The annual interest on the principal fund mentioned is also used for beneficial purposes, including education, etc.

INDIAN MONEYS, PROCEEDS OF LABOR, UINTAH, ETC., INDIANS.


There has accrued from grazing-trespass fees, mining leases, and other miscellaneous sources from July 1, 1900, to June 30, 1919, inclusive, approximately $185,161.37, of which amount there was disbursed in making per capita payments to Indians, delegation expenses, advertising, subsistence, education, hardware, farm implements, etc., the sum of $167,616.43, leaving a balance in the Treasury June 30, 1919, of $17,544.94.

(3) TOTAL AMOUNT OF LAND DISPOSED OF.

Approximately 300,000 acres have been entered and sold under the homestead law, and approximately 520,000 acres have been sold to the highest bidder, making a grand total of approximately 820,000 acres.

(4) TOTAL AMOUNT OF LANDS REMAINING TO BE DISPOSED OF.

Of the lands opened to homestead entry and sale, comprising a total of 1,004,285 acres, there remains approximately 184,000 acres to be disposed of.

(5) INDUSTRIAL PROGRESS OF UINTAH AND OURAY INDIANS.

This reservation comprises approximately 98,185 acres of allotted land and 250,000 acres of unallotted (tribal) land, or a total of 348,185 acres, inhabited by 1,110 Indians, who are citizens of the United States, 600 of whom wear citizens' clothing, 122 read and write the English language, and 312 speak the English language. During the fiscal year 1919, 170 Indians on this reservation cultivated 7,545 acres, producing crops worth $109,788.

The superintendent reports that during the past year not a single crime of serious nature was committed by any of his Indians. The principal accomplishment of this service in behalf of the industrial welfare and progress of the Indians has been getting their irrigable land in cultivation and thereby saving the water rights thereto, to which the State law had been made applicable. In 1915 there were approximately 80,000 acres of such land under
ditch on the reservation, to which the water rights would expire in 1919, unless beneficial use should be made of the water prior to that time. As there were only 250 able-bodied male adults on the reservation, it was a physical impossibility for the Indians themselves, unaided, to subjugate this immense quantity of raw land. Therefore, after careful investigation, it was decided to lease the surplus irrigable land on liberal terms in order to attract settlers. Pursuant thereto, on March 24, 1915, a comprehensive plan was adopted having this end in view. This plan has been aggressively prosecuted since that time, with the result that practically every acre of cultivable land has been placed in cultivation, and the water right saved, without which the land is valueless, but under irrigation it is tremendously productive. On this point, in his last annual report, the superintendent states:

"A large acreage of the allotted lands belonging to these Indians is now held under lease contract by whites. The land was in a raw state when these white men took charge thereof; and to-day it is being cultivated, beautiful fields of alfalfa and grain are now waving where a year, or two years, or three years ago there was nothing but sagebrush, lizards, and horned toads, The Indians who are not already profitably engaged in farming their own allotments are beginning to look with considerable interest at these lands, which they know belong to them and which are so rapidly becoming attractive, and it is not at all an uncommon occurrence for a Ute to request that he be permitted to occupy the lands which have thus been subdued."

And also:

"During the past three years about 65,000 acres of allotted lands have, by one means or another, been placed under cultivation; and where three years ago nothing but sagebrush was to be found, we now have grain fields and alfalfa fields. Little log houses, some frame houses, little stables, henhouses, etc., are springing up on practically all of these allotments."

One hundred and sixty-two Indian families on the reservation now reside in permanent homes, many of which will compare favorably with those of the white people, being equipped with modern furniture, sewing machines, and other appurtenances of modern civilization. These Indians share in the so-called Ute judgment fund, on deposit in the United States Treasury to the credit of the Confederated Band of Ute Indians, under a decision of the Court of Claims in 1911, and subject to annual authorization by Congress for expenditure in their behalf. For the past several years Congress has annually authorized the withdrawal of $200,000 from the principal of this fund for the Uintah and Ouray use, the greater portion of which has been segregated into individual shares and deposited in bank, subject to expenditure under the individual Indian money regulations.

The tremendous industrial development brought about by the means of the leasing plan mentioned above and the expenditure of the funds referred to for the benefit of the Indians has placed them on a considerably higher plane of civilization. Also it can be stated that the Uintah and Ouray Indians own live stock worth approximately $811,907; but their principal means of support, as indicated above, must be agriculture, their live-stock holdings being only a secondary consideration.

Mr. Taylor. Is there any discrimination by the Forest Service against the Indians using the forest reserve for grazing, or aren't they in position so that they can use it?

Mr. Merritt. The Indians can not compete with the white men in getting land—

Mr. Taylor. But the forest reserve says they are especially looking after the little fellows, the man with seven cows, or something of that kind, and you give him the best of it, and I thought that they might help the Indian in that way.

Mr. Merritt. It is the nature of an Indian to hold back and not assert his rights, and it is necessary for the Indians to have on the reservation a man to look after his interest.

Mr. Taylor. Isn't it true that the forest reserves that were taken were naturally the higher lands and the better grazing lands in the summer time than there is on these grounds that—
Mr. Meritt. As I understand it, it is but a small grazing proposition in the forest reserve.

Mr. Taylor. I was wondering whether or not the Indians are deliberately excluded, or can they get there?

Mr. Meritt. They are not deliberately excluded, but the Indian is somewhat backward, and will not be aggressive in acquiring grazing rights or the various rights that he may have from the white man.

Mr. Mays. And do you think that the Indians on these various reservations, do you think that there should be more reservations for the Indians—

Mr. Meritt. I think that there is ample land on the Uintah Reservation at this time to meet the needs of the Uintah Indians.

Mr. Mays. In other grazing reservations, have not you retained it for them, and have not you also leased some of that grazing land to horsemen in that vicinity?

Mr. Meritt. Yes; we have leased a part of the reserve. Some of the white men who have gone on the irrigable lands have been permitted to graze their cattle and stock on the reserved Indian lands.

Mr. Mays. And for which the white men have paid—

They have paid for that privilege?

Mr. Meritt. Yes, sir.

Mr. Taylor. In other words, there is no obstacle in the way of these Indians increasing their stock, is there?

Mr. Meritt. No, sir.

Mr. Taylor. What are the statistics? I would be interested in knowing, in determining the amount of stock that the Indians have had during the past 10 years.

Mr. Meritt. The Indians have greatly increased their holdings of stock on the reservations. On the Uintah Reservation they have stock valued at $311,907.

The Chairman. Mr. Meritt, you are familiar yourself with the alleged evidence, with the facts constituting the alleged fraud in this matter?

Mr. Meritt. I am not personally familiar with those facts.

The Chairman. You have been told of them and have been informed of what constitutes the fraud?

Mr. Meritt. Yes, sir.

Mr. Raker. Are you personally acquainted with this land?

Mr. Meritt. I have not personally been on this particular reservation, but I have been in all of the Western States including Utah, and I am familiar with the land conditions in all of the Western States.

Mr. Raker. I wondered whether or not this land was of the character of what we call the sagebrush land that is out there at various points, covered with juniper, and rocky knolls, or whether it was just simply alkali land.

Mr. Meritt. My information is that this is sagebrush land, and while it is a sagebrush land, it is of very little value except for grazing purposes.

Mr. Raker. These farmers in this Uintah Reservation, some three or four hundred, seem to be doing pretty well, I would say.

Mr. Meritt. Yes, sir.

Mr. Raker. And they are working on stock grazing—
Mr. MERITT (interrupting). You should remember, Judge Raker, that that land is irrigable land, under the irrigation project, and that no man could make a living on 160 acres of this sagebrush land.

Mr. RAKER. I was just trying to determine whether or not the land of the climatic conditions, so far as the land itself was concerned, was practically the same——

Mr. MERITT. If this land could be irrigated, there could be no question about a man and his family making a good living on 160 acres, but it is impossible and impracticable to irrigate it.

Mr. RAKER. My observation has been that in that character or class of land, if it is fenced within a year or two years, it becomes very valuable for pasturage.

Mr. MERITT. I think it would take probably 25 or 30 acres of that land to maintain a cow or a steer.

Mr. RAKER. Is not there any grass all over this country that is good for grazing purposes?

Mr. MERITT. My opinion is that it is not the best grazing land in the world, this sagebrush land.

Mr. TAYLOR. You have to walk a good ways between the bunches of grass.

Mr. RAKER. I understand the situation pretty well in the West, and the sagebrush land is the best land that we have in the West, if you put water on it, if that is practicable.

Mr. MERITT. If this land could be irrigated it would be very valuable.

Mr. RAKER. But unless it is an exceptional place, unless it is of alkali, and it has rocky points, there is hardly any portion of this land in the Western States but what produces what we call a native bunch grass.

Mr. MERITT. I want to state for the information of the committee that as soon as we can get a railroad into this Uintah basin, that that country will be a very valuable country for agricultural purposes. We will utilize all of the land in there under the irrigation project, and it will become a great producer of cereals and foodstuffs.

Mr. RAKER. I will say that I have ridden all over that State, and in the spring you could see as far as the eye could reach grass a foot or 2 feet high, but in a short time afterwards you would not see a spear of grass on it, because it is overstocked, but if you could fence that in two years you can get a good and new crop of this bunch grass, and in three years it will be very good.

Mr. TAYLOR. Well, there might be some places of that kind in California, but not all over the West.

Mr. RAKER. And I am not going to sit here idly by without asking questions in regard to those matters. I did not say that I had been on this particular ground, but I made myself clear and plain that it was in the general category, and I have been up in eastern Idaho and in Colorado and Oregon and I have seen this. I am just asking this witness if he had seen that condition and knew whether or not this winter reservation was anything of that kind of land.

Mr. MERITT. My information is that this is rough sagebrush land and is not very valuable for grazing purposes.

The CHAIRMAN. Well, sagebrush grows on good land, and it also grows on bad land.
Mr. Taylor. I want to say further, in answer to my suggestion and interruption, that I live in the county adjoining this Uintah Reservation, and I have been over this particular country, and I know that country very well, and we do not have grass there growing very deep on this desert country.

Let me ask you another question about the water holes. This question of the water holes makes me tired. Have we got any place in that country where the cattle drink out of a hole—a water hole—at any place?

Mr. Meritt. I think that these gentlemen from Utah could give you more definite information about that.

Mr. Summers. Well, I would object to having anything passed upon by these gentlemen from Utah. There may be a stream or a water hole, and I do not know whether it exists there or not.

Mr. Taylor. There is not any hole where cattle drink out of.

The Chairman. There are water holes in Africa, where the lions and the tigers get together.

Mr. Meritt. My information is, gentlemen, that this water land has been taken up by the homesteaders. That would be perfectly natural. This land has been opened up for homestead entry for a great many years, and it is natural that the homesteader should get the best land, and the land left last is the poorest land to be disposed of. I imagine that it is not very valuable land for grazing purposes. The land has some value, and it is our duty to get the very highest price for this land for the benefit of the Indians. I thank you, gentlemen.

STATEMENT OF MR. CLAY TALLMAN, COMMISSIONER OF THE GENERAL LAND OFFICE.

The Chairman. Would you please give the reporter your name and your position?

Mr. Tallman. My name is Clay Tallman, Commissioner of the General Land Office.

I fear that these gentlemen have led you to believe that I know a whole lot more about this than I do, because my information is pretty general.

It is well, first, in considering these matters, to get ourseleves located. I have here a map of Utah [indicating a map, which is marked “No. 1”], showing the location of the Uintah Indian Reservation. The yellow portions of the map indicate the reservation that was left after the forest reserve was taken out. The heavy line out around here [indicating on the map] indicates the area that was in the reservation originally, before the forest reserve was taken out. That is just a map of Utah, from which to get the general situation of these ceded lands.

I may call attention at this time to the fact that the Rio Grande Railroad runs well to the south of this reservation; that to the west are the high Wasatch Mountains, which extend over into the reservation more or less—the various ranges; and on north there is a high range of mountains; and the westerly portion of the reservation is high and mountainous and rough foothill country; and the basin part, that has been spoken of, where the irrigated lands and where the settlers are, is in the easterly portion of the reservation.
Mr. TAYLOR. And you also come into the mountains on the east side.

Mr. TALLMAN. Yes, in the eastern portion, the eastern half of the reservation.

Now, that map is intended to give a general idea of the situation. There is no railroad into this territory; a branch of the main line to the south, but runs north to Heber City, some distance outside of the reservation, and away over on the east side there is a little railroad that comes up from Grand Junction, Colo., and touches the line of the State quite a good many miles from the reservation proper.

The territory generally in this section is pretty high. This western portion that we have under discussion here runs from about 6,500 feet up to as much as 12,000 feet. I should say that this area will run on the average about 7,000 feet or better.

It is a country where killing frost is liable to come most any time of the year, and in which the principal crops are hardy farm crops, such as alfalfa and grains, and hardy vegetables.

The CHAIRMAN. I do not suppose that they raise alfalfa without irrigation.

Mr. TALLMAN. No; there is a good deal of irrigation in the reservation, and some within the general area under discussion. I will call that map No. 1.

Now, this map here [indicating another map] shows something the way the reservation looked at the time of the act of 1905, when the land office proceeded to dispose of the ceded portions of the land. I might say what has not been stated here, that the opening of this reservation was really authorized by a provision in the Indian appropriation act of May 27, 1902. That act directed that proceedings be taken to allot the Indians and to cede the balance of the land. By various subsequent provisions and special acts the time of opening or doing all these various things was deferred to a later date, until we had the act of March 3, 1905, under which disposition was actually made. The first act provided for the allotment and the subsequent sale, and the 640-acre provision I think came up the first time in this act of 1905.

This is designed to illustrate the way the reservation looked in 1905 before we went ahead with the disposition of the land [referring to another map].

Now, you can see here that this was taken off [indicating] and put into a forest, inside of the green line. The forest reserve runs along there [indicating] and comes up here, and out there and out here to the south [indicating on map]. This shows the Indian grazing land in yellow.

Mr. RAKER. So practically along the northern boundary of the Indian grazing land is in the forest reserve?

Mr. TALLMAN. Yes, sir.

Mr. RAKER. And the forest reserve is over there, the west.

Mr. TALLMAN. This bounds it practically on three sides. Now there are some small areas that are timber reserves, and very small areas set aside for townsites, and this red [indicating] is the land allotted to the Indians before any of their land was otherwise disposed of.
You can see, if you look at the other map later, that the allotments follow the streams. This reservation was first picked over by the Government as the best lands for the Indians, and also other lands like this cross-hatched in black are reserved for Indian irrigation works, to irrigate for the Indians, so we had at that time generally speaking, to dispose of under the homestead law a million acres, consisting of these land in clear white up through here [indicating on the map].

In 1905, under the supervision of Judge Witten, who was then superintendent of opening and selling of Indian reservations, a registration was held in which anybody who was qualified to file his name for the subsequent drawing could do so. I do not know how many did, but a considerable number did, and following that there was a drawing to secure the right to enter, after which the lands were open to entry under the homestead law and at $1.25 per acre for five years. As the result of the operation of the homestead law, from 1905 to 1910, about 300,000 acres were disposed of in that way.

Now, the homesteaders, of course, took the most desirable land; they took the bottom lands along the streams for the most part, where there was water, and you will find to-day along the streams on the bottom lands some little ranches which are quite successful.

Mr. VAIL. This is map No. 2?

Mr. TALLMAN. Yes, sir. We will call that map No. 2.

This (referring to another map) is a map that we used in the 1910 sale. In the meantime examination had been made of this reservation for coal and other minerals. A good deal of the land was withdrawn for coal examination and classification, so that after the homesteaders had been operating for five years and certain land had been set aside because of its possible mineral value, we started in on the 1910 sale, as I take it from the records, and we had for sale the lands indicated in white on this map; the lands in black in this map No. 2 were withdrawn from sale for one purpose or another.

Mr. TAYLOR. It shows the Indian grazing lands as it was reserved there?

Mr. TALLMAN. That is still reserved. Now, we had a sale in 1910, and another in 1912. When we came to get ready for the 1917 sale, which came in my time, the first thing I tried to find out was how this matter stood, and for that purpose one of these maps was taken and marked up as you see this. Now, this map [indicating], these green streaks, along like this [indicating], indicate the power withdrawals along the streams. The land colored in pink like this [indicating on the map], and this pink over the black [indicating], the coal classifications in the meantime having been made and some of the lands restored, indicate the lands that were sold in 1912. The purple which you see through here [indicating on the map], is the 1910 sale, and here, and here [indicating], and none of that land that you see there is in controversy at this time. The pink is the 1912 sales, and involved the sales, includes the land that is in the controversy that we have before us. The lands in controversy in those suits lie right in here [indicating], this and this, and right across that [indicating], just about like that, in a general way [indicating]. The locations involved are in here at the present time [indicating].
I want to draw attention to that with the idea of the relative amount in litigation.

Mr. Taylor. That is on the western side of the reservation?

Mr. Tallman. That is on the western side of the reservation, up here where it is high.

Mr. Taylor. And that is the pink that is colored over the black. Why is it colored over the black?

Mr. Tallman. Because it was withdrawn in 1910 and was not offered for sale. In 1912 we found out that it was not coal and restored it, so it was opened for sale in 1912.

After this map had been made up in this way, we left the white on this map to be disposed of under further sales under the act which directed the offering at public auction of not more than 640 acres.

Mr. Raker. On the map No. 4, is the coal land which was withdrawn for examination marked?

Commissioner Tallman. The coal land withdrawn on that map still remains solid black, without any other color put over it.

At the 1917 sale it was necessary to prepare a different map. This map came in my time. The idea was in preparing this map for the use of the public, so that they would know what they could purchase, so as to make it as simple as possible, and we made it in two colors and all the red land was disposed of in some way and they need not bother with that. All the white land they could get under certain conditions.

You will note some of the white is solid white, and some cross-hatched in various ways. These cross hatches denote various mineral classifications that have been made. In this case, there is one over here [indicating on the map], some cross hatching, classified coal lands straight across [indicating], and a little of it up here [indicating on the map], and classified oil and nitrate lands, a considerable amount down through here [indicating]. Water-power reserves you will find considerable of them are still indicated by the cross hatching, following up the streams [indicating]. The town sites are a very small amount.

By 1917 we had legislation, under the act of February 27, 1917, by which we could proceed to dispose of the surface of all of these lands, with the reservation to the Government of these various mineral deposits, so that in 1917, with that act to authorize us, we could dispose of this land, the land classified as coal with the reservation under the act of June 22, 1910, hence we had to offer in 1917 the lands that appear on this map in white and blue, the blue having been put on since the sale of 1917, to show the lands that we sold in 1917.

The blue lines on this map show the 1917 sale, which map is No. 5.

Now, I told you that the land in suit was a small block of land being in the upper portion of the reservation, shown on the map, No. 1. Right up in here [indicating on the map] you can identify it by this here, up to where Forest Reserve projects out to the east [indicating on the map]. Here is that same land on a larger scale, and the Forest Reserve on this is pointed out as on the other maps.

The land in the different colors on this map [indicating on the map] is to show the lands that are owned by the different parties and the defendants in these suits. The land actually in suit, however, is that marked by the circle in the middle of each legal subdivision [indicating on the map].
I call attention to this big area here, marked "Coleman," and it will be noted that the part in suit is in this, and is just about half of all the land that he owns.

Mr. Raker. It is about 12,000 acres.

Commissioner Tallman. Yes; he probably acquired the other land by some other means, and all of these men have bought out a good many homesteaders.

Mr. Raker. Where is the Albert Smith land?

Commissioner Tallman. It is the big whitish-yellow. You will notice other tracts all through here [indicating] intermixed with land in suit, because you must understand that these suits have their origin in a good many individual transactions reaching to the number of hundreds. The Government must maintain its case in each one of these cases sufficient to warrant recovery, and with respect to each one of the individual tracts in the original sale. These men have sought, since they acquired these lands, to block up these lands. Some have bought and sold many thousands of acres and have divided it up to suit their purpose.

Mr. Taylor. So as to consolidate their holdings?

Commissioner Tallman. So as to consolidate their holdings in connection with the sheep business. Now, last fall I was in the West and a number of the defendants seemed to be very anxious to have us see these lands, and I finally went out there and took a trip over there with them, with the chief of the Field Division of our office and the district attorney. It was quite an advantage in the way of visualizing the situation there somewhat, although it was only a very hasty trip and we could get only a very general idea.

For you gentlemen who were with me at that time I will point out in a general way where we went so as to give you an idea how much we could see of these lands in one, two, or three-day trip. I might make a mistake, because I went over a lot of ground in a short time. My recollection is, however, that we came in on a road from Park City, Utah, through the forest over a high mountain divide here, following down a branch of the Duchesne River, which came in at this point. This is a high point here. This land is sloping toward the Duchesne River and toward its tributaries. We could see all this land back, of course, across the river and back to the tops of the hills. The same way over here. We came down this road to here somewhere, my recollection is; we turned up about in here, and went up quite a distance to David Smith's lands, up to his headquarters, and had lunch there. We could get a good idea of the character of that land.

The Chairman. That is 7,000 acres?

Commissioner Tallman. Yes; and then we came back and followed this road down the Duchesne River. This Duchesne is the principal stream; it is considerable of a river and carries a good deal of water the year around.

All down the Duchesne, beginning up here somewhere, clear down here, is a canyon with bottom lands running from one quarter of a mile to a mile and a half probably wide; good bottom lands, and that is all little ranches, pretty generally distributed all through there on both sides of the river proper, and we could see out here all these lands sloping down to it. One who is familiar with that
sort of country can get a pretty good idea what it is like. We came
down this way and went out here to the town of Duchesne, I think
they call it, over night.

A Witness. Excuse me, we turned and went up to Albert Smith's
ranch.

Commissioner Tallman. Yes; that is when we came back up here.
I was just coming to that. I think we came back about here and
went up on Albert Smith's lands.

The Chairman. He has about 15,000 acres?

Commissioner Tallman. Yes. This is a high mountain right here.
You can see up there 20 or 30 miles the general character and scope
of the country. About the center of Mr. Albert Smith's land is a
pretty high mountain called Tabby Mountain, and his ranch head-
quarters are pretty well up on the side of that mountain.

We took a team and went pretty near to the top of that mountain
and got as good an idea as we could of the lands on the higher
areas, and got a good view of the surrounding country. We came
back and down along here.

Now, that country, gentlemen, is practically all mountainous or
foothill country. There are here and there some little valleys down
in through here, some little valleys in which there are homesteads.
They have gotten those lands and taken them up and there are
little settlements down here; one little place called Fruitland, I
think, if I remember the name right, where they can get a little
water for irrigation from some of these streams.

Now the practice of these sheepmen—they are referred to in our
reports and in the correspondence generally as the "Heber sheep-
men," because they were men who for a good many years had head-
quarters at a town called Heber City—now these sheepmen, I am
informed, bring their sheep in here in the spring from grazing
lands away south where they winter them, and they keep those lands
here for what they call the lambing season, a month or six weeks,
whatever seems the best under the circumstances, and then move
up into the forest range for summer range, and then in the fall they
bring them back to these lands for a few weeks. It is not a winter
range. The climate in here, I apprehend, is pretty cold and severe
in the winter time because of its altitude.

Now, as far as the population is concerned, I suppose there are
less people living in this region than there were 10 years ago. Down
here in some little flat areas I saw a good many abandoned home-
steads; nobody living on them at all; and I do not think, in my
judgment, any of this land is of any value for crop-raising pur-
poses by dry-farming methods alone. It may be in some years in
some little areas here, when the season is just right, that a crop of
grain would mature, but as a rule it is not fit for cultivation be-
cause of its roughness. As a rule, I do not think there is sufficient
rainfall for the maturing of crops on the lower ranges, and up high
where there is sufficient rainfall neither the length of the season
nor the lay of the land would permit the growing of crops.

Mr. Vaile. Did you see much knee-deep grass out there?

Commissioner Tallman. No; but it is a good grade of sheep-
grazing land; there is no getting around that fact. There are some
areas better than others; it varies very much. In that block of
country you will find every possible gradation, but in the main there is a good deal of feed there for sheep; it is a good sheep country, or cattle country, either, if you want to use it for that. It is not a year-around country. That is the principal purpose for which it is useful.

But however you dispose of that land, gentlemen, it is only going to be used for that purpose, for if you should sell it or give it away in 40-acre tracts the only use that land would have would be to gravitate back in the course of time into areas sufficient to be used for practically the same business these men are conducting now.

As to the question of values, a good deal has been said about that, and that was the thing I was concerned with, perhaps, more than anything else, because at the time I was there the suits had been started and legislation had been talked about and I think also had been started.

Did the Government get for this land what it was really worth, and did these men by the manipulations charged in the bills of complaint defeat the Indians in getting the full value for the land?

I found it most difficult to come to any sensible conclusion on that question—that of value.

Now, I will just show why. In the first place, those lands were open to homesteads for five years at $1.25 per acre. Shortly after these lands were opened to homestead and the entries had been made Congress passed an act allowing them to make final proof on eight months' residence, so that they were getting the lands at $1.25 an acre, and a comparatively slight compliance with any other provisions.

The CHAIRMAN. What act was that?
Commissioner TALLMAN. The act of March 3, 1911.

The CHAIRMAN. Have you the statute?
Commissioner TALLMAN. I have not the citation.

Mr. CHADWICK. Was any of this land applicable to that bill of Senator Smoot's allowing nonresident homesteads?

Commissioner TALLMAN. No. Now, none of you gentlemen who are familiar with the conditions that exist here would give scarcely anything for 160 or 640 acres of that land for your own personal use for any particular purpose that you could put that land to by itself, even though you were a farmer and looking for land. By that I mean that a small area like those lands that were left for sale, not irrigable, would not be worth much of anything to anybody for any use to which they could put it. On the other hand, a large area like these gentlemen here have accumulated for use as they are using it, as a unit in the sheep business, has a considerable value, has a very definite and actual value and usefulness. How much that is is not easy to determine.

I am informed that one block situated up in this country of a large area, some 3,000, 4,000, or 5,000 acres, commonly spoken of as the Jeremy tract, sold some time ago for $10 an acre, including some little irrigated land of much greater value down here along the river. There were two homesteads included, which included some irrigable land which was included in the general sale at a flat price of $10 an acre.

A big tract over here some distance from these lands, not in suit at the present time, sold for $2.25.
Now, notice on map No. 1, over here on the western side of the reservation is an area marked out as the Strawberry Reservoir. That is a big irrigation reservoir built by the United States Reclamation Service on the Strawberry River, which runs through this part of the reservation and runs through these lands on the western side of the reservation. The water from this reservoir is taken through a tunnel for an irrigation project down here in Strawberry Valley.

Mr. Summers. It is not used on the reservation at all.

Commissioner Tallman. No; the water is taken through a tunnel off into another drainage. The Reclamation Service has withdrawn around that reservoir a considerable area of land for its protection, and they are holding it in that way and leasing it. They have an area there of about 52,000 acres net. When the water is very low it is something more than 52,000 acres. And they lease that for grazing purposes under various conditions, such as the payment of the rental in advance and a limitation of the number of stock that can be put on it, and an agreement to put out forest fires, to protect the lands and use them in various ways so as to protect the reservoir.

From 1907 to 1910 they got in round numbers about $10,500 a year rent for that 52,000 acres, and they got the same down to 1915. That was on yearly leases. In 1915 the Reclamation Service made an offer of a lease for five years, competitive bidding, and they are receiving $16,750 a year for that land. Now, that would be about 6 per cent on a little less than $6 an acre valuation.

I think, if I am any judge, from what I saw around there, that this area that they lease there is as good or better than anything I saw over here, that area around the lake.

Now, we have records of various sales of lands over in the reservation that have been made in these areas in suits, or similar areas, running all the way from $2 an acre up to $10 an acre, and some scattered, perhaps, at higher prices. It is a good grazing proposition if you have enough of it to handle it on an economical basis, as a part of a sheep or cattle business on a considerable scale.

Now, some question was asked about the water. I can not say much as to that, but in the main, Mr. Summers, the water supply here is from these rivers and quite a good number of little mountain brooks that come down the side of the mountain and run into these main streams, this being the Duchesne drainage and a Strawberry drainage down here, and here the Current Creek drainage. Now, those main streams, like Current Creek, Red Creek, Strawberry River, which is considerable of a river, and these creeks here are live creeks, I think, substantially the year around.

Mr. Summers. All of those shown on there are year around?

Commissioner Tallman. Pretty much. Now, you get away from those on a high mountain there you will find several sections of land on the side of a hill which, if you had it by itself, there would be no water on at all.

Mr. Vaile. And apparently all the land immediately adjoining these streams is either held by the owners or by parties to these suits by titles not in suit?

Commissioner Tallman. Here are others, some of the lands along these streams, where they would get water, but you notice here these areas are so divided and set aside that each man has
access to one of these tributary streams for water supply, and within trifling distances for stock, more or less. Of course, in the early spring and late fall there is much more water, especially in the spring, than in the middle of the summer.

Mr. Summers. May I make an observation there. Mr. Tallman?

Commissioner Tallman. Yes.

Mr. Summers. Here on one tract where suits have been instituted are seven sections with a stream running through the sections; down here I find nine sections in another tract with streams running through the sections.

Mr. Vaile. I think you are confusing matters there, if I understand it.

Mr. Summers. I do not want to.

Mr. Vaile. As I understand it, these sections marked with a ring in the center are not involved in the suits; they were held by parties to the suits but under previous title.

Commissioner Tallman. No; just the other way. The circles indicate lands in suit.

Mr. Vaile. I beg pardon.

Mr. Summers. I have not counted these, but illustrating with this, and without taking your time, those seem to be, as far as the streams are concerned, the two principal ones where there is a stream flowing directly across the section. Now, I do not know about similar streams like minor springs and like that.

Commissioner Tallman. Neither do I.

Mr. Vaile. I was going to ask if the character of the banks of these streams is high, precipitous banks.

Commissioner Tallman. All kinds, Mr. Vaile.

The Chairman. Do they run full all summer?

Commissioner Tallman. I think the principal streams do.

Mr. Vaile. Do you know, Mr. Tallman, whether the water has been mostly appropriated from these streams for use in those parts of the territory the streams are contiguous to for irrigation?

Commissioner Tallman. I do not think that interferes with stock water very much, Mr. Vaile. I do not think they pay much attention to it. I think the irrigation waters available are pretty much appropriated, I judge. There is at the present time a reclamation project in contemplation using a big storage up here somewhere, on the Duchesne, but that is intended to take the water away off here.

Mr. Chadwick. Is that range there controlled by the water alone? Does that have anything to do with the control of the range?

Commissioner Tallman. Oh, there is a good deal of that range that is controlled by the water.

Mr. Chadwick. A good deal of that range would be of no value to those gentlemen unless they had the water, and a good deal of other good land is shut off because they have the water; is that true?

Commissioner Tallman. You could pick out sections here, many sections, I should judge, where there would be no water on them at all.

Mr. Taylor. I understand that, but is it not true, generally speaking, that the streams run through the country and that the cattle can drink out of the stream wherever they can get to it?

Commissioner Tallman. Yes.
Mr. Mays. Where there is no fence.

Mr. Taylor. Is that land all fenced?

Commissioner Tallman. There are very few fences, very few improvements, except some sheep headquarters up and down here. Those farmers are all fenced in and they can not get to the river along there; they have to get their stock water pretty much, I should judge, where a road crosses or where a small stream comes down.

Mr. Summers. The private ownership, of course, can all be fenced?

Commissioner Tallman. Yes.

Mr. Taylor. May I make the observation it was No. 6 map I was commenting on?

Mr. Raker. Take the Red River and the Strawberry River, do they furnish water for the Strawberry Dam?

Commissioner Tallman. The Strawberry does and some other tributaries, but if I am not mistaken, the principal supply of water is the Strawberry River.

Mr. Raker. Before the water was diverted into the Strawberry Reservoir did the stream flow down through this reservation?

Commissioner Tallman. Yes; through the reservation.

Mr. Raker. Now, was that water appropriated or used before this land was thrown open for public settlement, if you know?

Commissioner Tallman. By the Government, for the Strawberry project?

Mr. Raker. Yes.

Commissioner Tallman. I do not know as to that.

Mr. Murdock. No; it flows down into the Duchesne and from the Duchesne into the Green River.

Mr. Raker. It flowed down through the reservation?

Mr. Murdock. Right down through the reservation.

Mr. Raker. Before it was diverted to the Strawberry Reservoir?

Mr. Murdock. Yes, sir.

Mr. Raker. And was that diverted after this land was thrown open in 1905?

Mr. Murdock. Yes.

Mr. Raker. That is all.

Do you know what the Government did, if anything, to prevent the diversion of this water from the Uintah Indian Reservation and allow it to be diverted into the Strawberry Reservoir and then taken off to another watershed?

Commissioner Tallman. I am not familiar with that.

Mr. Mays. Mr. Commissioner, in making your calculation of value on that did you consider the fact that if they had been in private ownership there would have been taxes payable to the State and that a man paying $6 an acre for it would, of course, receive a smaller rate of interest on his money than by leasing from the Government, because there are no taxes to pay?

Commissioner Tallman. That is true. I did not give any consideration to taxes at all. I just figured the income.

Mr. Mays. Taxes are very high out there.

Commissioner Tallman. Let me see. I am not entirely clear on the valuation for purposes of taxation of these lands. My recollection is that they have been appraised for taxation purposes at $2 an acre at one time and that just recently they were raised to $3 an
acre—last year. Now, I do not suppose that is the full value for tax purposes. I do not know.

Mr. Mays. Legally it is. The laws in Utah require all properties to be taxed at full value.

Commissioner Tallman. What is it practically; does it run pretty close?

Mr. Mays. It runs pretty close in the cities.

Commissioner Tallman. Now, just one other point and we can see what we have left on this map No. 5 of the remaining 180,000 acres we have to sell.

Mr. Evans. Let me ask you one question: There are a number of tracts over there within the area here shown as Albert and Bob Smith that are not contested by the Government at all, so that even if the Government was successful in all of these other suits it would still leave Smith a large number of different tracts, intermixed with the Government land, so that it would be practically valueless to Smith and to anybody else, would it not?

Commissioner Tallman. Well, whether it would be valueless or not, it would not be worth so much; that is certain.

The Chairman. You mean there are a number of acres in the Albert Smith tract of 15,000 acres that are not involved in the suits?

Mr. Evans. Yes.

Commissioner Tallman. No; I mean Albert Smith owned much more than 15,000 acres.

The Chairman. How is that?

Commissioner Tallman. I mean that Albert Smith owns more than 15,000 acres, and his whole entire holdings are shown by this yellow color, and within that area are the 15,000 acres in suit.

The Chairman. The whole 15,000 acres are involved in suit?

Commissioner Tallman. Yes.

Mr. Evans. The 15,000 acres is not all contiguous.

Commissioner Tallman. I think that is about all I have to offer, gentlemen.

Mr. Raker. You said you had another point.

Commissioner Tallman. I was just going to call attention to the fact that the way this 150,000 acres is left it is pretty widely scattered. Now, if we offered that for sale in 640-acre tracts, I am quite convinced we could not get as much for it.

Mr. Chadwick. Is that all of it left?

Commissioner Tallman. Yes; and it is on the average the poorest part.

The Chairman. How much is left for sale?

Commissioner Tallman. About 180,000 acres.

The Chairman. That is exclusive of the lands involved in the suits?

Commissioner Tallman. Yes.

Mr. Chadwick. Are those power sites still withdrawn?

Commissioner Tallman. I think they are. Of course, that area is withdrawn. As a matter of fact, most of that was homesteaded before the power site got there; all up and down the Duchesne; for instance, little ranches all along the stream, improved ranches.

Mr. Chadwick. The white space is not taken up, is it?

Commissioner Tallman. That is true.
Mr. Chadwick. Would it or would it not interfere with the value of the adjoining lands?

Commissioner Tallman. It perhaps would, because they could not get control of the water.

Mr. Chadwick. If the stream is controlled largely or is reserved along on both banks of the stream for miles and miles there as a power site, that of itself would make the adjacent land outside of that withdrawal much less desirable, would it not?

Commissioner Tallman. Not under the present conditions, because the Government, making the withdrawal for power site, simply means the land is open for grazing to anybody, to get to the water, and everything of that sort.

The Chairman. Mr. Tallman, I wish you would tell the committee how title to this land was secured. What were the necessary papers or affidavits for anyone to sign, and what law permitted one to act as an agent for another person in purchasing the land?

Commissioner Tallman. This is the order of the Secretary of the Interior for the 1912 sale, addressed to the Commissioner of the General Land Office by Samuel Adams, then First Assistant Secretary of the Interior.

The Chairman. Under Secretary Fisher?

Commissioner Tallman. Yes. It reads as follows:

It is directed that all of the unreserved nonmineral lands in the former Uintah Indian Reservation, in the State of Utah, which are embraced in the attached schedule, be offered for sale at public auction under the supervision of James W. Witten, superintendent of the opening and sale of Indian lands, at the city of Provo, Utah, on October 8 and thereafter, in legal subdivisions approximately 320 acres, except in cases where homestead entrymen or the owners of lands patented under the homestead laws shall request the offering of smaller legal subdivisions adjacent to the lands held by them.

No person shall be permitted to purchase more than 640 acres in his own right, or to purchase any area which, added to lands purchased by him at the former public offering of said lands, will amount to more than 640 acres, or to purchase the same at a less price than 50 cents per acre, and the purchaser of each tract must pay the entire purchase price thereof to the receiver of the Vernal United States land office, then temporarily at Provo, before 4.30 o'clock, p.m., on the second day after the sale thereof, and if he fails to make such payment, he will forfeit all right to the tract so purchased and the tract will be again offered on the next day after he makes default in such payment, and any person so defaulting will not be permitted to bid for, or purchase, other tracts at this sale.

The superintendent of the sale will be authorized to prescribe such rules for the proper conducting of the sale, not in conflict herewith, as the exigencies may require, and he may at any time suspend or indefinitely postpone the sale, or adjourn the same to such time and place as he may deem advisable, and may reject any and all bids which, in his judgment, are less than the cash value of the lands offered.

All persons are warned under the penalty of the law against entering into any agreement, combination, or conspiracy which will prevent any of said lands from selling advantageously, or which will result in any one person becoming the purchaser of more than 640 acres at said sale and the sale heretofore held, and all persons so offending will be prosecuted criminally for so doing.
The CHAIRMAN. What publicity was given to that notice?
Commissioner TALLMAN. I think very wide publicity.

The CHAIRMAN. Published in the press?
Commissioner TALLMAN. Oh, yes; distributed very well.

The CHAIRMAN. Also posted in the Land Office?
Commissioner TALLMAN. Yes; and it was distributed to all inquirers, along with a schedule and description of the lands and this map. Now, I find in the records a form of a postal card, which I take it was used as a very brief means of answering inquiries relative to this sale and others. It is entitled:

AUCTION SALE INFORMATION CIRCULAR.

Lands will be sold by the United States at public auction as follows: About 775,000 acres of Shoshone or Wind River Indian Reservation lands, at not less than $1 per acre, beginning at Lander, Wyo., on September 19, 1912; about 250,000 acres of Uintah Indian Reservation lands, at not less than 50 cents per acre, beginning at Provo, Utah, on October 8, 1912; and about 350,000 acres of Crow Indian Reservation lands, at not less than $1.50 per acre, beginning at Billings, Mont., on October 21, 1912.

The Shoshone and Uintah lands will be sold for cash and the Crow lands for one-fifth cash, and the balance in four equal, annual installments.

Any person can buy not more than 640 acres in any one of these reservations, but he may buy that amount in each of them. Persons who purchased at the former Crow and Uintah auction sales may purchase such an additional area at this sale as will, when added to the area formerly purchased, equal 640 acres, but they can not buy more than 640 acres at both sales.

The sales will continue from day to day and about 200 tracts will be offered daily.

These lands are suitable principally for dry farming and grazing purposes and the purchasers will not be required to either reside upon or cultivate any part of them, but may obtain patent as soon as full payment has been made.

Bids may be made through agents or in person. The fact that a bidder has already entered on the public land or is now the owner of other lands in any area will not prevent him from buying at these sales.

No maps of these reservations will be furnished, but printed schedules showing the lands to be sold and the day on which any particular tract will be offered for sale may be obtained from the register and receiver of the following land offices after the dates mentioned:

For Shoshone Reservation, United States land office, Lander, Wyo., after September 1.
For Uintah Reservation, United States land office, Vernal, Utah, after September 10.
For Crow Reservation, United States land office, Billings, Mont., after September 20.

WASHINGTON, D. C., August 15, 1912.

JAMES W. WITTEN, Superintendent of Sales.

The CHAIRMAN. And what was the next step? Give the successive steps necessary to acquire title.

Commissioner TALLMAN. At the sale lands were offered tract by tract, not more than 640 acres at any time; I think less than that, I judge from the regulations, if anybody requested it; and people bid.

When a piece of land was struck off the buyer got what was commonly called a "ticket" signed by the superintendent, which read as follows:

This is to certify that the ——— land was sold for ——— dollars per acre to bearer, whose name is written on the back hereof, and all rights thereunder will be forfeited and said land resold if the required payment is not made before 4.30 on ———.

He got that at the time his bid was accepted.
The Chairman. Did he announce at the time he made his offer that he was buying for himself or for some one else? Do you know about that?

Commissioner Tallman. No; he did not announce it at that time. When he went to pay his money he got a different receipt. At the time of the sale he did not have to make any statement at all. At the time of striking off his qualifications were presumed, and he got a ticket simply saying that he was the fellow who bid the most for this tract of land and it was struck off to him, and he must come around within the succeeding day and pay up. When he paid his money he got a receipt, which read as follows:

This is to certify that I have received the sum of $--- dollars on ---, whose post-office address is written below, in full payment for the --- land (describing it), containing so many acres, which was sold to said purchaser at public auction under the act of March 3, 1905, at --- dollars per acre, for which a formal receipt will be hereafter issued and mailed to said purchaser in lieu hereof, and I hereby certify that the oath was subscribed and sworn to by ---.

The oath that was attached to that paper which the purchaser had to take reads as follows:

OATH.

I, the undersigned, do solemnly swear that the above-named purchaser has not purchased and will not purchase from the United States in his own right more than four quarter sections of the land offered at the sale at which the above-mentioned purchase was made.

The purchaser's full first name and his post-office address must be written here.

MEMORANDUM RECEIPT.

This is to certify that I have received the sum of $--- from ---, whose post-office address is written below, in full payment for the --- section ---, township ---, range ---, containing --- acres, which...
was sold to said purchaser at public auction, under the act of March 3, 1905 (33 Stat. 1069), at $—— per acre, for which a formal receipt will be hereafter issued and mailed to said purchaser in lieu hereof, and I further certify that the attached oath was subscribed and sworn to before me by the person whose name is signed thereto on this ——— day of November, 1910.

Receiver of the Vernal, Utah, United States Land Office.

THIS IS TO CERTIFY THAT

The ———, section ———, township ———, range ———, was sold at $—— per acre to bearer whose name is written on the back hereof, and all rights therein will be fully forfeited and the said land resold if the required payment is not made before 4:30 p.m., on ———.

JAS. W. WITTEN, Superintendent of Sale.

By ———.

Used at Crow and Uintah sales, October 15 and November 1, 1910.

CASH CERTIFICATE.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
Vernal, Utah.

Serial No. ———.
Receipt No. ———.

This is to certify that ——— of ———, county of ———, State of ———, has purchased the ———, section ———, township ———, range ———, Uintah special meridian, containing ——— acres, at $—— per acre, or for the total sum of $——, all of which has been paid, under the act of Congress approved March 3, 1905 (33 U.S. Stat. L., 1069), and the regulations issued thereunder by the Secretary of the Interior on August 8, 1912.

Now, therefore, be it known that the Commissioner of the General Land Office will forthwith cause a patent to be issued to said purchaser for said land.

Issued ———.
Posted in volume ———.

Thereafter the register of the land office issued to him the cash certificate of purchase in the usual form, which cash certificate was transmitted to the General Land Office to afford a basis for patent.

The CHAIRMAN. Was that the only oath subscribed by the purchaser?

Commissioner TALLMAN. I think it was.

The CHAIRMAN. You permitted that oath to be made by the agent of the purchaser? I notice in this Jones case that Lindsay made the oath as agent.

Commissioner TALLMAN. You notice from the instructions I read that a man is allowed to buy this land by agent. There was another form, I think, of power of attorney and oath combined; I do not happen to find that in my papers here. That was for the 1910 or 1912 sale. I have one that we prepared for the 1917 sale, which was, I think, substantially the same, in which the person giving power of attorney made the other and gave a power of attorney.

The CHAIRMAN. The person giving the power of attorney was the real purchaser?

Commissioner TALLMAN. Yes.
The Chairman. He made the oath that he had not purchased more land?

Commissioner Tallman. Yes.

The Chairman. Now, that oath that you require, is that an oath authorized by law?

Commissioner Tallman. I think so.

The Chairman. Or was it an oath required under your regulations for your own convenience?

Commissioner Tallman. It was required under the regulations and the law authorized a limitation of acreage at the sale. We have had similar cases in the courts before, and the courts hold that where the law provides a qualification or limitation, an oath is a reasonable method of determining the fact and is in effect authorized by law.

The Chairman. But what I had in mind was whether or not false swearing would be perjury inasmuch as it may not be an oath authorized by law.

Commissioner Tallman. Well, we have thrashed that question through the courts, Mr. Chairman, both ways.

The Chairman. Of course, I think it was a proper thing to exact for your own protection.

Commissioner Tallman. In a case like this where there was an authority vested in the executive officer to determine the area I think the decision of the courts would hold that this was a reasonable method of determining that qualification. There are some other cases where oaths have been required in regulations that were not required by the law and perhaps not authorized by the law, or not specifically authorized, where the courts have held it was not perjury.

Mr. Mays. Do you think that affidavit was required in every case?

Commissioner Tallman. I think it was. I think we would not issue the patent unless that affidavit was in the record. That is the practice now.

Mr. Mays. Would the officer take the money unless the affidavit was executed?

Commissioner Tallman. I do not suppose he would.

Mr. Taylor. Have there ever been any suits brought by the Government or anybody for the other sales that were made at the same time as to Montana and Wyoming, and the people transferred their purchases to others?

Commissioner Tallman. I do not recall any at this time. As I stated here, the investigations that have been made in reference to sales indicate that probably some of the lands sold at the 1910 sale were procured in the same manner that these lands in suit were procured.

The Chairman. What you have read in that oath is all the statement or oath required of the purchaser?

Commissioner Tallman. That is my understanding; yes, sir. Now, in 1915 we required a purchaser to make this oath.

(See oath under Commissioner Tallman’s testimony on 1910 sale (p. 135 hereof), which he states in letter to clerk of the committee is “substantially the same” as 1912 oath.

The Chairman. That is a 1917 sale?
Commissioner TALLMAN. Yes.
Mr. TAYLOR. None of those are questioned, are they?
Commissioner TALLMAN. Not in these suits.
The CHAIRMAN. Are they as a matter of fact questioned?
Commissioner TALLMAN. Some of them look suspicious and they have not all been patented.
Mr. TAYLOR. Have you ever made any ruling or regulation as to how long a purchaser must hold a homestead claim, or any other claim, under an affidavit of that kind that he is buying it for himself world without end for his own individual use, before he can sell it honestly and legitimately?
Commissioner TALLMAN. Oh, yes; the courts and the department have rendered numerous decisions on that. The general principle is when his complete right to the land passes. In other words, a homesteader can sell his land when he gets what we call his final certificate, which means presumably he has done all that is required of him to vest the land in him.
Mr. TAYLOR. He does not have to wait for issuance of the patent?
Commissioner TALLMAN. He does not.
Mr. TAYLOR. How long was it after these men paid the money before they got the title to this land?
The CHAIRMAN. The final certificate, first.
Mr. TAYLOR. Yes; before they got the final certificate.
Commissioner TALLMAN. In these 1912 sales?
The CHAIRMAN. Yes.
Commissioner TALLMAN. I do not know, Mr. Taylor. I apprehend the certificates issued within a few days after the sale was made and they came up to the General Land Office and were ground through the mill. These things were simple and I presume they went through pretty fast. I do not suppose it was six months before those patents were out.
Mr. TAYLOR. In these suits do they have to prove the land was transferred to other parties before the receipt was issued, or how soon after that, or what are the actual facts about these transfers?
Commissioner TALLMAN. The theory on which these suits were brought, Mr. Taylor, is that these men employed or used the names of other persons who at the time of the bidding, at the time of the purchase, had no personal interest in the lands and were buying the lands simply and entirely for the use and benefit of the party who furnished the money.
Mr. TAYLOR. Persons who did not have the money or did not have any personal use for the land?
Commissioner TALLMAN. Yes; he may have known it or he may not have known it. I apprehend that some of those purchases were made in the name of a son or daughter or friend whom he could rely upon, and he did not know about it until afterwards. There might have been that sort of thing. I do not know as to that.
The CHAIRMAN. That is, the alleged principal knew nothing about the action of the agent.
Commissioner TALLMAN. Yes; of course he had to get a power of attorney here. That might not have been possible at that sale.
Mr. RAKER. Mr. Commissioner, in addition to your answer as to the homestead, it has been the ruling of the department and of the
courts practically unanimously, and the Supreme Court particularly, and which the State courts in the West have followed, that after the certificate has been issued on timber land, preemption, and homestead, the party may dispose of his land.

Commissioner Tallman. As a general rule, assuming the absence of fraud; and good faith all the way along the line.

Mr. Taylor. You do not know how long it took to issue the patents there, do you?

Commissioner Tallman. I would have to look up the records on that.

Mr. Taylor. You do not know of general knowledge about how far they were behind in those days?

Commissioner Tallman. No; I do not. Let me see. The patents issued less than six years prior to the time we brought the suits, Mr. Taylor.

Mr. Raker. That record we had this morning shows the actual date of the sale and the actual date of the issuance of the patent, but I do not remember it now in the Jones case.

Mr. Mays. Suppose the case of Mr. Murdock, just to illustrate. Suppose Mr. Murdock has a large family of boys and the whole family own a large herd of sheep, 5,000 or 10,000 head, that require considerable ground; that Mr. Murdock himself buys 640 acres, his son buys 640 acres, another son buys 640 acres, and all together they buy, we will say, eight or ten sections of land, an amount which would graze their herd, all of the family having naturally the interest a family has in common property, would you consider that in itself evidence of fraud?

Commissioner Tallman. The same question was up this morning, Mr. Mays. The answer must be that it is all relative. It is all a question of degree. There is not any doubt but what if Mr. Murdock wanted to hand his son $1,000 as a gift and his son wanted to buy 640 acres of this land for himself, it would be a perfectly legitimate transaction. On the other hand, if Mr. Murdock went to the sale with his money and with a power of attorney from his son, who did not have any interest and did not intend to have, and made a bid in the name of his son, the land was knocked off to his son, and the son immediately, as soon as final certificate was issued, made a deed of conveyance to Mr. Murdock and never intended to retain an interest in the land bona fide himself, I think it would be outside of the provision of this law. I think perhaps along that border line is where the misunderstanding on the part of the purchasers has arisen, if it has arisen, because they did not fully appreciate, perhaps, the distinctions that might be made in cases of that sort.

Mr. Mays. The department would not consider the community of interest a family has in the ownership of sheep as showing the interest of each individual member of the family in that herd?

Commissioner Tallman. We will probably have to meet that question when we get to this suit. I think this is the first we have had under this law.

Mr. Mays. In other words, it is quite questionable in that instance whether there is any actual fraud or not.

Commissioner Tallman. Well, there might be an argument built up that it is not fraud.
The Chairman. What is the information you have as to these fraudulent transactions?

Commissioner Tallman. Why, the information we have summarized, gentlemen, is to the effect that these lands were acquired in the method which was mentioned here repeatedly by Senator Smoot and others. These suits are based on the theory, and which we think we can back up with the evidence, that the lands were not purchased in good faith by the persons who purchased them for their own use and benefit, but were purchased for the persons who have them now, in the majority of cases. These suits differ very much as to details. There have been sales and transfers in different ways. In some cases we have got to show that the present holder is a purchaser with notice, if we succeed in our suit. As I mentioned some time ago, each suit is based on a large number of individual transactions. We have had to make a very extensive investigation to learn the facts with respect to each individual case so we could present that evidence. This whole data contain some 600 or 800 pages.

Mr. Welling. Can you state briefly, Mr. Commissioner, how the Department of the Interior initiated the investigation of these questions?

Commissioner Tallman. It originated, I think, from a complaint that somebody had filed which led one of our field men to look into it in a preliminary way to see if there was anything in it, and that led us to believe we had better go further, which we did. We were delayed considerably in our work and we had to work pretty fast in the early part of last summer in order to get the data together in order to beat the running of the statutes.

Mr. Taylor. Mr. Tallman, what is your idea about the duties of this committee? Ought we to sit as a court, try these cases and go into these 600 pages of testimony and bring these witnesses here, or go into a detailed investigation to determine ourselves as to whether there was any fraud committed in each one of the cases and, if so, in what cases, or is it your idea we ought to just lump this whole thing off on the Secretary of the Interior and let him settle it up?

Commissioner Tallman. Well, as to that, after we had started these suits, Mr. Taylor, naturally a number of these gentlemen came to call on us and they were seriously concerned about what they were up against, and they were rather frank as to just how they had done business in connection with this matter, in an informal way; they thought we ought to dismiss the suits at first. We explained to them that was impossible, that we had the data before us, and it seemed to be a violation of law without a doubt, and we had no other course to pursue except to get the information, file the suits, and let the courts determine what were the actual facts in the case. I was rather impressed with the fact these men were not land thieves in the ordinary sense, but that they had sort of overreached, and perhaps at the time did not realize the seriousness of what they had done; possibly did not realize we would find it out—I don't know as to that. But we told them that we were without authority to give them any relief; that Congress was the only authority to do it. And I assume and presume that is what suggested the idea of their coming to Congress to get a relief measure of some kind. We
have thought that under this bill we could probably work this thing out to the advantage of the Indians in a way that they will get out of it much more money than they have got or would have gotten.

Mr. Taylor. Well, is it your opinion that if we pass this bill—

Commissioner Tallman. Let me say right there, Mr. Taylor, that the view of the Department of the Interior on this Indian question is that the Government is acting in a trust capacity in the interest of the Indians in this land, and is not now they are disposed of so much as a matter of public policy for the development of the country as it is to get the most money for the Indians or what would be for their greatest benefit. Now, in framing up what we would do with these lands on the public domain we in the Land Office always think primarily what is the best thing for the country, but with an Indian land proposition we look at it as you would if you owned this land yourself—how can we get the most out of it in the shape of financial returns to assist the Indians in building the irrigation projects, and other things?

Mr. Taylor. It involves a different principle for the guidance of the Interior Department, does it not?

Commissioner Tallman. That is our idea.

Mr. Taylor. Is it your idea if Congress should pass this bill in this form and if there is any downright fraud that the public could feel assured that we were not shutting our eyes to or trying to condone or to be a particeps criminis to a direct fraud? Will the department take care of that or ought we to add clauses to this bill?

Commissioner Tallman. As to that, Mr. Taylor, there can not be much distinction made. A man either got these lands through a dummy or he did not. If he did not, we have no case in these suits, or, to the extent he did not, we have no case. If he did, he is just as guilty in one case as he is in another. We can not make ducks and drakes out of them. And while it is all right theoretically to talk about dealing with these cases on the basis of the relative seriousness and moral turpitude involved, in the main this is a case where it is very much the same as to all, as I understand the cases.

The Chairman. You mean there are no particular extenuating circumstances in any particular case?

Commissioner Tallman. I do not think it is more extenuating for one than for another, Mr. Chairman—or much less.

Mr. Raker. Without asking for this voluminous report, which you say is some 500 pages, speaking generally as to the 13 cases that were brought—I think it is 13—the reports of your agents in each transaction as turned over to the Attorney General involving the land in the suit, prima facie shows fraud and violation of the law. Is that about a fair statement of it?

Commissioner Tallman. Oh, certainly; and we try not to bring suits unless we think we have a case. If we have not something definite and tangible, as a rule we do not depend on dragging it out on the witness stand afterwards.

Mr. Mays. Do you think the time limit may have influenced the officers to hurry these suits?

Commissioner Tallman. As to that, Mr. Mays, that is true. We had two or three different chiefs of divisions in that section. We had a tremendous amount of work to do and the chief discovered
that he had let this rest in order to take up other work a little too long. We had to get busy very promptly. It is the ordinary practice with respect to civil suits for the Field Service of the General Land Office to report what they have found to our office and we submit any recommendations that may be made to the Secretary of the Interior, who in turn refers same to the Department of Justice with a recommendation for suit. In these cases the statute was so nearly expired that there was not time to go through that process, I had had several preliminary letters from the Chief of the Field Division as to the situation and the progress of the investigation so that when it came time to start the suits we simply wrote a letter to the Department of Justice requesting them to direct the United States Attorney to proceed on his own judgment and bring the suits right there in Salt Lake on the basis of what information the Chief of the Field Division could give him, so that the full reports on this matter in these particular suits, by reason of the circumstances I have mentioned, were not before us in detail until after the suits were started.

The Chairman. Did you find any evidence of a conspiracy or an attempt to eliminate competition in bidding on these lands?

Commissioner Tallman. Some.

The Chairman. What was that?

Commissioner Tallman. There are things in the record that indicate a disposition or an attempt on the part of some persons to get rid of other bidders. As a rule these men had more money than the other fellows and one method, which was perfectly legitimate, was to outbid anybody who came in, because they wanted these lands. And there are some suggestions in the record of other sorts of trades to eliminate certain bidders who might run the price up. Our suits, however, are not based on that proposition at all.

The Chairman. Did you find any intimidation to suppress bidding?

Commissioner Tallman. Some. One case of alleged buying off of another bidder to get him out of the way; one that I happen to recall. There might be others. I have not gone through all those details with any great degree of care at all.

The Chairman. Now, there has been a resolution introduced directing the Secretary of the Interior to furnish the House all available information in his department with reference to any fraud, collusion, misrepresentation, or deceit in connection with the attempt of various persons to acquire title to lands in the former Uintah Indian Reservation in Utah in amounts contrary to the provisions of laws of the United States or to eliminate competition in the public sale of such lands and auction by the United States. Now, will we get from that any more information than we have already gotten from you?

Commissioner Tallman. You will get the details ex parte; you will get everything gathered together that represents the Government's side of the case.

Now, we are bringing a great many suits every year, Mr. Chairman; we never know what is going to be the outcome of those suits until we try them, and we get bumped a great many times when we think we have a pretty good case to start with. I do not know what the result of these suits will be. I would be surprised if we win every
tract of land. We recognize there are various defenses that may be interposed as to certain tracts of land that can not be interposed as to others. We may succeed in part. We think we have a good case as good cases go ordinarily.

Now, as to that resolution, I do not think it should be passed for two reasons—not that we have anything whatever in this connection to hide; there is not a single step in this entire transaction so far as my office is concerned—and I have handled it all—that I feel called upon to make any excuses for, but I consider it very bad business to make a public record of the Government's case before it has tried its suit and laying all the data before the defense for their use. I have never heard of anything of that kind being done before.

The second reason is that our special agents are instructed to make investigations and reports, and their reports are considered under the rule of our department confidential, and these special agents are seeking information, and they are authorized and directed to represent to people from whom they get information that whatever information is given them will be considered confidential, and we would never get much of the information we do get if we did not follow that practice. That is without injury to anybody, for the reason that we never take a piece of land away from anybody without a formal, open hearing, where we present our evidence subject to cross-examination. The report is simply information as the basis on which we start that proceeding and conduct it. Now, the same thing is true of this suit. I apprehend there are hundreds of statements here; many people gave statements to the agents orally and refused to sign them; others asked that their names be not mentioned; it might make trouble for them if they were; and all that sort of thing. Now, gentlemen, we should respect the promises we have made those people; we are going to try this case eventually, and any success we have will be the result of an open trial in court, where a man will say what he wants to say under the rules.

The CHAIRMAN. You have summarized to the committee the general showing in these reports, have you not?

Commissioner TALLMAN. I think I have. As far as we personally are concerned we do not care who knows what is in these reports, but we are under obligation to the public who have given us the statements in confidence and to the Government in the conduct of this suit. They would not show any more than you have stated, would they?

Commissioner TALLMAN. I do not think so; not in substance, no. They would show what I have stated, and in addition the opinion on the part of the special agents who investigated this that in their judgment the price which was received for this land was too low and that they are of the opinion that as a result of the control which was exercised over these sales by this group of men the Government did not get as much for these lands as they were worth. The reports also show that they divided up the lands so that there was no competition among themselves for the areas each was to get.

The CHAIRMAN. And what was the average purchase price?

Commissioner TALLMAN. The average purchase price was around close to $2 at the 1912 sale. I have not the average here for the other sales.
The Chairman. Will you give us the general average for all the sales at the present value?

Commissioner Tallman. The average is around $2; the average price for the lands in suit.

The Chairman. Purchase price, you mean?

Commissioner Tallman. Yes; average purchase price for the lands in suit. The average purchase price by these defendants for all the lands they bought, including some lands not in suit, is $1.87, and the average purchase price of the lands purchased by the same group of men in 1917 was $1.79 an acre. Now, in the 1917 sale the average purchase price for the something over 200,000 acres sold was 75 cents an acre.

The Chairman. And what was the average value at that time?

Commissioner Tallman. The average value—well, I have no means of knowing, Mr. Chairman. I think probably it was more than 75 cents, but that depends entirely on how you look at this proposition. As I tried to make clear on this proposition the land for 160 acres is not worth 25 cents an acre, most of it. If you can buy 10,000 acres in a block, it is worth anywhere from $5 to $10 an acre to-day, in my judgment. It is so situated with respect to water, forest reserve, and other surrounding circumstances as to make it useful in the sheep business. Now, the question of value is not easy to get at. That is the reason I mentioned that Strawberry land.

Mr. Mays. What was the general average, Mr. Commissioner, of all the sales in 1910, if you have it there, and 1912, as well as the 1917 sale? I ask that question to determine whether these gentlemen paid the average price that the land brought at those sales?

Commissioner Tallman. I haven't that figured out, Mr. Mays. I will have to furnish it to you.

Sales of Uintah Indian lands.

<table>
<thead>
<tr>
<th>Year sold</th>
<th>Area sold</th>
<th>Total amount received</th>
<th>Average price per acre</th>
<th>Maximum price per acre</th>
<th>Minimum price per acre</th>
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<tbody>
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<td>1910</td>
<td>183,420.34</td>
<td>$230,502.94</td>
<td>$1.36</td>
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<tr>
<td>1912</td>
<td>136,441.17</td>
<td>206,662.49</td>
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<tr>
<td>1917</td>
<td>260,684.74</td>
<td>151,644.56</td>
<td>.75</td>
<td>3.10</td>
<td>.30</td>
</tr>
</tbody>
</table>

1 Not available without examining all entries.

Mr. Mays. I take it from your statement that these men paid for the land they bought in 1910 $1.79 an acre, in 1912 $1.87 an acre—

Commissioner Tallman. Yes.

Mr. Mays. And that your sales that you made in 1917 brought 75 cents an acre—in other words, they paid between two and three times as much for the lands in 1910 and 1912 that they bought as your lands sold for in 1917.

Commissioner Tallman. That is true, and some of the lands sold in 1917 are generally considered of much poorer quality.

Mr. Taylor. Is it not likely too, Mr. Commissioner, that if these lands could have been sold in larger blocks to these gentlemen, 2,000, 3,000, or 5,000 acres, the Government might have gotten a great deal more than it did this way?
Commissioner Tallman. This thing has been mismanaged, Mr. Taylor, in my judgment. No sale should be made without an appraisal in advance, and then it would not make much difference what manipulations were attempted, the money the land was worth would be gotten. But the question of appraisal here is not easy to get at, because it depends on the area you can get of these lands.

Mr. Taylor. It would have been more businesslike to appraise it before than to appraise it 10 years after?

Commissioner Tallman. Yes, sir; Mr. Kelley, the chief of the field division, a man who has had large experience in public-land matters and in land conditions throughout the West—and I have a good deal of confidence in his judgment; Mr. Will Ray, the United States attorney, has had wide experience, grew up on a ranch, and I have seen a little of the country; and after we got back we had a conference among ourselves, and I don't know how long it would take us together in a room to agree on an appraisal to be placed on these lands which we saw, on account of these widely varying conditions which you have got to consider and which you have got to lump all together in a general way.

Mr. Welling. Do you believe Senate resolution 1006 offers a proper solution for all these problems?

Commissioner Tallman. I think from the standpoint of the Indians we can come nearer doing it by an adjustment under that bill, if passed, than in any other way. I am not discussing any moral turpitude question; I am simply proceeding on the assumption we have a bad situation here which must be settled some way and it ought to be settled primarily for the benefit of the Indians so they get a full value for the land. Whether they did get it in 1912 is an open question, because conditions have changed so rapidly in that western country since those days. The sheep business has been very profitable to some during the war, whereas in 1912 the prices of wool and mutton as they existed then were widely different from what they are now. You can hardly make any comparison between those two periods.

Mr. Welling. Ten cents a pound, and now they get from 50 to 90 cents.

The Chairman. Of course, the thing that is going to shock the conscience of the House and that seems obnoxious is our shutting our eyes to the palpable evasion of the law and to the perjury, if it is perjury, in taking that oath.

Commissioner Tallman. There is no question about that. It is a question whether these men were misled or how honest they were in their belief that they were doing right. From what I saw of them they were all men who are self-made, stock and ranch business primarily, the kind of men who made the West, who built up the business, and some of them perhaps made small fortunes by this time, and would ordinarily be accounted good citizens most anywhere.

The Chairman. And the other question is whether the passage of this bill is going to plead itself as a precedent when another case of this kind comes up, whether this is going to be the policy of Congress.
Commissioner Tallman. Sure. In the case of the Alaska coal lands there was something similar. The Land Department directed proceedings against very many alleged fraudulent claims. Then was a great controversy about it, if you recall, and investigations. After it was all over, when Congress passed the Alaska leasing law, they authorized us in so many words to pay back the money that we had taken, and in the meantime we had already taken the coal lands away from them.

Mr. Welling. Do you not think there was a different character of defendants in that case than in these cases out here, Mr. Tallman?

Commissioner Tallman. Perhaps in some of them; they were not all alike.

The Chairman. Was that a case of actual fraud or constructive fraud, or a mistake in the interpretation of the law.

Commissioner Tallman. That is so much a question of opinion on the facts that existed in the case, Mr. Chairman, that anything I would say would be a mere personal idea about it.

The Chairman. Of course, we have had no showing so far, although we may have, about anyone misinterpreting or misunderstanding this law.

Commissioner Tallman. These things vary, Mr. Chairman, very much in the West with public sentiment, public opinion, and common practice at the time. I think it makes a large difference whether a man does a thing like that when everybody else is doing the same thing and everybody winks at it and assumes it is right. It is just like failing to put in all your personal property for tax purposes. Nobody objects.

The Chairman. In our land-fraud cases we used to plead the custom of the country.

Commissioner Tallman. Yes; on the other hand, when the determination to enforce the law is made apparent and conditions have changed, we have a right to look at the seriousness of the offense, I think.

Mr. Raker. Mr. Commissioner, under the circulars promulgated for the sale of this land and under the card and the instructions given, if a man read them he would have to be fairly dense if he did not understand that he could not buy more than 640 acres, would he not?

Commissioner Tallman. There could be no question about that, Mr. Raker. As I mentioned a little while ago, it would seem that the only opportunity for a misunderstanding would be the extent to which somebody else individually could buy the land and then make a conveyance afterwards, and in that respect distinctions might be rather finely drawn.

Mr. Taylor. It is claimed, Mr. Commissioner, there is no precedent for this kind of a bill and that it is a very dangerous course that Congress is embarking upon. What do you say about that? Is there any precedent for this kind of legislation or is it a dangerous precedent, notwithstanding this present Indian interest, or are there any qualifying provisions you think ought to be added to this bill for the purpose of preventing it being a precedent, dangerous or otherwise?

Commissioner Tallman. Well, the bill is entirely discretionary, so far as that goes. But, of course, it must follow that if the bill is
enacted we must assume it is enacted for a purpose, and that it is the intention and understanding of Congress that in the main, as to the alleged offenses we have described here, they are condoned.

Mr. Raker. Unless we put in a proviso providing no one who committed fraud should participate under the provisions of the bill.

Commissioner Tallman. Yes; and as to the other question Mr. Raker brought up, there should be some language in the bill to remove all doubt.

Mr. Raker. Making a provision that it should not affect pending litigation?

Commissioner Tallman. Yes.

Mr. Raker. And then a provision similar to the oil-leasing bill?

Commissioner Tallman. You might as well wipe it out, Mr. Raker, if you are going to stick that on there, because we can not construe that with the situation before us as we think it is. We can not construe it as constructive fraud, or any other kind of fraud, except fraud. I do not mean to say by that that it is not something that Congress may, in its judgment, very properly condone, but not from our standpoint as executive officers; we would have a congressional investigation on our hands inside of three weeks.

Mr. Raker. The only trouble with us is we might have a district investigation later.

Mr. Taylor. That would only apply to those gentlelement from Utah.

Commissioner Tallman. I think this, Mr. Raker: If you are going to put a provision in this bill that no compromise shall be made where there is fraud, there is nothing to compromise.

Mr. Raker. I think I got your meaning. You stated it very clearly, Mr. Commissioner. That is the reason I asked you, if, in addition to that, you would put in a provision, so the committee can dispose of this House resolution 412. You have said you have given in substance what these papers show—the record itself?

Commissioner Tallman. Yes; I have commented on that.

The Chairman. Without objection, the committee will stand adjourned until to-morrow morning at 10 o'clock.

(Whereupon, at 5.20 o'clock p. m., the committee adjourned to January 7, 1920, at 10 o'clock a. m.)

Committee on the Public Lands,
House of Representatives,

The committee this day met, Hon. N. S. Sinnott (chairman), presiding.

The Chairman. The committee will come to order.

Now, I have received a number of telegrams from people in Utah favoring the bill. The first one is from Simon Bamberger, who is governor of the State of Utah:

Salt Lake City, Utah,
January 7, 1920.

Hon. N. J. Sinnott,
Chairman Public Lands Committee,
House of Representatives, Washington, D. C.:—

I earnestly indorse Senate bill 3013 by Smoot, authorizing disposition of certain grazing lands in Utah. Failure of the bill would work injustice on
many leading residents of Utah who honestly invested money in development of Utah reservation, and if denied adjustment provided by bill would suffer serious loss and injury.

The next telegram is from Joshua Greenwood, president public utilities commission of Utah:

Salt Lake City, Utah,
January 3, 1920.

Hon. N. J. Sinnott,
Chairman of Public Lands,
House of Representatives, Washington, D. C.:
The provisions of Senate bill 3016, Sixty-sixth Congress, disposing of certain grazing lands in the State of Utah, seems to me to be eminently fair and proper, especially when we take into consideration the conditions under which these lands were obtained by many leading residents of the State and honestly invested their money in development of the Indian Reservation, and without such investment and development the lands may not have been brought to the notice of the public or have been utilized for beneficial purposes. If these citizens are denied the benefits contemplated by provisions of such bill they will suffer great loss and injury and thereby be deprived of such rights under the conditions and circumstances which justly belong to them.

Joshua Greenwood,
President Public Utilities Commission of Utah.

The next telegram is from Lester D. Freed, president of the Chamber of Commerce and Commercial Club of Salt Lake City, which is as follows:

Salt Lake City, Utah,
January 3, 1920.

Hon. N. J. Sinnott,
Chairman of Committee on Public Lands,
House of Representatives, Washington, D. C.:

Senate bill No. 3016, of Sixty-sixth Congress, is of utmost importance to the people of Utah. In representing the Chamber of Commerce of Salt Lake, composed of 1,100 commercial, professional, and stockmen, I earnestly hope you will see your way clear to favor this bill as it now reads. If this bill is not passed it means a great loss to men in the stock business and a big setback for Utah, as we are now endeavoring to encourage this line of business.

Lester B. Freed,
President of Chamber of Commerce and Commercial Club
Of Salt Lake City, Utah.

The next telegram is from Mr. J. C. Lynch, of Salt Lake City, Utah, which is as follows:

Salt Lake City, Utah,
January 3, 1920.

Hon. N. J. Sinnott,
Chairman Committee on Public Lands,
House of Representatives, Washington, D. C.:

I earnestly indorse the provisions of Senate bill 3016, Sixty-sixth Congress, entitled "A bill to authorize the disposition of certain grazing lands in the State of Utah." Failure to pass bill would work serious injustice to many leading residents of this State who honestly have invested their money in the development of Uintah Indian Reservation, and who, if denied the benefits of the provisions of said bill, would suffer irreparable loss and injury and be deprived of rights which they honestly and justly acquired.

J. C. Lynch.

The Chairman. The next telegram is from Charles S. Burton, president of the Columbia Trust Co., Salt Lake City, Utah:

Salt Lake, Utah, January 2, 1920.

Hon. N. J. Sinnott,
Chairman Committee on Public Lands,
House of Representatives, Washington, D. C.:

I heartily approve passage of Senate bill 3016, authorizing disposition of certain grazing lands in State of Utah. Great hardship and financial loss
will result to many residents of this State who honestly and in good faith put their money into these lands if bill fails to pass.

Chas. S. Burton,
President Columbia Trust Co.

The Chairman. The next telegram is from Mr. Harden Bennion, secretary of state:

Salt Lake, Utah, January 3, 1920.

Hon. N. J. Sinnott,
Chairman Committee on Public Lands, Washington, D. C.:

I am personally acquainted with the Uintah Indian Reservation country and the conditions sought to be remedied by Senate bill 3016, Sixty-sixth Congress, and want to make as emphatic as possible my opinion that the passage of the bill will serve the ends of justice and be to the best interests of the country.

Harden Bennion,
Secretary of State.

The Chairman. The next telegram is signed by Ralph Johnson, Sterling S. Burke, Porter F. Johnson, and Seymour B. Burke, and is as follows:


Hon. Nicholas J. Sinnott,
Care Representative Welling, of Utah, House of Representatives, Washington, D. C.:

Upon representations made by Andrew McDonald, cattleman, of Heber, Utah, circulating petition against passage Senate bill 3016, now before your committee, we, and each of us, signed said petition under misunderstanding its purport, and request an elimination of our names therefrom, and, instead, emphatically indorse the pending bill.

Ralph Johnson,
Sterling S. Burke,
Porter F. Johnson,
Seymour B. Burke.

Mr. Evans. Mr. Chairman, I have some letters here which I would like to have you read.

The Chairman. You may read them.

Mr. Evans. I thought that they might go in the record at this place. These letters are addressed to you.

The Chairman. The first letter is from W. L. Dean, President of the Bank of Duchesne, and is as follows:

Bank of Duchesne,
Duchesne, Utah, December 27, 1919.

Mr. N. J. Sinnott,
Chairman House Committee on Public Lands, Washington, D. C.

Dear Sir: Telegrams sent to you by certain citizens of Wasatch County with reference to House bill No. 3016 have been brought to my attention and I wish to deny the statement made therein to the effect that the great majority of people in Wasatch and Duchesne Counties are opposed to this bill.

I am unable to speak with authority for the people of Wasatch County, but am unable to see why the homesteader and farmer of that county should be very vitally interested in the bill one way or the other.

I do feel qualified to speak for the citizens of Duchesne County and I am very certain that the great majority of our citizens are not opposed to the bill as reported from the committee.

It is quite true that this land has come to be owned in large areas by single individuals, but this can be very easily accounted for from the fact that it requires immense tracts to support live stock in large enough herds to justify the industry. For instance, one tract of land comprising approximately 40,000
acres owned by one individual in this county is not sufficient to support 1,000 head of cattle.

The small grazer is given preference on the forest reserve and it is a much more satisfactory place for him to handle his stock.

Very truly, yours,

W. L. DEAN, President.

The next letter is from Mr. Owen Bennion, of Roosevelt, Utah, and is as follows:

ROOSEVELT, UTAH, December 29, 1919.

Hon. H. J. SİNNO TT,
Chairman House Committee on Public Lands.

DEAR SIR: As chairman of the board of county commissioners of Duchesne County I wish to indorse House bill No. 3016 validating the sale of certain public lands in this vicinity. I believe that the voters in great majority are in favor of this bill.

Respectfully, yours,

OWEN BINNION.

The next letter is from Mr. L. W. Curry, cashier of the Uintah State Bank, of Vernal, Utah, addressed to Hon. N. H. Welling, and is as follows:

VERNAL, UTAH, December 27, 1919.

Hon. N. H. WELLING,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN: I have been informed that a fight is being made against certain sheepmen who own lands in the western part of the Uintah Basin, and that one of the points made by those who are opposing these men is that the entire community is against them and believes they have been dishonest in acquiring their lands.

Personally I am not acquainted with the conditions surrounding the purchase of the lands by these parties, but I have known Messrs. Smith, Murdock, and others for a number of years. We have done business with them and have found them straightforward, law-abiding citizens. There is no sentiment, so far as eastern Utah is concerned, against these men. We have always considered them among our reliable citizens.

As stated above, I am not acquainted with the details surrounding the purchase of the lands, but I do say that there is no feeling in this community, so far as I know, that these men are crooked or dishonest in any way.

With kind personal regards, I am,

Yours, very truly,

L. W. CURRY, Cashier.

And the next letter is from Mr. G. V. Billings, former representative of Duchesne County, Utah, and is as follows:

DUCHESNE, UTAH, December 28, 1919.

Hon. N. J. SİNNO TT,
Chairman House Committee on the Public Lands,
House of Representatives, Washington, D. C.

DEAR SIR: In your consideration of House bill No. 3016 as one of the earliest settlers of this country engaged in the live-stock business, and as former representative of this county in which the greater part of the lands involved are situated, I feel it incumbent upon me, not only on behalf of the cattle and sheep industries, but also for the Government and matters of taxation of the State of Utah, to urge the passage of the bill.

Your attention is respectfully directed to the fact that, with the exception of scattering parcels of land which were purchased at the first sale in 1910, almost the entire acreage sold by the Government was of a most inferior character, requiring, according to estimates, from 40 to 60 acres under the most favorable weather conditions to sustain one head of stock.

The situation therefore which confronted the land-office agents who conducted the several sales and the possible purchasers of the land offered was that the Government would never hope to sell the land, nor, on the other hand, could there be any possible reason for the sheep or cattle producers to buy it with a limit of 640 acres to the individual.
Grazing Lands in Utah.

There is not the slightest doubt but that if this land reverts to Government ownership there it will remain, and the State of Utah will forever be deprived of its taxation.

In the conduct of these sales and the buying of the land by the entrymen there was no thought of defrauding the Government. No fraud whatever enters into the transaction, and as far as the land itself is concerned, it is to-day, and will always continue to be, just as much the public domain as before the sale of it. There has never been any fencing done on these large holdings, and in the nature of things there never will be, owing to the fact, as above stated, the land is not of sufficient value to warrant the building of fences, and absolutely no effort has ever been made by the entrymen to prevent the running of stock by nonowners.

As far as the land owned by the cattlemen is concerned, it is grazed in emergencies, but owing to its extreme dryness can in reality be used only by those favorably located to watering places on their home lands, which in a very limited few cases can be reached and utilized in that manner. There is no water whatever on the lands held by the cattlemen.

For the most part the sheepmen utilize their holdings simply as stopovers while their herds are moving either from the summer to the winter or from the winter to the summer ranges.

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Therefore, in the complete absence of any fraud on the part of the entrymen, or any intention whatsoever of entering into a conspiracy against the Government; for the further reason that if these lands revert to Government ownership they must forever remain Government land, or if sold, the sale must be conducted along precisely the same lines as heretofore, and for the further reason that the taxation of these lands will be lost, I respectfully submit that in justice to all the bill under consideration should meet with your committee's approval.

Respectfully submitted.

G. V. Billings,
Former Representative of Duchesne County, Utah.

Whereas certain complaints have been filed in the Federal Court for the District of Utah at Salt Lake City, Salt Lake County, State of Utah, wherein it is charged that certain citizens of Salt Lake and Wasatch Counties, State of Utah, have illegally purchased public grazing land; and

Whereas there has been introduced in and passed by the Senate of the United States a bill (S. 3016), which said bill is now before the House Committee on Public Lands, granting relief to the citizens who purchased said public grazing lands and validating the titles acquired by said citizens under certain conditions; and

Whereas the members of this association are familiar with the lands in question and with the manner in which said sale was conducted and the motives which inspired the purchase of said lands by said citizens; Now, therefore, be it

Resolved by the members of the Uinta Sheep Grazers Association, in annual meeting assembled, That we firmly and sincerely believe that said sales of said lands were fairly and honestly conducted by the Federal officers in charge of said sales; and that the purchasers of said lands made their purchases honestly and in good faith with no desire or intent to violate any law; that said Federal officers were fully aware of the condition surrounding said sale and the manner in which said purchases were made; and be it

Further resolved, That this association is opposed to the further prosecution of said suits against said citizens of Salt Lake and Wasatch Counties; and be it

Further resolved, That this association respectfully petition the honorable House Committee on Public Lands to report said bill (S. 3016) favorably, and that the House of Representatives pass said bill and that it be enacted into law. The above resolution was unanimously adopted by the Uinta Sheep Grazers Association at its annual meeting held in Salt Lake City, Salt Lake County, State of Utah, January 20, 1920.

Hugh W. Harvey,
President Uinta Sheep Grazers Association.

Jas. A. Hooper,
Secretary Uinta Sheep Grazers Association.

The Chairman. Now, we are ready to hear the next witness.
STATEMENT BY MR. DON B. COLTON.

The CHAIRMAN. Give your name and the business you represent
Mr. COLTON. My name is Don B. Colton, and I live at Vernal, Utah. I really do not represent anybody. I desire to say that I was receiver of the United States land office at the time these sales were made, in 1910 and 1912, and have lived in the Uintah Basin all of my life, practically, and after these suits were brought the defendants came to Vernal and asked me if I would come back here and appear before the committee, and state what I knew with reference to the conditions surrounding the sale, and the country itself.

I have been engaged largely in the live-stock business practically all of my life, although I have other business interests as well.
I have been over this land a very great many times, and know, I think, what the physical conditions of the country are.
I was receiver of the United States land office from 1905 until 1914, for nine years. The Commissioner of the General Land Office, and other officials of the department, I think, have called the committee's attention to the various tracts of land in such a clear way that perhaps it will not be necessary for me to make any statement of the conditions surrounding the opening of the reservation and the disposition that was made of the lands.

I want to say that prior to the opening of the reservation the matter of the opening was advertised from one end of the country to the other, and thousands of people went into that country and looked it over. In fact, the reservation never did have such a population as it did just prior to the opening. A great many men went away entirely disgusted. It was a common saying that the land was worthless, with the exception, of course, of the tracts that were irrigable land, that could be reached easily by water.

So that, for five years, the country was literally combed for pieces that were good enough to make a living on, and I desire to say here, now, that it was pointed out that there are streams that go through several of these sections that were purchased.

Now, gentlemen, I think I am not exaggerating the facts in saying that while that is true, that in most of the districts on those streams there are deep box canyons, that practically prohibit stock from going in; that wherever there was an opening in the canyon, or land could be obtained near these openings, the lands were taken by homesteaders, and the homesteaders have been bought out in many instances, of course, by the stockmen.

I want to speak just a word with reference to the character of the land, also. I went with Mr. Tallman over this land, and I want to say that I think he described the conditions as he saw them about as well as a man could, going over the land for the first time; but he went largely along the road; and the exception of when he went up to the top of Tabby Mountain, the trip was taken in a Packard automobile, so that he didn't see very much of this real country.

It is a very rugged, steep country in the main. A man nearly always gets two acres for the price of one, when he buys land, because there are two edges to it. There isn't a very heavy growth of sagebrush on most of it. There is a little sagebrush and grease wood on it.
Congressman Taylor knows of this country, I know, because it is very much like the country with which he is familiar. It is almost more than a semiarid country, part of it. Reference was made, and comparison was made, with the Strawberry reclamation project. It seems to me that with the exception of a very little of the land, the comparison is not a good one at all. Strawberry is higher, and the rainfall is heavier there, and you can get to almost any part of the country with a good road.

The Chairman. Now, what do you mean by the rainfall being high; what is it?

Mr. Colton. Why, I should say that up there, perhaps, on Strawberry Range, it is probably 12 or 15 inches or more; I can not say as to that—that is the annual rainfall. It is very much less than that down in the basin on the other side.

The Chairman. What is the rainfall in Washington; does anyone know; it is something like 50 inches.

Mr. Colton. I am reliably informed, Mr. Chairman, that for dry-land farming there must be at least between 12 and 15 inches of rainfall in order to insure crops, and I will say that down in the basin it can not possibly be over eight or nine inches. You will understand that this basin is surrounded, practically, on almost all sides by high ranges of mountains.

Now, for five years, there was carried on propaganda to get people to come in there and buy the lands. This yellow card that was introduced here yesterday was sent by the thousands from the land office at Vernal, Utah, and we had literally thousands of men inquire concerning that land, and we mailed that card broadcast.

I do not know as to the order that was given to Judge Witten, by the Commissioner in the General Land Office. I do not recall that I heard anything about that, or any instances. In fact, I do not recall seeing it. That would not make any difference. The yellow card stating that the land was to be sold in 640 acre tracts——

The Chairman (interposing). What do you mean by the order to Judge Witten?

Mr. Colton. An order was read here last night, in which it was stated that anyone who violated the rules by which the reservation was opened would be prosecuted.

Mr. Taylor. That order was from the Assistant Secretary of the Interior, Adams?

Mr. Colton. Yes, sir.

The Chairman. You do not recall having received that—having received that at the land office? That was not received while you were in office?

Mr. Colton. I think not. Now, at the time of this sale, I may state, both as to 1910 and 1912, because the conditions were practically the same. When the sale opened, the first two or three days of the sale only isolated tracts were bid in, largely by the homesteaders, men who had lived out in the basin that wanted to add to their lands here and there, and wanted pasture. In the western end of the basin there were scarcely any sales made at all.

The Chairman. What was the date of the sale that you are referring to now?

Mr. Colton. I think it was in October, 1910. The same conditions obtained in 1912. The superintendent in charge, Judge Witten,
seriously considered the advisability of adjourning the sales, and asked what the reasons were that there were no sales.

These men replied to him that it was impossible for them to handle it in such small tracts. They came to me. I was well acquainted with some of them—not so well acquainted as I am now—but with the leading members in the communities over there, and they came to me, and they said, “We will buy that if we can get enough land to continue to use the land for our sheep.”

You understand that prior to the opening of the reservation and to the five-year period, these men had been leasing part of this land from the Indians and had rather established areas in which they were leasing, and running their sheep on the forest reservations, back of these lands.

Now, they said, “If we can get an amount of this land that justifies us in using them for lambing grounds, we will buy it.” I said to them that I did not have anything to do with this matter, and for them to see Judge Witten, superintendent in charge. They appointed a committee of three to go to Judge Witten and talk the situation over.

The Chairman. Who composed that committee?

Mr. Colton. Two Mr. Murdocks—J. R. Murdock and A. M. Murdock—and Mr. J. C. Jensen. Mr. J. R. Murdock came down here last summer, and told this story to the Secretary of the Interior and to the Attorney General. He is now in poor health and can not come. Mr. A. M. Murdock is present this morning.

The Chairman. Where is Judge Witten, do you know?

Mr. Colton. He is here in the Land Office.

Now, I just want to say in connection with this matter, that there never was, and there never has been any sentiment that either Judge Witten or Judge McFall were the least bit dishonest.

The committee went and talked this over with Judge Witten. I was not present at the interview at the time. The judge told me next morning that he had had an interview with these men, and these men told me what had been done.

The Chairman. That was what year?

Mr. Colton. 1910.

The Chairman. 1910?

Mr. Colton. Yes, sir. They said that the judge had said that he would consider the affidavit, and did go over the affidavit. I think that the affidavit was in the third person, to the effect that the purchaser of this tract of land had not and would not buy in his own right more than 640 acres of land——

The Chairman (interposing). I have the affidavit here, and I might read it into the record at this point. [Reading:]

Oath.—I, the undersigned, do solemnly swear that the above-named person has not purchased, and will not purchase from the United States, in his own right at this sale any lands, the area of which when added to the land purchased by him at the former sale of the Uintah lands, in November, 1910 (if any) would exceed 640 acres.

William H. Lindsay,
Agent for (whatever named person he was pretending to act as agent for.)

Mr. Colton. I might say, Mr. Chairman, that the 1910 affidavits were exactly like that with the exception that the words “have not bought at a previous sale” were not inserted.
In 1912 Judge Witten was asked with regard to the sale, whether the rules for 1910 would be followed, and he replied that they would. Now, those gentlemen returned and said that Judge Witten had said that he did not believe that the Government would go back of this affidavit; that if they could make this affidavit that it was all that the department would require, and that it would be considered sufficient, and he said that he thought that there would be absolutely no question as to it.

Now, I want to say, gentlemen, the next morning at a public sale, where there were assembled at least 40 men, that that announcement was made. I can name, now, if you desire, 12 or 15 men, myself, whom I personally know were present at the time that announcement was made.

Mr. WELLING. What announcement was made?

Mr. COLTON. Judge Witten simply said that a question had been asked as to whether or not men could buy land in the names of their wives and children. Now, this is about the statement he made, "My opinion is that he can, and that there would be no objection on the part of the Government," and he did repeatedly say that the penalty for a man having had his name used, was that he could not buy any more land on that reservation.

The CHAIRMAN. What year was that statement?

Mr. COLTON. That was in 1910.

The CHAIRMAN. 1910?

Mr. COLTON. Yes, sir.

The CHAIRMAN. Are the 1910 purchasers involved in these suits?

Mr. COLTON. No, sir; but these same men bought land in 1910, and in 1912, asked the judge if the same rules would obtain, and be followed as were followed for the 1910 sales, and his reply was "yes."

Mr. TAYLOR. Judge Witten conducted both sales?

Mr. COLTON. 1910 and 1912. In 1917—I want to speak of the 1917 sales a little later.

With that understanding the auction was resumed and the bidding was opened, and spirited.

Now, I want to say right here, that the average that these men paid for their lands was higher than the general average that was obtained for lands that were on sale at about the same time by the State. There isn't any question about that. They went up higher in isolated cases, it is true. They went up as high as $5 and $6, and in one or two cases $7.

Men from the Duchesne Valley bid against these men. There were men from Salt Lake who were bidding. There was one man from Salt Lake who represented a number of people, and he bid for this land. His limit was a dollar and a half. He could not go above a dollar and a half, and so when the land reached a dollar and a half he dropped out of the sale, but these other men went ahead with the bidding.

Now, when the day was over, a man would come in and pay for his land that he had bought during the day. For instance, Albert Smith's name has been mentioned here. Mr. Smith is present. I know at the close of one day Mr. Smith came in and paid about $25,000, and offered his personal check, and I said, "I can't take your
personal check." He said, "Well, the National Bank of the Republic is your depositary, and it is my bank. If you will telephone up there at my expense and ask them if they will just simply send down a certificate of deposit for the amount, it will be all right," and I did that. Now, we talked about that as we were checking up the sales, the gross sales, and we felt, and in fact, gentlemen, I want to say here, that the matter was talked over all over town. We went down; I went down and talked with Senator Smoot about it. I said, "There is no use of staying here until the end of this week, if the sale is going to be as it has been." And it was the belief of Judge Witten that it could not be continued. Senator Smoot said that the Indians certainly needed that money. Judge Witten said that they certainly needed the money, and as long as there was not any attempt to monopolize large tracts of land, that it seemed that the only sensible thing to do was to go ahead with the sale.

Now, I just want to speak about the monopoly on these tracts of land. I want to say that where many of those suits have been brought, that in a very large number of those cases these men have an absolute defense to these suits; that these large tracts have been acquired from men who purchased in good faith, made their purchases in good faith, but a few men have attempted to consolidate their lands, and have bought out their neighbors.

In some cases, for instance Mr. Smith's case, he bought a large tract of land in the name of his wife and children; and he has a large family. Then there are men who bought, possibly, in the names of their friends. I haven't any doubt in the world but that those sales can be set aside, for there probably is a technical violation of the law, but whatever was done was done open and aboveboard, and I do not see how any man could have attended that sale without knowing those conditions obtained there. Now, I want to say here the State of Utah was selling better lands than these at the very time this sale was being carried on, or about the time, at $1.25 an acre, better grazing land. There was one company that bought up something like 20,000 acres right at about the same time from the State of Utah at $1.25 per acre, and these lands have been subsequently transferred to a part of these men who are engaged in the sheep business. So that these sales were carried on it seems to me properly, and that while there was a technical violation of the law, they were carried on in the only sensible way that they could have been carried on at that time, and have the Indians realize anything for the lands at all.

Now, I want to say just a word with regard to these objectors. I am not here attacking these men or any of their motives at all. Mr. Crandall's name was mentioned here yesterday. I happen to be, in a way, very well acquainted with Mr. Crandall. My brother married a sister of this man whose protest was read here yesterday; he and his father were starting the sheep business during the 1912 sale, and his father called me up and asked me if I would buy some land for him. I told him I could not do it, that I could not act as agent, and said, "You had better come down to the sale yourself." And he said, "What is the land going for?" and I said, "Some of the sales that have been made have gone as high as $3 and $4 an acre." His expression was, "Oh, well, I can't give that for any
of the land. I won't come to the sale if that is the price it is going at." So he stayed away from the sale.

Most of the men reside at Heber, which is some 50 to 80 miles from this land, and really I am like the commissioner, I really can't see what it matters to them one way or the other whether the thing goes on. I will say, however, that I don't know what Duchesne County would do if all these lands were thrown back to the Government and the county was deprived of the taxes which they pay on this land. So that it does matter to the people of Duchesne County, and it matters a good deal. Now, I want to speak, Mr. Chairman and gentleman, just a few minutes, with reference to the 1917 sale. The very same conditions prevailed except that there was more digression from the strict letter of the law in 1917 than there was in 1912. These men are here and will testify for themselves.

In the case of Mr. J. S. Murdock, he is here. He was solicited outside of the sale and outside of the room in which the sale was held, and asked to buy 14 sections of land, and he said, "I haven't the names, and I have not got the affidavits of the people to take the land," and the judge said, "You do not need the affidavits, and we will send the cash certificates directly to you." That was Judge McFall.

The Chairman. That was Judge Witten.
Mr. Colton. No; that was Judge McFall.
Mr. Taylor. He is Assistant Commissioner of the General Land Office?
Mr. Colton. He is Assistant Commissioner in the General Land Office. In pursuance to that agreement this man went in there and bid that land in, and furnished the names, and then the cash certificates were sent to him, and the affidavits never have been furnished, and were never called for, until after this investigation was commenced.

Now, the receiver in the land office at Vernal, Utah, will bear me out in this statement.

One of the understandings at the time of the sale was that the penalty that the Government would inflict upon any man who bought at that sale was that their names could not be used to purchase more than 640 acres of land.

The Chairman. But they could, indirectly, purchase more than that number of acres?
Mr. Colton. Yes, sir; and they were told that the Government would not go back of those affidavits. Now, Mr. Chairman, in plain words, that is about the situation.

Mr. Hersman. I would like to know who stirred up all this trouble.

Mr. Colton. That is what I would like to know. I will tell you where I think it came from. I think it came from some of the fellows who refused to buy at the beginning and who have now acquired and gotten a little flock of sheep, and some of these other fellows who now want to push the other men out.

I want to say that officials of the Government have said to men present here that these suits ought never to have been brought, but since they have been brought it is a very difficult matter for the Gov-
ernment to do anything unless there is some kind of legislation to relieve the situation.

Mr. HERSMAN. In other words, they want this bill to be enacted, rather than for them to have the suits dismissed?

Mr. COLTON. Well, I can't answer that.

Mr. HERSMAN. You do not need to answer that.

Mr. COLTON. I do not know what their motives are. I will leave that to you gentlemen to decide.

The fact remains that these men did not commit fraud in the sense of a man being guilty of moral turpitude. What they did was done open and above board. Everybody else knew what they were doing. And it was the only sensible way those lands could have been sold. These men made a mistake by buying the lands that they could have continued to use, but they bought them because they had watering places near them and they had the best right in there and could have operated from their homesteads, but they said, as long as we can get the lands and be absolutely unmolested in our possession we will buy them, and I think that they bought them with that end in view.

I call your attention to the fact that in this petition here, only 6 men subscribing to it, have subscribed as stockholders. The fact is, gentlemen, that of the petition of 171 names they are more or less young men—boys working around town at odd jobs.

Now, there are gentlemen here who are their neighbors and know that story better than I do.

I want to say that since the purchase of these lands these men have, in some instances, put valuable improvements upon the land. They haven't very many fences, but they have built cisterns and things of that sort to hold the water. They have also built dipping vats and cement cisterns to hold water for their camping places, and in some cases they have fenced off buck pastures around the best parts of their lands, and while these men are not going to be literally ruined, it will work a great hardship on them now if there isn't some way in which they can adjust this matter in fairness and continue their business.

I want to repeat again, gentlemen, if I may, that, so far as any of the men who conducted those sales being in any way criminals, I do not think that for a minute. They talked this matter over. I never even heard that there was such a thing as a money consideration ever passing anywhere along the line until last night, when there was one particular case mentioned by the commissioner.

Mr. TAYLOR. Was there anything like a collusion, to keep people from bidding, or prevent others from bidding, or anything of that kind that could be shown as fraudulent, evidence that could be shown, that prevented the Government or the Indians from getting what this land was worth?

Mr. COLTON. Absolutely none so far as I was able to see.

Mr. VAILE. At all events, it was more successful, and was better for the Indians, and brought more money to the Indians, the way it was sold than if sold any other way.

Mr. COLTON. I think that is a fact.

Mr. Chairman, the fact is that some of the men were considered fools for paying as much as they did, in some instances, for this land. We have a man here this morning, Mr. Murdock, who, I
think, went up a good deal higher, in the excitement of bidding, than he would have otherwise. Some men said that Mr. Smith was a fool for having gone as high as he did. Since, of course, with the increased prices for wool and mutton, it has proven that they did not make a bad investment.

Mr. Wellin. Isn’t it a fact, Senator Colton, that a great deal of this land was bid in by buyers who never did consummate the sales?

Mr. Colton. Yes, sir; a great many of them bid in the lands and did not consummate the sales. When they would run up on these sales, the auctioneer would say that they were sold to such and such a bidder and a slip would be given to him, but he never did come in and pay. In fact, a great many tracts that were bid in on Friday and Saturday, in 1912, were not paid for, and the judge waited for them until Monday morning, and they were sold again, put up the second time, and sold for about half the price bid in for on Friday and Saturday.

The Chairman. You say, Mr. Colton, with regard to the statement before certain men made by Judge McFall, that it was that they could undoubtedly buy through their relatives more than 640 acres?

Mr. Colton. I did not hear Judge McFall’s statement. I was not there at the 1917 sale, but the effect of Judge Witten’s statement, undoubtedly, was that the Government would not go back of that affidavit, and that so far as buying for their families, and their wives and children, at least, was concerned, that there would be no question about that.

The Chairman. So far as buying for their families?

Mr. Colton. Yes, sir; he said that so far as the children were concerned that it did not make any difference how old the child was. There were children 3 or 4 weeks old who bought land, or whose agents bought lands for them.

The Chairman. You are referring to Judge Witten’s statement?

Mr. Colton. Yes, sir.

The Chairman. This was in 1910 and 1912?

Mr. Colton. In 1910 and 1912—

The Chairman (interposing). And in 1917; you were not there then?

Mr. Colton. No, sir; I was not there in 1917.

The Chairman. Do you know whether Mr. Witten admits making the statement, or denies it?

Mr. Colton. He says now—his attitude now is—that he does not remember having told them; that if they come to him, that it isn’t likely that he advised them to break the law. He does not remember going any further than that, and that he said that they could buy lands for their family. He says that it isn’t likely that he went any further than that, and does not think that he did.

I understand that to the Commissioner of the General Land Office that he has said that he positively did not.

Mr. Taylor. Judge Whitten is getting to be quite an old man, is he not?

Mr. Colton. Yes, sir.

The Chairman. What is the business of William H. Lindsay?

Mr. Colton. He is in the stock-raising business.

The Chairman. How large a holding has he?
Mr. Colton. Now, if he is the Lindsay I know, he probably has 1,500 or 1,800 or 2,000 head—if he is the Lindsay I know.

The Chairman. Now, he bought land and then transferred it to Thomas Jones?

Mr. Colton. Yes, sir; I know Thomas Jones.

Mr. Summers. Senator Colton, regarding the water supplies, do you mean to say that the canyons are so very steep that it would be impossible to bring the stock down to the water on land where there is a stream meandering through that land—that the canyons are so steep that the stock can not get down to water?

Mr. Colton. I do not want to make it that broad. I will say that in many cases that is true, and on many sections that is true.

Mr. Summers. In many cases there would be no places where the stock could go down to water, although there was a stream meandering all of the way through the section?

Mr. Colton. That is true, but there are other places where they can get to the water. I will say that it is more practicable to get cattle down than it is sheep, because of the tendency of the sheep to crowd over bluffs and other things. You people that are more or less familiar with stock raising know about these things.

The Chairman. Did these people, in purchasing more than 640 acres, act solely as agents for their families, or for some one else?

Mr. Colton. I can not answer as to all cases. I think, Mr. Chairman, there were cases where they went outside of their own families.

The Chairman. How large a family has Mr. Albert Smith?

Mr. Colton. I think he has 10 children.

The Chairman. Ten children?

Mr. Colton. Yes, sir.

The Chairman. And they got 15,274 acres?

Mr. Colton. Yes, sir; but a lot of that, Mr. Chairman, has been bought subsequently from men who made bona fide purchases.

The Chairman. Men who purchased regularly in their own names.

Mr. Colton. Mr. Albert Smith bought a very large part of the 15,000 acres.

The Chairman. How many did he buy directly?

Mr. Colton. I can not say as to that; no check was given. I can not say.

The Chairman. Do you know whether or not he used all of his family?

Mr. Colton. I think he used all that were living at that time.

Mr. Taylor. Were all of these purchases legally made to members of the family, all family affairs, or were there any large corporations, or outsiders?

Mr. Colton. I think there were no corporations.

Mr. Taylor. They were all people that were practically located there, practically local people and wanted the land?

Mr. Colton. Yes, sir.

Mr. Taylor. And they were all people who were buying the land for legitimate use rather than for speculation? You do not think there was any speculation, or any outside corporations, or monopolies, or anything of that kind, but that they were all local people that were trying to buy this land?
Mr. Colton. I do not think there were any speculators. I will say this in answer to the question, that one tract, embracing 7,000 acres was kept for four years by the man who bought it, J. R. Murdock, and he tried to sell it for about $3 an acre and failed, and then came back and sold it to Mr. J. S. Murdock for $2.25 per acre. I do not know just what he paid the Government but it was around $2.25 an acre.

Mr. Mays. And he kept it for four years?

Mr. Colton. Yes, sir; he kept it for four years.

Mr. Taylor. All of this land was purchased for bona fide use, for use in their business rather than as a speculation. They did not have any speculative motives.

Mr. Colton. That is my understanding entirely.

The Chairman. Do you know whether or not these purchases that were made for members of the family were merely subterfuges?

Mr. Colton. In answer to that, Mr. Chairman, I think that they were purchases that were going to inure to the benefit of these men.

The Chairman. To the benefit of the agents?

Mr. Colton. Yes, sir; I do not know to just what extent that was being carried on.

The Chairman. You knew that they were violating the statute in purchasing in that way?

Mr. Colton. Well, I believe I did. I think I will say this, that I talked the matter over myself with Judge Witten, and I believed there was a technical violation of the law at that time.

The Chairman. What advice did you give to these purchasers yourself?

Mr. Colton. I can not remember of having given any advice, but I will say this——

The Chairman (interposing). Did they ask you for any advice?

Mr. Colton. I will say that I told them to confer with Judge Whitten.

The Chairman. I am not endeavoring to establish any blame on you; I simply want to develop the real facts.

Mr. Colton. I believe that if they came I would have advised them, but I do not think they came to me after the talk with Judge Whitten. I do not remember if they did.

Mr. Taylor. Judge Witten was the higher authority?

Mr. Colton. Absolutely; he let us know that he was in charge of the sale.

Mr. Summers. You say that he knew what you knew as to the developments of the sale?

Mr. Colton. I feel morally certain; I do not see how it would have been possible for him not.

Mr. Summers. Senator Colton, did you see any money transferred, any large sums of money, as received at the land office?

Mr. Colton. Why, undoubtedly, if you mean by that large sums paid for the land.

Mr. Summers. And knew that the disposition of that at that time was for the purchase of these lands?

Mr. Colton. Yes, sir; he was nearly always present in the evening when we were checking up, and we would talk about the amount of the day's sales.
The Chairman. What age children were used in the purchase of this land?

Mr. Colton. I think Mr. Smith had one that was about six weeks old.

The Chairman. What Smith was that?

Mr. Colton. Mr. Albert Smith.

The Chairman. What became of that particular tract of land?

Mr. Colton. I think it is still in the name of that child.

The Chairman. I was wondering how it could transfer it.

Mr. Mays. Was there any limitation as to the age in the regulations?

Mr. Colton. Absolutely none. There was in 1917. It was put in that affidavit.

Mr. Mays. That was 18 years?

Mr. Colton. Yes, sir.

Mr. Mays. So that a child 10 years old could come and buy 640 acres?

Mr. Colton. Yes, sir.

Mr. Taylor. There was not any age limit in 1910 and 1912?

Mr. Colton. No, sir; absolutely none.

Mr. Mays. So far as you know, there was no restrictions?

Mr. Colton. No, sir; and I want to say that the statement was repeatedly made that the Indians needed the money; that they were building their canals over there, and that they needed the money.

Mr. Taylor. There was nothing wrong in a father advancing money to one of his children to buy land?

Mr. Colton. I think that is the attitude that Judge Witten took.

I want to say, gentlemen, again, that I am appearing before you only as a citizen. The men who made these purchases, in 1917, of these large tracts of land were interested parties, and all of these transactions were open and above board, as I have told you.

We can get the testimony of at least 12 or 15 men I know who heard statements made in 1917 bearing out the statement that these affidavits were not necessary, as is shown in the case of Mr. Murdock, where the certificates were sent to him without the affidavits having been sent in. If you desire us to furnish anything along that line we will be glad to furnish them at the pleasure of the committee. We can furnish affidavits.

The Chairman. Have you any sheep?

Mr. Colton. Yes, sir.

The Chairman. As a sheep man, are you able to say how many sheep a section of this land will sustain?

Mr. Colton. I think a very conservative estimate would be to say about 100 to 125 head. That would not be true in some instances, where they could not get water, but I think it will sustain that many, if we had plenty of water, from 100 to 125 head.

The Chairman. To the section?

Mr. Colton. Yes, sir. I know we use that much. Some of our men have sold out on this reservation and have gone right over into Wyoming and bought better land for about 85 cents an acre.

Mr. White. Senator, I would like to ask a question. Are there any of those unsold lands mentioned here so far from water as to make them useless for sheep, on account of water not being accessible at all?
Mr. Colton. They are very useful for sheep grazing in the fall. You see, the snow comes early there, and they can pull down on them in the fall of the year. I want to say that I am in favor of the removing of the restricting clause so that these lands, where they are so scattered, can be acquired in larger tracts, and so that they can be sold so that people can use them in the fall and spring.

Mr. White. Well, are those lands that you are speaking of now furnishing pasture for as many sheep as the purchased lands are, or are they inferior to the purchased lands, or are they of equal value for sheep growing?

Mr. Colton. I would say that they are of equal value.

Mr. White. That is, if they are accessible to water?

Mr. Colton. They are just as accessible to water as many lands that were bought.

Mr. White. Why, if they are desirable, why is it that they have not been sold?

Mr. Colton. Because men have only bought that which they could use, and I do not think there has been in the past, at least, any particular desire to get hold of more lands than could really be of use to them.

Mr. White. And if this land had no water available, it would not be desirable?

Mr. Colton. No, sir; it would not.

The Chairman. I wish you would state, for the benefit of Judge Raker, who has just come in, and who did not hear the statement you made with reference to Judge Whitten and Judge McFall. I wish you would repeat that statement.

Mr. Raker. Mr. Chairman, I have been attending a session of the Public Lands Committee in the Senate, on behalf of the committee, and my duties have been so arduous that I could not get here any earlier.

The Chairman. Judge Raker takes a very great interest in this matter, as he does in all matters before the committee.

Mr. Austin. Is this going into the record? I object to it.

Mr. Raker. Of course, it is going into the record.

Mr. Colton. Mr. Chairman, do you wish me to state again——

The Chairman. Yes; I wish you would state what Judge Whitten said and what Mr. McFall said to the people, if you will.

Mr. Colton. I want to say again what I prefaced to my statement to the committee, Judge Raker—I am well acquainted in that country and I know absolutely that there is no feeling among the people that this ever was done, that there was anything ever done that involves the honor of either of those men. There is, on the contrary, an absolute feeling that they conducted the sales with fairness, and that what they did was in the interest of the Indians; and, that so far as any collusion between them and any bidders, it seems to me that that has never even been thought of out there. Fairness was shown in the general way of conducting the sale and also in selling certain tracts, particularly, I remember, in the sale of a tract wanted for a cemetery, in rebuking a man who wanted to run up the price on the community. So he had—Judge Whitten particularly had, I was not present in 1917—but Judge Whitten had the interests of the community and the interest of the Indians particularly at heart.
During the first two or three days of the sale, and particularly after they reached that part of the reservation that is involved here, there were no sales whatever, and these stockmen all desired to get more land, wanted to get more land so they could carry on their business successfully, and so they told Judge Witten that they could not buy if they were limited to tracts of 640 acres.

Mr. Raker. You understood that Judge Whitten was a Government agent and conducted the sale, and was talking for the Government.

Mr. Colton. Yes, sir. A committee of these men held a meeting and appointed a committee of three of their members to go to wait on Judge Whitten. They came first to my room in the hotel—

Mr. Raker (interposing). Who were these gentlemen?

Mr. Colton. They were Mr. J. R. Murdock, Mr. A. M. Murdock, and Mr. J. C. Jensen. Mr. J. R. Murdock was here last June and told the story to the Secretary of the Interior and the Attorney General. He is now in very poor health and is unable to come down here. Mr. A. M. Murdock is here. They came first to my room and asked if there was any way that they could acquire sufficient land to make a living on.

Mr. Raker. You were receiver at the land office at that time?

Mr. Colton. Yes, sir. I simply told them that I had no authority in the matter whatever and that they would have to see Judge Whitten. They went from my room to see Judge Whitten, and they had a talk with him and then returned to my room and told me about it.

Judge Whitten told me the next morning that he had had an interview with them, and then he made a public announcement.

Mr. Raker. He made a public announcement where the bidders were assembled.

Mr. Colton. Yes, sir; and in the presence of 15 or 20 men I know personally, and there were a great many more. These men told me, when they came back, what Judge Whitten had said to them. Now, gentlemen—these are about his words: "I do not know whether I can relieve you in particular."

They took up the affidavit, and he looked it over, and the affidavit read in substance that the purchaser said, "I, the undersigned, do hereby say, or swear, that the purchaser of the above tract of land has not and will not buy in his own right more than 640 acres of land at this sale." He said, "I do not believe the Government will go back of that affidavit. If you people are willing to make that affidavit, I think, of course, we can go ahead." He said, "I am quite sure it is within the spirit of this law for men to buy for their families, or for their children, and their wives. I do not think there will be any question at all raised about that." He said that that was what they could do and that they could go ahead with that understanding. The next morning, in a public place, he made that announcement.

Mr. Raker. That that you are telling now?

Mr. Colton. Yes, sir; my recollection is that the public announcement did not include friends. I understand that this committee inquired as to friends, so long as they were not attempting to monopolize large tracts of land. My recollection is that the public announcement said that the Government would not go back of that affidavit, and he said that if they bought for their families that he did not...
think there would be any question at all raised, that that was all right. Now, in 1917——

Mr. Elston. You say, that in one instance, where it is charged that quite a large tract, in excess of 640 acres, was purchased for one man for himself, or for his friends, or family, and that he presented one check for the whole purchase, and that the judge directed, or knew of the selling of this big tract to the purchaser, without requiring an affidavit, and that this transaction was more of a transaction to sell the land in order to get the money for the Indians rather than a transaction of being sure that each tract, or each sale did not exceed 640 acres.

Mr. Colton. That is a transaction that occurred in 1917. I was not present at that time. There are three persons here in the room who were present. One of these men was solicited to buy 14 sections.

The Chairman. By whom?

Mr. Colton. By Judge McFall, in charge of the sale in 1917.

Mr. Elston. And, Judge McFall was acting as an agent for the Government?

Mr. Colton. Yes, sir.

Mr. Taylor. He was Assistant Commissioner of the General Land Office.

Mr. Elston. You mean to say that the Assistant Commissioner went to the purchaser and invited him to buy this amount of land knowing that he could not do so under the technical provisions of the law, but indicated that the Government would condone this procedure, and the Government practically solicited him to do that?

Mr. Colton. In fact, that is what he did, because this party said that he did not have any power of attorney from these parties, and he said that that did not matter, "You furnish the names and we will send these cash certificates direct to you," that is just what was done. He furnished the names and paid the money and the cash certificates were sent directly to him, and not until after this investigation was commenced were the bidders called on for the affidavit.

Mr. Welling. As a matter of fact, they never have been furnished at all?

Mr. Elston. I would like to ask a question with regard to the suit by the Government. Is there any statement made here, or is it alleged that Judge McFall or Judge Witten were, or entered into a conspiracy to defraud the Government, or that they received anything for their services in any way?

Mr. Colton. Never; there is not any statement anywhere in the case to that effect, and I do not believe that anybody ever felt that they did.

Mr. Taylor. Could there be any such suggestion that they did?

Mr. Elston. No; but that bears on the question, because we have Governments agents, an acting Commissioner General for the Land Office, and the superintendent that was directing the sale, who practically had sole authority, so far as this statement is concerned, and invited these gentlemen to do what they have done or condoned it, or encouraged it, in order to sell this land.
That may not excuse a technical violation of the law, but what I am getting at is this: Instead of there being any attempted wrong-doing, these two Government agents had no other object in view than to get as much money for the Indians as they could, and the only thing they had in view was to do the best they could for the Government and for the Indians, and they did not have any other motive in view. Then, it looks to me that there was no establishment here of a general conspiracy between the Government agents and the large stockmen to perpetrate a fraud against the Government.

Now, what I want to do is to get the actual facts. The technical violation of the law is one thing, the actual moral turpitude and conspiracy, carrying with it the bad smell is another. What we want to do is to find out if there is a bad mess of this and if a mistake was corrected.

Mr. Colton. I am glad Mr. Elston brought that up. I would like to tell this story a little further. There isn't any feeling there was a bad mess. When these suits were brought, after the Government officials heard this story and knew what they were, they felt they never ought to have been brought. There was a feeling that these suits ought to have been dismissed. That was the first I ever knew there was anything going on. I came back here with the parties. When the Government officials took the stand that they couldn't consistently dismiss the suits, then it was felt we all ought to come up here to ask for authority from the Congress in order to have this thing settled outside of court.

Mr. Barber. Did they give any reason as to why they couldn't dismiss these suits?

Mr. Colton. Yes; they gave this reason, that the report of the special agent was there indicating there had been a breaking of the law and without any showing to dismiss the suit would leave a bad record in their office.

Mr. Raker. With whom in the Department of Justice did you and the rest of the gentlemen who came here talk?

Mr. Colton. We talked first with Mr. Kearful, the predecessor of Mr. Nebeeker, who testified yesterday; and then we went directly to the Attorney General, Mr. Palmer.

Mr. Raker. You talked to Assistant Attorney General Kearful and then to Attorney General Palmer?

Mr. Colton. Yes, sir. I may say that the Senators from Utah and the two Congressmen, Mr. Welling and Mr. Mayes, went with us down to Secretary Lane. Mr. Kearful and Mr. Tallman, Commissioner of the General Land Office, were present at that interview.

Mr. Raker. Let me ask you this question, Senator: What did the Government receive as to the price of this land at the time the sales were made relative to its then value?

Mr. Colton. I may say that I think there are tracts here and there that perhaps the purchaser did not pay full value for, but in the main, considered as a whole, I think the Government got good value for the land. As I stated to this committee, the State of Utah was selling better lands, grazing lands, at that very time for $1.25 an acre, and these men paid more than $1.25 an acre.
Mr. VAILE. Wouldn't it be helpful, Judge Raker, to remember in that connection that the Government itself was selling the land to homesteaders, the choicest lands, the better locations at this time for $1.25 an acre?

Mr. RAKER. That is in my mind all the time.

Mr. VAILE. These men were paying upward of $2.50 for land all the time.

Mr. RAKER. That is in my mind, that the Government fixed the price for all the land to homesteaders at $1.25 per acre, and all the land could have been taken at $1.25 an acre. That is right, isn't it, Senator?

Mr. COLTON. Yes, sir.

Mr. RAKER. From your observation and from what you saw at the time the sales were conducted, following the sales, do you believe that this method whereby Mr. Smith and his family — and how many children?

Mr. COLTON. Ten children.

Mr. RAKER (continuing). Were permitted to bid and to purchase such land at the public sale, any other parties were prevented from bidding or deterred from bidding by reason of the fact that Smith, with his large family and large amount of children, overbid them?

Mr. COLTON. I would say not at all. I would say in the beginning at that time Mr. Smith didn't have a large amount of money. He borrowed practically every dollar invested in these lands, and that is why they said he was a fool for doing it. He was at that time a comparatively poor man. I think he has made most of the money he has, and I don't think he is an excessively rich man now.

Mr. RAKER. In other words, he took a chance on good husbandry?

Mr. COLTON. Yes, sir.

Mr. RAKER. What would you say as to the other men, the attitude they took with their families and the public knowing it, whether or not they deterred others from attending these sales?

Mr. COLTON. I do not believe they did. I personally know of others who did bid, and these men who finally secured the land — they said if they are willing to pay that, let them have it. And I think they all practically borrowed money, the Murdocks and the Smiths; I think everyone, possibly with the exception of David Smith, borrowed the money.

Mr. RAKER. One thing in my mind I want to know, and I think you can explain it, is that this land could have been sold by the auctioneer — the Government official — at 50 cents an acre.

Mr. COLTON. Yes, sir; he had that authority.

Mr. RAKER. Just why was it and how was it they got $2.50 an acre?

Mr. COLTON. Because there were a lot of good bidders; a good many of them would have given 50, 75 and $1, but when they would get up above $1.25 there would be very few of them would go higher.

Mr. RAKER. This seems to be true, as stated by the Commissioner of the General Land Office yesterday: If a man can get in that country five or six or ten thousand acres (he is engaged in the sheep or cattle raising), he doesn't need but a little cross-fencing and a little outside fencing. He can afford to pay a little more for his tract of land of that kind that if bought a small tract of land.
Mr. Colton. Yes, sir; that is true.

Mr. Raker. And that will induce men to buy a large tract of land instead of a small one.

Mr. Colton. In fact, Judge Raker, if they had limited this to 640 acres they wouldn't have sold any of it, just as Judge Tallman said, because it isn't worth anything.

Mr. Elston. If the land is put back under 640 acres and it is absolutely impossible that any sale should be made in excess of that acreage to any person, either directly or indirectly, would it result in the sale of any great portion of that land?

Mr. Colton. I think absolutely not, and particularly by reason of the fact that these persons had come by bona fide purchase to a large part of this. The rest of it would be useless.

Mr. Elston. You don't believe, then, by undoing it the Government would get any more money or get any readier sale for the land.

Mr. Colton. I feel absolutely sure they could not.

Mr. Elston. Was this purchase of the 60,000 acres all there was?

Mr. Colton. As I remember it, something like 600,000 acres all together were put on sale.

Mr. Elston. What is involved here is one-tenth of the whole acreage; it doesn't amount to one concern gobbling up the whole 600,000 acres?

The Chairman. Just 60,000 involved in the suits but more than that will be involved in the selling of it.

Mr. Colton. I think Judge Finney rather misunderstood the suit when he said a large part. I think perhaps 200,000 acres will be involved, but I don't believe in excess of that.

The Chairman. You state if any restrictions are put on that you don't believe any sales can be made at all. That is subject to verification. Do you believe that the purchase by these men of this 60,000 acres has resulted in a monopolization of the area there to the exclusion of anyone else who legitimately is or who legitimately can get there. In other words, is there a control there through any indirect means that is unjust and burdensome and should be set aside?

Mr. Colton. No, sir.

The Chairman. Why?

Mr. Colton. I should say in the first place I don't think any of these parties have more land than what could reasonably be considered necessary to run their sheep for this reason, on their holdings on the national forests, they are being cut down 10 per cent every year. They can't increase their holdings. They have no other place to keep their sheep. They must confine themselves to the amount they can get on the reserve. This land is open and the people's cattle and horses here in that forest rove over this land. I went with Judge Tallman and we saw lots of horses roving over it.

Mr. Elston. Mr. Chairman, let me ask you this question: While there is only 60,000 acres involved in this suit, is it contemplated more than that will be involved in the settlement?

Mr. Raker. Yes, sir; 200,000 acres. In looking over the maps I notice there are a large number of tracts of land adjacent to those who now own small farms. I imagine some of these farmers might pay a fair price for this land, the remaining land, 180,000 acres, if
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it was offered for sale now, if they thought it was all going to be closed, don’t you think so?

Mr. Colton. I think so; yes. I think they would buy up the lands adjacent as was stated yesterday by Mr. Bonnin. Those people are in a position where they could pay, if they could get it, for a reasonable price.

Mr. Raker. I notice another situation, looking at the map. I want to ask you a question about it. There is a large tract of land I suppose pretty nearly a section, right near it is a stream, flowing diagonally. That land is withdrawn for power purposes if not used. Now, as a matter of fact if that power of withdrawal was lifted wouldn’t that land bring two or three times as much if it were sold in one lot so that the people may know that they could get the water?

Mr. Colton. I may explain that in all those streams where there was homestead land, they were taken first as homesteads and you will find, for instance, in those little streams leading off from the Duchesne, the Currant Creek, and the Red Creek, in most cases the streams run down through there—run through steep boxed canyons. Wherever it was wide enough it was taken by homesteaders, so that in many cases those streams are not good watering places, particularly for sheep. It is very dangerous to drive sheep down into a steep boxed canyon. There would be places, in my judgment in the light of later developments, where land would bring higher prices.

Mr. Raker. I was engaged in that kind of business at one time and I realize what it is to drive a bunch of sheep down into a steep canon like that. You don’t have many left when you get through.

Mr. Mays. Referring to the matter mentioned here that certain lands, strawberry lands, over near this reservation were rented and the price of this land is based on the rentals obtained from that land, what would you say as to these lands as compared with the strawberry lands?

Mr. Colton. As stated, there is a large range of mountains right west of these lands and the strawberry grazing section is right in that, and it gets a good deal more moisture there, and I think anyone who rides over the land would say there is no comparison in the value. The strawberry valley section is a pretty good grazing section.

Mr. Mays. Better than this?

Mr. Colton. Very much better.

Mr. Mays. So that when he asked if those lands were worth $6 at this time, that is no criterion as to what these lands are worth?

Mr. Colton. Absolutely not.

Mr. Raker. What is your business?

Mr. Colton. I am engaged in the sheep business. I am engaged in other business also. I am managing director and president of a telephone company and also of a building company. I am also a lawyer. I am engaged principally in stock raising.

Mr. Raker. You have been engaged for the past 15 or 20 years in this section of grazing country?

Mr. Colton. I was raised there. My father took me there when I was 3 years old.

Mr. Raker. How many people are there in the whole reservation?
Mr. Colton. Of the whole reservation, I should say eight or ten thousand people.

Mr. Raker. What is the general feeling of the people in that territory as to whether this land has been take up so as to deprive the public of its proper use or the individuals of the development of the country?

Mr. Colton. I hold a position that necessitates traveling over the country a good deal. I am sure there is no feeling against it. In fact, the sheep industry, if you strike a blow at the sheep industry you strike a blow at every man that is engaged in farming.

Mr. Raker. Then, there is no such feeling by the people that some men have hogg'd the land up; in other words, that the country has been benefited?

Mr. Colton. Yes, sir. I will say that that is by the great majority of people. You will find people here and there—

Mr. Raker. You will find soreheads everywhere?

Mr. Colton. Yes, sir.

Mr. Vaile. You will remember that this land is 100 miles from a railroad and the only way to get products out of that valley is to eat it up and drive it out, and the sheep and cattle men are the very salvation of the community from an agricultural point of view.

The Chairman. Who was it Mr. McFalls solicited to purchase the 14 sections?

Mr. Colton. J. S. Murdock and, also, I will say, A. M. Murdock and M. B. Pope, who heard of the whole transaction.

The Chairman. It is very important to have as near as you can give it the exact language of Judge Witten. I wish you would state that again, just what he told them they could do as to using members of their families to purchase land.

Mr. Colton. It has been a long time. I don't know as I can give the exact words, but in substance it was this: The question has been asked whether or not—

The Chairman (interrupting). No; don't give the question. You need not go into the preliminaries, but just what he told them.

Mr. Colton. He told them that he didn't believe the Government would go back of that affidavit. That if they could take that affidavit and thought it would be all right, and he felt quite certain if a man bought in the name of his wife and children it was absolutely all right; that there wouldn't be any question made of such a transaction.

The Chairman. What did Mr. McFall tell along that line?

Mr. Colton. I can only give you that from what I was told. I was not present.

The Chairman. Give that from hearsay.

Mr. Colton. He was very emphatic that the purpose of the sale was to get the money for the Indians, and that it would be all right if they bought this land in the name of parties—other parties, provided those other parties had not made a purchase or their names had not been used in the purchase of any of that land.

The Chairman. David Smith secured in round numbers 7,000 acres of land. How did he operate? Through his family?

Mr. Colton. Not altogether. That 7,000 acres was bought, a large amount of it by men who at that time were either directly or indi
rectly engaged with him in the sheep business, and they were really bona fide purchasers that David Smith subsequently bought out.

The Chairman. These do not all represent purchases by David Smith from the Government directly or indirectly?

Mr. Colton. They do not. They represent in a large way purchases by other men who bought in their own names in good faith and subsequently sold to Smith in good faith.

The Chairman. How long did those purchases by Smith run?

Mr. Colton. I think all the way from six months to three years.

The Chairman. F. A. Peterson; he purchased 2,400 acres in round numbers. How did he operate?

Mr. Colton. To be right honest, I don't know. Mr. Peterson very well, and I couldn't answer that.

The Chairman. Thomas Jessup secured 7,000 acres in round numbers; how did he operate?

Mr. Colton. He operated very much as Mr. Smith did, through members of his family and men who were working for him and with him and perhaps some of his relatives; I don't know.

The Chairman. Did he have means to buy the land himself?

Mr. Colton. Not without borrowing it.

The Chairman. What was his financial condition when he—

Mr. Colton (interrupting). I should say he was in just limited financial condition. He was just a fairly well-to-do farmer and stock grower. He had stock.

The Chairman. Albert Smith secured 15,000 plus, and you say he was a man of no means at the time?

Mr. Colton. No; he was a man of some means. He was a pretty well-to-do farmer and stock grower.

The Chairman. I thought you said he borrowed the money.

Mr. Colton. He did. He borrowed practically all the money to buy that land with.

The Chairman. From whom did he borrow it?

Mr. Colton. From the National Bank of the Republic. I say that because he told me that; I don't know.

The Chairman. What was the size of his holdings before the purchase?

Mr. Colton. Before the purchase of the land?

The Chairman. Yes.

Mr. Colton. I don't think he had anything but just a home.

The Chairman. Home; where?

Mr. Colton. I am not sure whether he lived in Salt Lake or Heber.

The Chairman. You mean a city home?

Mr. Colton. Yes, sir.

The Chairman. What was his business?

Mr. Colton. He was running sheep; he was leasing lands from the Indians.

The Chairman. He had some stock before he purchased?

Mr. Colton. Yes, sir.

The Chairman. How many head did he have?

Mr. Colton. I couldn't say as to that. He is here. In fact, I never met him until this sale.

The Chairman. He bought through the medium of 10 members of his family?
Mr. Colton. Six or eight members anyway.

The Chairman. And the land he secured from the Government and the other land he purchased from bona fide purchasers?

Mr. Colton. Largely; yes, sir.

The Chairman. From the Government?

Mr. Colton. Yes, sir.

The Chairman. Do you know whether those other purchasers purchased with the design and intent to convey to Smith?

Mr. Colton. My information is that they did not.

The Chairman. Now, M. A. Smith secured something over 4,000 acres. How did he operate?

Mr. Colton. Very much as the others had. I will say, however, that I think that tract of land largely in his case is made up from purchases he made from bona fide purchasers at the sale.

The Chairman. Do you know how many acres he secured directly in this indirect way?

Mr. Colton. I couldn’t say that; no.

The Chairman. Maude Smith, is she related to Albert?

Mr. Colton. She is the wife of Albert Smith.

The Chairman. What relation is M. A. Smith to Albert and Maude?

Mr. Colton. A brother.

Mr. Raker. That is quite a good-sized family in Utah.

The Chairman. Alice G. Smith secured 1,200 acres, plus.

Mr. Colton. Who is that?

The Chairman. Alice G.—how is she related to the other Smiths?

Mr. Colton. I am not acquainted with her; I couldn’t say.

The Chairman. These various Smith holdings aggregate 23,000 acres.

Mr. Colton. There are lots of Smiths there.

The Chairman. Then there is a Blanche Smith; is she related to the other Smiths?

Mr. Colton. I couldn’t say.

The Chairman. Secured something over 2,500 acres.

Mr. Colton. I couldn’t say as to that. I am not acquainted with her.

The Chairman. Well, all these Smiths, have they business connections together?

Mr. Colton. No; I think each one of them is separate. I think none of them are partners or in any way connected, although some of them I know personally are brothers.

The Chairman. Thomas Jones has 6,000 acres, plus. Do you know how he operated?

Mr. Colton. I think he operated largely through his family.

The Chairman. Well, he purchased three or four sections from William H. Lindsay.

Mr. Colton. I think that was a perfectly bona fide purchase. My understanding is that Lindsay and Jones were not together on this sale at all.

The Chairman. I see Lindsay still owns 1,520 acres.

Mr. Colton. Fifteen hundred and twenty acres.

The Chairman. Of his own. Do you know why he retained that and sold some land to Jones?
Mr. Colton. I think it was due entirely to the fact that his permit on the reserve is a limited one and he can't operate more than a certain number of sheep, and the 1,500 acres would probably be sufficient for his needs.

The Chairman. Lindsay sold within six or seven months after he secured his land to Jones. Do you know the reason of that sale?

Mr. Colton. No, sir; I do not. You see, I live 150 miles from them.

The Chairman. William Coleman secured 8,000 acres, plus. How did he operate?

Mr. Colton. Well, I think very much in the same way. I happened to be acquainted with him, though I wasn't acquainted with him at the time of the sale. I think he bought through the Smiths and partners that were working with him at the time.

The Chairman. You don't claim to have any precise, definite information as to these operations?

Mr. Colton. No; I do not.

The Chairman. Only in a general way?

Mr. Colton. That is all.

The Chairman. Are there any sheepmen operating in that section with 100 or 150 head of sheep alone?

Mr. Colton. There are very few. I don't know just how many. They may have a few on their ranches, I think that is true.

The Chairman. Do you know of any of 100 or 150 people up there operating up there with 100 or 150 head of sheep?

Mr. Colton. I do not.

The Chairman. That was brought out the other day to me and it was news to me in the sheep industry except that in Oregon it is sometimes done and the same as they do in Ohio.

Mr. Colton. I know only a small number who operated on that scale.

Mr. Mays. They don't depend on the sheep industry?

Mr. Colton. No, sir.

Mr. Mays. They don't come in this reservation at all.

Mr. Colton. Except in a cooperative way where they hire one or two herders—two herders always—and put all their herds together.

(Thereupon, at 12 o'clock the committee recessed till 1.30 p.m.)

AFTERNOON SESSION.

The chairman called the committee to order at 1.50 o'clock p.m.

The Chairman. Who is your next witness, Mr. Mays?

Mr. Mays. I am not conducting this hearing.

The Chairman. Or Mr. Welling.

Mr. Welling. Mr. Pope is here.

STATEMENT OF MR. M. B. POPE.

Mr. Pope. Mr. Chairman and gentlemen of the committee, M. B. Pope is my name. I reside at Duchesne, in Duchesne County. I am mayor of the city of Duchesne and have resided in that part of the Indian reservation since August, 1905—in that reservation zone. I have engaged in the stock business there for some time, partially for myself and partially working for other people.
I have ridden all over this territory a number of times. I attended all of the land sales which have been held regarding the sale of these lands. I was at Provo in 1910, at the 1912 and again at the 1917 sales, and at the sale in Duchesne in 1917.

The sale was opened in Provo in 1910 with Judge Witten conducting the sale. He started the sale on the east side of the reservation. The bidding was very lax. In fact a number of tracts of land passed over where they received no bids whatever. He gave the farmer the preference. That is, a man who owned a farm, and wanted a little additional land adjoining his place had the preference of having that ground segregated and put up for sale in separate tracts, in order to favor bona fide homesteaders who wished to get a little additional land there for grazing or land that may be good for farming at a future date.

The Chairman. That is, he offered that little piece in a separate unit?

Mr. Pope. In a separate unit; the farmer could go up to the desk and have any particular tract of land that adjoined his farm segregated and offered in a separate unit; otherwise, the land was offered the north half of the section and then the south half of the section.

Mr. Vaile. And then by sections, I suppose?

Mr. Pope. There was none offered by sections at all. They were offered by the north half of the section and then the south half of the section, offering half sections as a tract; and where there were fractions, they would offer those fractions that were in the north half and then in the south half, and a number of times when the judge was unable to get a bid for land, or a suitable bid, he would receive perhaps a bid of 50 cents, he would argue with the people, stating that he had a duty to perform to protect those Indians, and to get a reasonable price for that land. He said 50 cents an acre was set for the minimum price of the poorer lands of this reservation, and not for the small tracts of better lands.

At the same time the bidding was still lax for two days.

Mr. Vaile. You are referring now to the 1910 sale?

Mr. Pope. The 1910 sale, but I think it was the morning of the third day—I am not right positive as to that—but I think it was the morning of the third day when the sale was opened, Judge Whitten made the statement—I do not remember the exact words he used—but it was to this effect, that inquiry had been made regarding the purchase of lands for members of the family.

The Chairman. For members of the family?

Mr. Pope. For members of the family; that there was no required qualifications under the law for any person to become a purchaser of that land, and that he thought that no wrong would be done if you bought land for the members of your family.

Immediately after that bidding began to increase and there was spirited bidding until along about the forth or fifth day of the sale, bidding got very spirited, and the price of land went up quite a little bit. In some instances there was a good deal of rivalry to get that land. Bidding ran in some instances up to $7 and more an acre, but that was only in one or two instances. The majority of the land went at from $1 up to $2 and $3 an acre. That is my recollection of it.
Each evening after calling the land through that day he gave the people the privilege of recalling; that is, before adjourning a sale they would have the privilege of recalling any tracts of lands that had been passed over that day, so that every man had an opportunity to bid.

In 1912 he conducted the sale along about the same lines, and the bidding in some parts was quite active; in fact, along through the Tabby Mountain district there were a number of tracts of ground sold one section right after another that ran up to three dollars and three dollars and a half an acre.

Mr. VAILE. Did you attend these sales as a prospective bidder?  
Mr. POPE. I did; I bought a little land for myself; not very much, and I bought for several farmers through our section who did not care to go to the expense of going over there. They gave me their powers of attorney and I bid in the land for those people.

In a conversation at, I think, the Roberts Hotel, in 1912, where some mention was made regarding the bidding in of this land and some fellows bidding in a good bit of ground, Judge Whitten said, "while it was technically against the law for a man to bid in more than 640 acres, yet we know they do it." And I don't see how any man can help but know it who was there during that sale.

The CHAIRMAN. I wish you would repeat that last statement. I did not get that.

Mr. POPE. He said that "while technically it was against the law for a man to buy more than 640 acres of land, yet," he said, "we know they do it." And I don't see how any man could help but know they were doing it and attend that sale, because these fellows would sit there and bid on this ground, these tracts of land, and they would go in there and make their payments; usually they had their affidavits, I suppose. I don't know. I didn't follow that part of it up.

Mr. FINNEY. That is, they had affidavits stating they were buying these lands for their own use and benefit?  
Mr. POPE. I think they did; I don't know that. I had several affidavits myself.

The CHAIRMAN. We have no evidence that they made no affidavit that they were not buying it for the benefit of somebody else. The only affidavit at the first sale was that the supposed purchaser had not purchased more than 640 acres. Is that right?

Mr. WITTEN. That is right; the law did not require any affidavits.  
Mr. POPE. That is all; I don't know of any other affidavits.  
The CHAIRMAN. Except possibly the 1912 sale affidavits.  
Mr. WITTEN. They were practically the same.  
Mr. POPE. At the first of this sale, people bid in the tracts of land where there were some springs, or along the creeks, or adjoining farms, and most of that land sold at a very small price. I remember distinctly Judge Witten in the 1910 sale refusing to accept any more 50-cent bids on that land, stating that he had a duty to perform to get the money out of that land for the Indians; that it was not his land, the Government's land; while the title was in the Government, the land really belonged to the Indians, and the proceeds would go to the Indians, and that he would not accept any more 50-cent bids. Then people started to offer 60 and 70 cent bids, the first bid on the
land, and finally he made a definite rule that he would not accept any bids under $1 per acre for that land. It was after that that the bidding became more spirited and the land went up to a higher price.

Mr. Vaile. Was it immediately after that, or after the announcement?

Mr. Pope. It was after the announcement that the bidding started to go up; the announcement took place after he had raised the price.

Mr. Vaile. The announcement that everybody knew that more than 640 acres were being purchased by one man?

Mr. Pope. The announcement that you could buy the land for the members of your family.

Mr. Vaile. It was after that announcement.

Mr. Pope. That was when the bidding started to increase.

The Chairman. That was all Judge Witten said, was it not, that one could buy for the members of his family?

Mr. Pope. That is all I heard him say.

The Chairman. He did not say that one, through himself, could use the members of his family for purchasing land?

Mr. Pope. He said that there were no qualifications prescribed in the law for a person to become a purchaser of that land.

Mr. Finney. You mean by that that they were not required to be over 21 years of age, and have a card to say they did not own more than 640 acres of land in the United States and things like homestead qualification?

Mr. Pope. That is it; or did not need to have citizenship in the United States.

The Chairman. You did not understand him to mean that I could use a member of my family as a dummy to buy lands for myself?

Mr. Pope. I understood him to mean that I could buy land for myself and for my wife and for my children and that we would all use that land in common.

The Chairman. Did he say that?

Mr. Pope. He did not say that, but that was my understanding.

The Chairman. Then his statement was that one could buy land for the members of his family?

Mr. Pope. Members of his family.

The Chairman. The memer of the family was supposed to be the actual owner of the land?

Mr. Pope. I suppose that was his case; he simply said the members of the family, and after that bidding picked up materially.

Mr. Raker. As a matter of fact, you people all knew and it is the law, is it not, that a father could go in there and bid in a 640-acre tract for his daughter by giving her the money, paying for her the money that the bid called for, having the patent made in her name, and it would be her land as the gift from the father? That could be done.

Mr. Pope. I think so.

Mr. Raker. But that was not tried?

Mr. Pope. I did not hear anything of that.

Mr. White. You do not mean, do you, that the land could be given by the father, but that the purchase price could be given by the father?
Mr. Raker. Yes; the purchase price donated by the father to the child as a gift, and if she was a minor it could be held until she became of age and dispose of it.

Mr. Pope. I did not follow those matters up, of course, to see what became of that land, but I was there when those fellows were.

Mr. Mays. As a matter of fact, it was a family affair, no matter what the form of it. They got it for the use of the family, got it that way, and have held it that way, and have used it ever since that way, have they not?

Mr. Pope. In a great many instances they have.

Mr. Mays. There was no outside corporation formed or any speculation by anybody in it, was there?

Mr. Pope. I never heard of any at all.

Mr. Mays. Nothing of that kind was charged?

Mr. Pope. No, sir.

Mr. Mays. There was no thought of these Government officials being in collusion with anybody to either depress prices or to monopolize ground or anything of that sort.

Mr. Pope. That certainly is not the case. The Government officials, in my opinion, and being right there on the ground, did everything they possibly could do to get the best price for that land that they could.

Mr. Mays. And you believe they did act in the utmost good faith and did all they could in that direction, do you?

Mr. Pope. I certainly do.

Mr. Whiting. And in addition to that do you think they exercised the ordinary horse sense in getting the best price out of this land?

Mr. Pope. They did.

Mr. Taylor. Suppose the father bought a tract himself of 640 acres, and he had 10 children, and after he got the land in the names of the children he had the children deed it over to him, did he not ordinarily afterwards?

Mr. Pope. I do not know; I do not know how the children could do it until they got old enough to do it.

Mr. Taylor. Well, I am assuming they were of age.

Mr. Pope. I don't know.

Mr. White. I do not think we should inquire too curiously about these things, gentlemen.

Mr. Taylor. But it is usually understood when a father uses the name of the family to get the land, that is just an ordinary bid, and the daddy gets the benefit of it: daddy gets the title in his own name, and if he wants to get married it goes to the widow; and if he wants to will it, he can, but the children don't have much to say about it.

Mr. Mays. Is it not about the general rule that the children get about all the old man has?

Mr. Taylor. They are entitled to it, but many times do not get it; no.

Mr. Pope. As I understand the laws of Utah, as long as the children are under age, or whether they were or not, they would inherit one-third of the property.

Mr. Mays. Provided the father did not make a will.

Mr. Pope. Provided the father did not make a will, they would inherit two-thirds of the property.

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Mr. Taylor. They have the same law in Utah as in Colorado—a man can will the property all away from the children, but can not from his wife?

Mr. Mays. Can you explain to the committee the peculiar fact, and it is a fact, that while these public sales and biddings were being conducted, these parties all got the land in a body?

Mr. Pope. They didn’t buy it all in a body; those parties have swapped the lands since that time in order to get it all in a body, but it was not all purchased in a body at the time of the sale.

Mr. Mays. Then the representation on the map of their owning large tracts of 5,000, 8,000, 10,000, 15,000, all in a body—they were not bought in the sale in a body, but were exchanged afterwards, is that it?

Mr. Pope. That is the case; they were not all bought in a body.

Mr. Whiting. Were not some of them bought in a body? Wasn’t that the idea of the purchaser, to get his individual tract, or the tract to which he secured a deed through the children—it being so suggested—as contiguous as possible?

Mr. Pope. That was the very reason those prices ran so high.

Mr. Whiting. There is no doubt of it.

Mr. Pope. Because they tried to get it as much in a body as they could.

Mr. Raker. In addition to using the children’s names, they used friends and employees, did they not?

Mr. Pope. I presume they did, but I can not say as to that, because I have not followed that matter up to see.

Mr. Welling. Do you think if these suits were won, and the land were reopened for sale under the reading of the law, they would get as high a price for them?

Mr. Pope. I do not think they would get as high a price for them.

Mr. Welling. Why?

Mr. Pope. Because a number of sales that were made at that time were bona fide sales, and if the patents were canceled to all the lands which could be canceled, it would leave a kind of checkerboard over that country and these intermediate sections would not bring as much because it would cost the purchaser more money to fence his ground, and in a great many instances he would not have water or opportunity to water, and the lands would not bring as much.

Mr. Welling. And the result would be it would lie there as vacant land, and the rancher who holds the strategic properties with the water, and the present owners would get the benefit of it anyway, would he not?

Mr. Pope. He certainly would to a great extent.

Mr. Vaile. You said a moment ago a number of these sales were bona fide sales. Do you know of any that were not bona fide sales?

Mr. Pope. I do not, but I do know of certain pieces of ground these people own, embraced in those tracts, were bought by other people and held by them for some time, which sales could not be questioned.

Mr. Welling. And many of them were bought by homesteaders.

Mr. Pope. Yes.

The Chairman. How many acres did you buy?

Mr. Pope. I bought 440 acres for myself; my wife bought 520 acres.
The Chairman. That is 900 acres in your family?
Mr. Pope. Yes, sir.
The Chairman. You bought that land for your wife?
Mr. Pope. I did. I paid for it with her money, however. It was not mine.
The Chairman. But you acted as agent for other friends?
Mr. Pope. For a number of them.
The Chairman. For how many?
Mr. Pope. I guess probably 12 or 15.
The Chairman. And how many acres did you buy for each man?
Mr. Pope. Three hundred and twenty was the most I bought for any one.
The Chairman. What was the aggregate that you bought for all your friends?
Mr. Pope. I don't remember.
The Chairman. Several thousand acres?
Mr. Pope. No; I would not think so. Perhaps it would about run to 3,000 or 4,000, or something like that.
The Chairman. That was at the 1910 sale or the 1912 sale?
Mr. Pope. Both.
The Chairman. Both.
Mr. Pope. Taking at both sales.
The Chairman. Did you afterwards purchase any of that land?
Mr. Pope. No, sir.
The Chairman. Your friends still own the land?
Mr. Pope. They do.
Mr. Raker. Now, as to the question of value, getting more for the land, supposing the patents were canceled. You said the land would be checker boarded. Now the man who has these large tracts, say he had 15,000 acres, and his land was checker boarded, he would be in a very delicate situation, would he not?
Mr. Pope. I don't think so.
Mr. Raker. Suppose he did not fence the land at all, other parties went in and bought the Government lands, under your laws in Utah, a man who allows his sheep to be herded on another man's land is guilty of trespassing, is he not?
Mr. Pope. Yes, sir.
Mr. Raker. Therefore, he would have to have a delegation of herders to keep the sheep off the other fellow's land, or he would not get any use of his land.
Mr. Pope. Yes, sir; and the other fellow would not get very much use of his land. That is the reason they would not sell for as much.
Mr. Whiting. Is the law Mr. Raker speaks of pretty well observed?
Mr. Pope. The herd law?
Mr. Whiting. Yes.
Mr. Pope. It is observed. That is the only way we have of protection; we have no fence law.
Mr. Raker. What I am getting at is that the man who owns the alternate sections, for instance, it would be quite to his interest to buy the remaining land within the boundary of his land, in order to make his holdings solid, would it not?
Mr. Pope. It would, but I believe firmly he could buy it for less than he paid for it before.
Mr. Raker. Is the land worth less there now?

Mr. Pope. No, but I think from the land he actually owned, it would so interfere with the balance of that range that the other fellow could not use his land, and he would not pay the price for it. If he paid the price for it, he would have to fence it, or put a herder on there.

Mr. Raker. As a matter of fact, from your observations there, being raised there as a business man, within the last five years has not the general value of land gone up all over that country?

Mr. Pope. It has.

Mr. Raker. About what per cent, 20 per cent or 40 per cent?

Mr. Pope. Perhaps 30 per cent. The farm lands which have been cultivated have gone up fully 50 per cent, but that is due to being put under cultivation; but the range lands have not increased anywhere near that much in value.

Mr. Raker. Have they not increased almost in proportion due to the fact the farmer is so anxious to have range to turn his cattle and horses out on, where he owns a farm of 300 to 500 acres, and the range is available for him, and, in fact, he can not very well get along without it?

Mr. Pope. That is not the case. Most of these farmers who have a few head of cattle run them on the forest reserve. They form a stock association, and this association hires a herder; each farmer who owns a farm there is entitled to a preferential permit for 35 head of cattle or 300 head of sheep. The stock association gets those cattle, the farmer turns them on the reserve in the spring, and the stock association returns them to him in the fall, and he just pays the pro rata of the herder bill and the cost of salting the cattle, plus the Government grazing fee, which would be a great deal less than the tract of land if he owned it.

The Chairman. Do you know William Lindsay?

Mr. Pope. I do; I am not very well acquainted with him, but I know him when I see him.

The Chairman. How large an operator is he?

Mr. Pope. I think William Lindsay runs one band of sheep.

The Chairman. What is the size of the band?

Mr. Pope. I think somewhere from 1,500 to 2,000 head; I don't know.

The Chairman. And how large are his holdings of land?

Mr. Pope. I don't know just what his holdings are.

Mr. Mays. How much land would he need for 2,000 head?

Mr. Pope. Well, he would have to have for his spring and fall range with his sheep perhaps 5,000 or 6,000 acres of that ground.

The Chairman. I notice in this complaint in the Jones case that William Lindsay acted as the agent for Andrew Lindsay, Mary Lindsay, and William A. Lindsay, and the land was patented to Andrew, Mary, and William on June 28, 1913; then on February 24, the three of them deeded their land to Mr. William H. Lindsay, and on the next day—on February 25—he deeded the land to Thomas Jones. Do you know anything about that?

Mr. Pope. I don't know a thing about that transaction.

The Chairman. Why did they deed to William Lindsay, if they were the real parties in interest, when he acted as the agent for them?
Mr. Pope. I do not know.
Mr. Mays. Do you know about this tract Mr. Tallman mentioned, 3,000 or 4,000 acres, that sold at $10 an acre?
Mr. Pope. I have been over it a number of times.
Mr. Mays. How about that land?
Mr. Pope. Why, some of that land is very good grazing land, but the real valuable part of that ground is the farming land on the river bottom.
Mr. Mays. Did that go in?
Mr. Pope. That went into that sale.
Mr. Mays. Any improvements on the farm land?
Mr. Pope. There is a good house, about five or six rooms, and a good barn; the farm land is all under fence, and about 100 acres of it into hay—in cultivation.
Mr. Mays. Well, a tract of land like that would naturally bring more than this grazing land?
Mr. Pope. A great deal more. And the grazing land is right adjoining the farm, making it more advantageous to any man who owns that farm, because of it being close to his place for feed and more convenient in handling his stock.
Mr. Raker. What detriment has it been to the farmers and residents and stockmen of that country there, because of the fact that this land has been unsold for the last 8 or 10 years?
Mr. Pope. The land has been unsold?
Mr. Raker. Yes.
Mr. Pope. Why, it is not any detriment to them; the land that is unsold they get the use of for nothing.
Mr. Raker. Then, so far as the people in the reserve—that is, so far as the exterior boundaries of the general reserve—have not been complaining because this land has not been sold.
Mr. Pope. No, sir; they have not.
Mr. Raker. It has really been no detriment to the country that it has not been sold?
Mr. Pope. No detriment to the country. The only person who has suffered anything by the lack of sale—of course, the county and the State have suffered some from lack of taxes.
Mr. Raker. That refers also to the forest lands.
Mr. Pope. Yes; the same; but the only person who has suffered any real loss is the Indian who has not received his money.
Mr. Raker. The land that is allotted to the Indians is not taxed?
Mr. Pope. No, sir; not taxed at all.
Mr. Raker. Now, just wherein and how has the Indian suffered because this land has not been sold?
Mr. Pope. Because the land has not been sold?
Mr. Raker. Yes.
Mr. Pope. Only from the loss of the money which would go into the Indian Department.
Mr. Raker. Wherein would that be of any greater benefit to him any greater than to have the land? I am just trying to get the idea.
Mr. Pope. He has absolutely no use for this land at all.
Mr. Raker. That is all right; but where has the Indian been in the slightest injured because the land has not been sold?
Mr. Pope. He has not been injured at all except he has not had the money.

Mr. Raker. Well, he don't need the money.

Mr. Pope. Apparently not.

Mr. Raker. There is plenty of money in the Treasury for him, is there not?

Mr. Pope. There seems to be; I don't know how much there is.

Mr. Raker. Therefore, if the grazing land has increased 30 per cent, and the ordinary farm land 50 per cent, and he has money in the Treasury to his credit, the country building up, prospects of a railroad through this territory from the main line, I am told by Mr. Kellogg, from Colorado, and others, the longer you hold the land, the more increase there will be on it, and the more he will get in the long run.

Mr. Pope. The Indian will have a hard time selling the balance of that land.

Mr. Raker. I know, but just get my question. If my statement is true, then it is to the advantage of the Indian, is it not?

Mr. Pope. I do not see how it would hurt the Indian any.

Mr. Raker. Whether it would hurt him or not, is it to his advantage or detriment?

Mr. Pope. If the land increased in value, it would be to his advantage.

Mr. Raker. Exactly, and as a matter of fact, the general grazing land has increased in that community, 30 per cent.

Mr. Pope. That is, between the 1912 sale and to-day.

Mr. Raker. Yes; between the 1912 sale and to-day. The surrounding farming land has increased 15 per cent. The Indian not needing it, the Government holding the land is really to his benefit—if the Government sells the land later, it is to his benefit.

Mr. Pope. Yes.

Mr. Mays. The money would have increased 30 per cent put out at interest, would it not?

Mr. Pope. Yes.

Mr. Raker. How much interest does he get on that money?

Mr. Pope. I don't know.

Mr. Raker. He doesn't get any.

Mr. Welling. He gets interest from the Government, Judge.

Mr. Raker. I am afraid not.

Mr. Welling. He does, though.

Mr. Pope. The Government, I am informed, has used a great deal of the money raised from the former sale of these lands for the purpose of building irrigation canals, to irrigate the Indian allotments, but I am not certain about it.

Mr. Raker. Well, whatever money has been used of the Indian money or other moneys to build a reservoir and irrigation canals, they hope by the sale of lands below the reservoir, they hope to return to the Indians all the money advanced in addition to other sums that would be coming from the land that was under the irrigation project.

Mr. Pope. I think they are hoping to give the Indians the benefit from the increase in value of the allotment which is irrigated under this project.

Mr. Raker. But that has nothing to do with the land that has not been sold.
Mr. Pope. No; there is none of the land that has been sold that would come under that project, that is fit for farming or of any particular value.

Mr. Raker. But all of the land that is under the irrigation project is supposed to pay in proportion to the advance of the whole project for this construction of this reservoir and the ditches, like all the other projects, is not that right?

Mr. Pope. All irrigable land.

Mr. Welling. But this is not a regular irrigation project, the Government irrigation project.

Mr. Raker. This is an Indian project.

Mr. Welling. All of these lands are allotted; they belong to the Indians themselves; they are not going to sell those lands to the public.

Mr. Raker. I know, but all the benefits derived from the irrigation system to the lands that these allottees own or hold will be paid back to them according to the proportion their land bears to the entire cost of the project; is not that right?

Mr. Welling. That is not true.

Mr. Pope. I do not understand it that way.

Mr. Barbour. Is not that a legal question?

The Chairman. That is a legal question.

Mr. Raker. I am trying to find out just how much these Indians have been damaged by the failure to sell this land.

Mr. Colton. Mr. Chairman, I think I could answer, if that is sufficient. Congress made an appropriation of $600,000 at one time to build these irrigation projects—a direct appropriation.

Mr. Raker. Then the question is, Congress having made a direct appropriation out of the general fund of the Treasury for the purpose of building a reservoir and constructing irrigation canals, etc., it expects all of this land to pay back the money?

Mr. Pope. I do not think so. I think the money is appropriated from the Indian fund, and the Indian gets his benefit from the increase of the value of his land that it puts the water on.

Mr. Raker. Those are two different statements.

The Chairman. The money coming from this land goes to reimburse the Government for the advance they made to the Indians.

Mr. Pope. That is correct.

Mr. Raker. Do not let us get complicated, because certainly they would not take the general Indian fund to build a reservoir system for a few Indians that are under the system.

Mr. Pope. All those Indians are under this irrigation system; all the Indians on this reservation.

Mr. Raker. All the land allotted to them before any homesteading or sale was proceeded with is under the irrigation system that we are speaking about now that was constructed by the Government?

Mr. Pope. Practically all of it except the Indian grazing land.

The Chairman. Here it is, Judge, the act of 1904, but the proceeds of the sale of the lands so restored to the public domain shall be applied first to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions, and the remainder under the direction of the Secretary of the Interior shall be used for the benefit of said Indians. The sum of $70,000 hereby appropriated, etc.
Mr. RAKER. I just had that in the statutes here and read it a few moments ago, but clearly such an enormous proposition like that would not be carried out by the Indian Office, that you allot to a lot of Indians a tract of land, and then take the money from the whole fund to benefit the land of two or three of the Indians, or a certain group of the Indians.

Mr. WELLING. If I may make a statement right here; after these Ute Indians had obtained a judgment from the Government and had $3,000,000 in the Treasury, then the Indian agencies out there undertook to give to each one of these beneficiaries of that judgment an allotment of lands that would lie under this proposed irrigation project. I think the entire cost of the project was charged up to the fund of the Ute Indians in the Treasury of the United States—every cent of it—and it rightfully ought to have been charged to them and not to the Government of the United States, and the money goes back into their fund, of course.

Mr. TAYLOR. They said yesterday over a million dollars had been put into this irrigation proposition.

Mr. WELLING. A good deal over a million; they are spending $200,000 there this year.

Mr. Pope. All of that land, except a few isolated tracts, has been put under canal.

Mr. RAKER. What is the name of that system?

Mr. Pope. There are several canals.

Mr. RAKER. What is the name of the reservoir?

Mr. Pope. They do not have a reservoir; they take it out of the natural stream.

Mr. RAKER. How can they spend $3,000,000 upon the Indian allotments which amount to about 80,000 acres?

The CHAIRMAN. How are we particularly concerned in that any more than just a passing interest?

Mr. RAKER. A passing interest, to this extent—

The CHAIRMAN. I do not want to stay on it too long.

Mr. RAKER. I do not want to stay on it too long, but just long enough to get the thing straight. I am trying to find out wherein the Indians have lost, and I expect it will show from the testimony, just the facts as they exist, that if the land is there, and has increased in value 30 per cent and 50 per cent, the fact the sale has not been conducted has been a godsend to the Indian, because he will get back about 50 per cent more than he would have got 10 years ago, and have that to put into his reclamation project so that will benefit the Indian.

Mr. WELLING. You are addressing an argument to the Indian Bureau.

Mr. WHITE. The statement has been made here repeatedly they have tried to sell these lands and could not sell them.

Mr. RAKER. Let me tell you something.

Mr. WHITE. Well, you can.

Mr. RAKER. We have seen lands sold that were considered worthless 30 years ago, and to-day they join the other man's farm that has water and are worth twice as much.

Mr. WHITE. Senator Smoot told us about these lands, that if Nebuchadnezzar had been turned out on them to serve his sentence, he would have died for want of pasture.
The Chairman. Judge, you may proceed with the witness.
Mr. Pope. The Duchesne River proceeds in a northeasterly direction until it strikes the town of Duchesne and then runs directly east. These lands on the south side of the Duchesne River rise up quite rapidly and there are deep canyons coming in from the south every few miles all the way down, and it is impractical to get any irrigation system to cover those lands. That is where the bulk of these unsold lands lies.

Mr. Raker. Is not much of this unsold land level land in 1,000-acre tracts?
Mr. Pope. Absolutely not at all.
Mr. Raker. No level land at all?
Mr. Pope. It is right up in these hills, and in some cases could be cultivated if you could get the water up to it.

Mr. Raker. I am leaving out the water at present. Is not any of it so located that it could be cultivated?
Mr. Pope. No, sir; it is not. It is almost on end and covered with cedars and pinon pine and cut up in deep canyons, canyons with cliffs 1,400 and 1,500 feet high. The cattle go up on the sides, but don't graze on the top except in the spring and fall, because they have not any water up there and it is too far to go to water.

Mr. Raker. That is all, Mr. Chairman.

Mr. Welling. Mr. Pope, do you know how many farmers there are in that neighborhood where you lived all your life who have little bands of 100 head of sheep who use these lands and any lands adjacent to them?

Mr. Pope. I do not know how many, but very few.

Mr. Welling. How many would you say in the valley around there?

Mr. Pope. I would say in Duchesne County, possibly 25.

Mr. Welling. If there was any injury to the sheep and cattle industry in that locality, would it not reflect itself very unhappily on the farm interests or the valley?

Mr. Pope. It would very much so.

Mr. Barbour. In what way?

Mr. Pope. The farmers rely very largely on these sheep and cattle industries for the sale of their hay, and hay is the principal crop we raise. What grain we need for our own consumption we raise, but the hay and the oats produced over there is very largely sold to the sheep and cattle men, otherwise there would be no sale for it at all.

Mr. Welling. You have confined yourself pretty generally to the 1910 and 1912 sales, Mr. Pope. Did you attend the 1917 sale?

Mr. Pope. I did.

Mr. Welling. What about those sales?

Mr. Pope. I attended the 1917 sale at Provo, and Judge McPhaul conducted that sale. He went clear through all this land, called it all for sale, and he gave the people an opportunity to recall any part they wanted, thereby practically offering it all twice, and some tracts of land were bought—a few—but there were quite large areas in between where lands had been sold, and then Judge McPhaul attempted to sell those tracts.
In one instance, in my presence, he said to Mr. A. M. Murdock—and I believe if I had that map I could show you so you could understand it better than any other way, the map of the 1917 sale. Right in here, west of Indian Canon, there is a large tract of land purchased here. Strawberry River runs right down in there. This is Current Creek coming in from up here, and where these places are shown here are little canyons running up to the south. These are homesteads along down here in red. These homesteads have been nearly all of them purchased by Mr. A. M. Murdock. A great many of them have changed hands two or three times, nearly all of them twice, before they reached Mr. Murdock. This tier of sections across here was sold. This block of land in here was all unsold. Judge McPhaul had tried to sell that, and not only that, but had been out on this ground and looked at it. The cliffs rise up very rapidly on this side of the Strawberry River. And Judge McPhaul said to Mr. Murdock, "If you will take that whole thing there, every 40 of it, and clean that all out, I will make it to you at 50 cents an acre."

Mr. Vaile. He was referring to the northern part of township 4 south of range 7 west?

Mr. Pope. Yes; this territory around in here, colored, and this land here, this tier of sections along in here, and all those larger pieces in there.

Mr. Vaile. That is five and one-half sections.

Mr. Pope. A little more than five and one-half sections in that one strip.

The Chairman. What was it he told Mr. Murdock?

Mr. Pope. He said, "If you take all that land, clean that right up, take every forty of it, the good and bad, and all that is in that piece of ground, I will make that to you at 50 cents an acre."

The Chairman. You are giving the exact words?

Mr. Pope. That is as near as I can remember it.

Mr. Welling. Did you hear Judge McPhaul say that to Mr. Murdock?

Mr. Pope. I did.

The Chairman. He did not say if he bought it himself?

Mr. Pope. He said, "If you will take the whole thing there and clean it up, I will make it to you at 50 cents an acre."

The Chairman. Was Mr. Murdock there as agent for other parties?

Mr. Pope. He was there looking after his own interests largely.

Mr. Welling. Did he buy all these sections in his own name?

Mr. Pope. I don't think he bought all those sections in his own name. In fact, I know he did not.

The Chairman. Did he buy them at all?

Mr. Pope. He did, and Judge McPhaul told him he could furnish the affidavits later.

The Chairman. What affidavits?

Mr. Pope. The affidavits and power of attorney to purchase.

The Chairman. Then what Mr. McPhaul had in mind was the agency of Mr. Murdock for other parties?

Mr. Pope. No; I think Mr. McPhaul realized that Mr. Murdock was buying that for himself, absolutely.
The Chairman. That he was buying it for himself?
Mr. Pope. Yes.
The Chairman. Why did he speak of these powers of attorney for other parties?
Mr. Pope. Because the law required that to be done.
The Chairman. Do you think that Mr. McPhaul was winking at a scheme to get around the law there?
Mr. Pope. I think Mr. McPhaul was trying to dispose of that land that he could not dispose of otherwise, and it was no good to anyone else except Mr. Murdock.
The Chairman. And he was willing to see Mr. Murdock resort to this subterfuge?
Mr. Pope. It seemed that way; yes, sir. Mr. McPhaul tried every method that a man could reasonably to sell that land, and he made that proposition, "If you clean up every bit of it, take every forty of it, I will make it at 50 cents an acre."
Mr. Welling. Was that statement made out near the land, or was he around Provo?
Mr. Pope. In Provo.
Mr. Welling. He just had the plats in front of him?
Mr. Pope. Just had the plats in front of him. Mr. McPhaul had been out there before that time.
Mr. Vaile. Was that preceding one of the sales?
Mr. Pope. That was after the sale had been adjourned.
Mr. Vaile. Which sale?
Mr. Pope. 1917; that is, after he had adjourned the sale.
Mr. Mays. There had been no bid on that land?
Mr. Pope. No bid at all. Judge McPhaul had offered that land twice, and Judge Witten had offered that land twice, and received no bids on it at all on the 50-cent minimum bid. I think Judge McPhaul raised the minimum to 75 cents an acre, but he could get no bid at all. Judge Witten had also offered it twice prior to that time and received no bid.
Mr. Raker. What are they going to build a railroad on that land for?
Mr. Pope. For the benefit of this land over it, because it is of value.
Mr. Vaile. You refer to the southern part of the land?
Mr. Pope. The northern part of the land.
Mr. Mays. In order to supply California with coal?
Mr. Pope. Yes.
Mr. Mays. And by going up to the reaches of those streams, the high elevations, can you not take the water out and bring it down the side hills and irrigate this land?
Mr. Pope. If you took the water out there, you would have to take it in pipe lines for several miles, and at an expense absolutely prohibitive.
Mr. Mays. That is what the committee wants to know, the whole situation.
Mr. Pope. This canyon here on the Strawberry River running down there will average 600 or 700 feet; a high perpendicular ledge a good portion of the way.
Mr. Mays. Something like that canyon through Colorado?
Mr. Pope. Much the same way, any more than there are little canyons cutting in from the south, and that is the only way you can get out of the canyon is down one of these little canyons.

The Chairman. Do you realize that that understanding between Mr. McPhaul and Mr. Murdock was a violation of the law?

Mr. Pope. Well, I realize it did not exactly follow the letter of the law.

The Chairman. It did not what?

Mr. Pope. That it did not exactly follow the letter of the law. I knew that the law required that a man should buy 640 acres.

The Chairman. Did Mr. Murdock know that?

Mr. Pope. I do not know; I think he did.

The Chairman. Did you discuss the morals or propriety of it?

Mr. Pope. I did not. I felt myself that Judge McPhaul was doing that which he ought to do, because there was no other way he could get a penny for that land. Mr. Murdock owned all of this land along the creek.

Mr. Vaile. South of the land he sold?

Mr. Pope. South of the land he sold; then this rises up here, a very abrupt country. On the levels, along across here—that land wasn't worth anything to anyone except Mr. Murdock, and all it is good for to him is for a little early spring and fall range.

Mr. Raker. Mr. Murdock would be very foolish to buy it if it could not be sold; he would not be a prudent cattleman or a prudent sheepman to buy it if he could get the use of it for nothing.

Mr. Pope. There is only this difference, if Mr. Murdock did not buy it, there are one or two of those forties that reach the creek where some other man might get in there; but it would be pretty hard for him to do it.

The Chairman. How long after that conversation was held was it until the sale was made to Mr. Murdock?

Mr. Pope. The sale began within a very few minutes.

The Chairman. Then they were knocked down to Mr. Murdock?

Mr. Pope. They were knocked down to Mr. Murdock.

The Chairman. And they had to furnish powers of attorney then, did they, at the 1917 sales?

Mr. Pope. Yes, sir.

The Chairman. And how long after that were the powers of attorney furnished?

Mr. Pope. I do not know just how many days, but it was after they had returned to Duchesne.

The Chairman. Some days?

Mr. Pope. Yes.

Mr. Mays. Did they have to make affidavit at that time?

Mr. Pope. They had to make affidavits at that time.

Mr. Mays. Were those affidavits furnished?

Mr. Pope. The affidavits were furnished and the powers of attorney.

Mr. Raker. Let me ask you this: Who started this trouble about the cancellation of these patents?

Mr. Pope. The only man that I know of taking an active part in that was one Hiram Jones.

The Chairman. What is the matter with Hiram?
Mr. Pope. Well, the trouble with Hiram—I am taking this from his own statements to me.

The Chairman. That is what we want to know.

Mr. Pope. He said that he went to Jessup Thomas and asked Thomas not to bid on a certain section of ground; he wanted to buy it himself, and Thomas refused to stay off it, and said he didn't feel like going in there and bucking against Thomas on that section of ground, so he went home.

The Chairman. Jessup Thomas—

Mr. Pope. Jessup Thomas is one of the men against whom one of these suits is filed.

The Chairman. He has a large tract of land.

Mr. Pope. He has a large tract of land.

The Chairman. What is Jones's business?

Mr. Pope. Jones has a bunch of sheep and a ranch up on the Duchesne River just above Tabby Mountain.

The Chairman. According to your information, is he the first one who made a statement to the Land Office and requested an investigation?

Mr. Pope. I don't know that he was the first one, but he told me that he had made a kick.

Mr. Vaile. Has Mr. Jones been distinguished in the history of the country by his interest in the Indians?

Mr. Pope. I think not. Mr. Jones is quite a successful farmer there. He has a splendid farm and a bunch of 500 or 600 sheep.

Mr. Vaile. As far as you know he is not a member of an association organized for the benefit of the Indians.

Mr. Pope. Not that I know of.

The Chairman. Are there many ranchers in that section who run a bunch of 100 or 150 sheep?

Mr. Pope. Very few; I know in our immediate vicinity right around Duchesne there are only five or six, and those people take their sheep now and take care of them on their own places in the winter time; then they throw them together and run them cooperatively.

Mr. Raker. You heard the testimony of Mr. Tallman yesterday?

Mr. Pope. Yes, sir.

Mr. Raker. And he said special agents gathered much data and information to the extent of 500 pages, from which they drew the conclusion there was fraud and other acts against the law that had been perpetrated and that it did impel them to recommend commencing these suits, and they could not dismiss them on that account. Now, from your statement, just through what source, and by what means, and from what people, could this great quantity of testimony relating to fraud have been procured?

Mr. Pope. Those special agents went into that country. They went down and looked up the records, the ownership of this land, and I presume they have the record of the purchaser with them, then they went along up that river, up the Tabby country and around other localities, and interviewed these different individuals over the country. One of the special agents has spent some two or three months over there to my personal knowledge. Two of them came to me and talked to me about it. I am quite confident they have not reported anything I said to them.
Mr. Raker. Why not?
Mr. Pope. Because I don't think it would be exactly favorable to their case. They have talked to what people they could get who were rather hostile to these purchasers of land.
Mr. Raker. Well, why hostile to them? They are good citizens.
Mr. Pope. They are.
Mr. Raker. They are not injuring anybody, are building up the country, raising families, bringing splendid men into the country, and beautiful women who are building up the country, why should they feel opposed to those men?
Mr. Pope. The only reason is that they let their opportunity slip by and would not buy any of these lands until it was all purchased. You don't find any opposition to these purchasers, or very little, if any, in Duchesne County, except along the Tabiona and a few at Fruitland.
Mr. Raker. They are jealous because these men bought the land and improved it and are certainly making a success.
Mr. Pope. Yes, sir.
Mr. Raker. Would that be a fair statement of it?
Mr. Pope. I think that would be a fair statement of it; yes, sir; and I make that statement from a long-continued acquaintance with those people over there and what they were doing. I served in the fish and game department in the third district of Utah from 1909 to 1917, and came in very close contact with those people often during that time—for eight years, riding over that country, up and down those streams, riding along the Duchesne River, where most of those people live—in fact, the only real objection I know of comes from Duchesne County.
Mr. Mays. What inspired the Heber opposition?
Mr. Pope. I think those people wanted to graze that land with their cattle; I can't see any other reason for it.
Mr. Mays. They want it in the forest reserve?
Mr. Pope. They want it in the forest reserve. There was an attempt made by these people, and I think some of the people who bought this ground made an attempt to have it embraced in the forest reserve before it was ever offered for sale.
Mr. Raker. I think that is all, Mr. Chairman.
The Chairman. That is all.
Mr. Raker. This man has been very explicit and very fair, I think. The Chairman. Who is the next witness?

STATEMENT OF MR. A. M. MURDOCK.

Mr. Murdock. Mr. Chairman and gentlemen, A. M. Murdock, Duchesne, Duchesne County. I am a stockman and farmer.
Gentlemen, I have attended all these sales that have come up in Duchesne County in 1910.
Mr. Vaile. Just a moment, Mr. Murdock. You are a defendant in one of these suits, are you not?
Mr. Murdock. I am not. A. M. are my initials. My brother is here. But I am a toad in the same puddle, I suppose.
Mr. Vaile. You started to say that you attended all these sales.
Mr. Murdock. And we went there for the purpose of buying land. I might state first, however, the condition that we were in. We had
a lease on the reservation that was thrown open. For five years our lease was; then we had an extension of one year. We were all poor fellows together. We started out there and we had to combine and put our herds together to get started in order to start in the sheep and cattle business. In those days, and before even the lands were thrown into the forest reserve, we were using certain sections of that country through the leases from the Indians—the Indian Department—and, of course, to save confusion, I would use one piece of country and some of the other boys use others until everyone who wanted to go in had an equal chance with us, and then when this thing came about, of opening the reservation, we were left with some stock on our hands; some had cattle and some had sheep. It was quite natural that we would investigate the proposition and try to get holdings to try to take care of our business, as we seemed to like the business, which we did by going to this 1910 sale first. As has been told you here repeatedly, the sale was very slow for the first two or three days and did not seem to afford any relief to us at all. We met—I don’t know, but we were living at Heber then, practically all of us, and we met and had a little conference, and a committee was appointed to wait upon Judge Witten to see whereby if any relief could be got fairly.

The Chairman. What year are you referring to?
Mr. Murdock. 1910; and there was a committee of three appointed to wait upon Judge Witten.

Mr. Barbour. Mr. Murdock, about how many attended that conference?

Mr. Murdock. I don’t know; it was just informal, probably 15 or 20 of us. It wasn’t secret at all. And we took the matter up first with Senator Colton; that is, we came to him first; thought he might give us some light on the subject, but he readily informed us that he could do nothing for us at all; that we would have to see the judge, which we did; Joseph R. Murdock, J. C. Jensen, and myself were the three of the committee. We thrashed the matter over, as I recollect it, with the judge, and came to this decision while we were with him, that we could buy land for our immediate family and relatives.

Mr. Vaile. Now, did you come to that decision as a result of any assertion made by Judge Witten or aside from that?

Mr. Murdock. Well, we thrashed the matter over together with Judge Witten and came to that unanimous decision.

Mr. Vaile. He seemed to accord with that decision?

Mr. Murdock. He seemed to accord with that decision, and upon the strength of it next morning—I don’t think he mentioned the relatives before the sale started in the morning.

The Chairman. Mr. Murdock, you are giving conclusions. Just say what Judge Witten told you.

Mr. Murdock. Yes; he told us this, that we could buy for our immediate family and our relatives, and, of course, we felt all right about that. We felt—or at least I did, and so reported for the balance of them. It had been my practice—I had been in the Government service twice, once six years carrying mail, and I had always adhered to the representatives that were sent out there to instruct me in my labor, and never got into trouble; another time, five years of contract carrying for their agencies, and I did the same in that regard, and there was nothing to it at all, and I naturally supposed
that when they came there, whatever they told us we could do, and there was no harm in it at all. And I can assure you next morning that was the outline, and from then on land was bought and all three sales have been conducted along the same line.

Mr. Wellig. Mr. Murdock, following your conference with Judge Witten, he made some public announcement of the policy to be pursued. You did not go into that.

Mr. Murdock. I said he made the public announcement in the morning that you could buy for your family. Everybody who was there present at that place heard it.

Mr. White. If a man did not have as many children as another he could not buy as much.

Mr. Murdock. I presume so. If a man had 15 of them it was all right, or if there were only 5.

Mr. Barbour. In that public announcement in the morning, was anything said about relatives outside of the immediate family?

Mr. Murdock. I don't recall, but he did in the conference the day previous. I will tell you why I was concerned. I had two sons-in-law, and I had their power of attorney to buy for them and their wives, and I was interested in that question, and we did, and the three sales have been conducted along the lines predicated practically upon those things.

Mr. Raker. Now, Mr. Murdock, the powers of attorney for your two sons-in-law, and your two daughters, the wives of the sons-in-law, that would be four of them—this statement of Judge Witten would not have affected you, because you could have gone right on to bid and patent the land.

Mr. Murdock. I did not, at that time, but I did afterwards.

Mr. Raker. You have already done that?

Mr. Murdock. You have already done that.

Mr. Raker. What effect did Judge Witten's statement have upon your bidding for your sons-in-law and daughters?

Mr. Barbour. As I understand, it does not have any particular effect on his case, but he is just stating what the judge said.

Mr. Raker. I see.

Mr. Barbour. The relatives—that would mean quite a scope, you know.

Mr. Vaile. In other words, you could have bid for your sons-in-law by virtue of the power of attorney, whether they were related to you or not.

Mr. Murdock. Sure.

Mr. Vaile. But having those relatives, you were interested in the general proposition of whether or not a man could bid for certain relatives?

Mr. Murdock. For several reasons. I wanted them to do the work I was getting old and I wanted somebody to take care of things and get interested with me.

Mr. Raker. How about the children; did you bring them in, too?

Mr. Murdock. Yes, sir; I brought them in.

Mr. Finney. Just what did that mean, that you could have 640 acres for a son and 640 acres for a daughter?

Mr. Murdock. Yes; all relatives.

Mr. Finney. Six hundred and forty acres for a nephew?
Mr. Murdock. Yes, sir.
The Chairman. You did not understand that to mean that they could buy for you?
Mr. Murdock. Well, I think generally everybody understood it that way.

The Chairman. That the relatives could buy for the one?
Mr. Murdock. They could buy—he said after that he didn't think the Government would go back of these affidavits at all; he was satisfied of it. He led up to believe that we were perfectly safe in bidding on this ground.

The Chairman. Well, did you understand from the judge that relatives, sons, and daughters could make a spurious purchase for the father when the wather was the real party in interest?
Mr. Murdock. Well, I don't know how you would term it otherwise.

The Chairman. Well, call it a fake purchase.
Mr. Murdock. No; I don't think there was ever a thought there from the salesman or from the purchaser that he was doing wrong.

The Chairman. Here is a father, say, with five children. The father buys 640 acres for himself; each one of the five children, the father acting as their agent, purchases a section, or five sections altogether. Do you understand from what Judge Witten told you that the five children could be used by the father to purchase for himself five sections?
Mr. Murdock. That was certainly my understanding.

The Chairman. That was your understanding?
Mr. Murdock. Yes, sir.

The Chairman. Now, what did he say to give you that impression?
Mr. Murdock. That is all that was said. Our complaint with him, you know, was that we could not graze on 640 acres of ground, and to eliminate that feeling we had, that was what we were sent to him for, to see if there was any way by which in fairness we could reach that point, and after consulting him and talking the matter over why we thought—I did at least—that he had the power to handle that sale as he saw fit.

The Chairman. You were not familiar with the statute yourself?
Mr. Murdock. Well, I don't know. I am not much of an attorney.

The Chairman. You had never read the law?
Mr. Murdock. I have never had much experience in——

The Chairman. Well, had you read the act of Congress providing for the disposition of it?
Mr. Murdock. The literature that was sent around; undoubtedly I had read it.

Mr. Welling. But not the law itself?
Mr. Murdock. But not the law itself.

Mr. Mays. Had you ever read this statement sent out by the Assistant Secretary of the Interior, Samuel Adams?
Mr. Murdock. I don't know that I had.

Mr. Mays. Did you ever see that statement posted up anywhere?

Mr. Finney. Mr. Pierce sent the first out in 1910.

Mr. Mays. There was one introduced in evidence here yesterday by Commissioner Tallman.

The Chairman. Two of them.
Mr. Mays. Perhaps two of them.
Mr. Murdock. I don't remember seeing them.
Mr. Mays. You don't remember seeing them?
Mr. Murdock. No.
The Chairman. You knew there was an inhibition against pur-
chasing 640 acres?
Mr. Murdock. Yes.
The Chairman. That is the reason you went to see Judge Whitten?
Mr. Murdock. Yes. I thought that conference with the judge 
eliminated that.
Mr. Raker. There was quite a crowd of you there; you were at 
the county seat, were you not?
Mr. Murdock. Of Utah County, yes.
Mr. Raker. At Heber.
Mr. Murdock. No; at Provo.
Mr. Mays. When you had the conference?
Mr. Murdock. That was at Provo.
Mr. Raker. That is the county seat.
Mr. Murdock. Yes; but not of our home county.
Mr. Raker. Did you or not consult an attorney in regard to these 
sales, with regard to bidding, or what you ought to do?
Mr. Murdock. I don't think we did'. If we did, I didn't know of 
it. We thought if we consulted the man in charge, as I always have 
done in my Government affairs, that we were perfectly safe.
Mr. White. Were there any Government attorneys in that town?
Mr. Murdock. I think so, in Provo; but that wasn't our home 
town.
Mr. WELLING. Mr. Murdock, you spoke of having leased this land 
from the Indians before the reservation was ever thrown open for 
entry?
Mr. Murdock. Yes, sir.
Mr. WELLING. At the time it was thrown open, you very well re-
member about half of that part that was opened was put into forest 
reserve?
Mr. Murdock. Yes, sir.
Mr. WELLING. What would have been the individual preference of 
the stockmen of your vicinity at that time with reference to this land 
that was not in the forest reserve. Did you want it sold or did you 
want it controlled by the Government as a forest reserve?
Mr. Murdock. Well, to be candid with you, we have never got 
any material results from forest reserves, that is, good results, for this 
reason: It has been the policy of the forestry people to recognize all 
surrounding settlers—the law has been explained here—every farmer 
is allowed 35 head. Of course, they keep the forest reserve stocked 
all the time up to its capacity. If they allow you or anybody else 
35 head additional, that is taken off from some one who has a larger 
permit.
Mr. Finney. Thirty-five head of cattle or sheep?
Mr. Murdock. Thirty-five head of cattle.
Mr. Finney. And how many sheep?
Mr. Murdock. Three hundred sheep. That is taken off the permit 
of the original big holders, they call them. For instance, I had a 
permit for 550 head of cattle. My permit has been cut down to 200 
head.
Mr. White. You do pretty well on it?

Mr. Murdock. No; it is crowded now. There is no satisfaction in it at all. There is no benefit from any source, only the little fellows, and they club together—still I have never complained about that—they club together as reported here and hire a herder; that is, the association.

Mr. Welling. So, that the reduction in your permit on the forest has almost forced the purchase of large tracts of land?

Mr. Murdock. We have just simply had to purchase lands or go out of business. The forest reserve is no relief, or is not a permanent relief. You may be cut down half to-morrow. It depends on the permits applied for, but, of course, if you are a big fellow, they will whittle them off of you until there is no dependence, you know. You can not make a business of the stock business with 50 head of cattle or 500 sheep. You have got to have a herd to make a business of it, and that is the particular reason we are looking after larger ranges.

Mr. Welling. Are you the Murdock that Mr. Pope referred to in connection with that 1917 sale of land?

Mr. Murdock. I am.

Mr. Vaile. As having been solicited to purchase certain land?

Mr. Murdock. Yes.

Mr. Vaile. Will you tell about that, Mr. Murdock?

Mr. Murdock. Well, it is—Mr. Pope showed you the piece of land there. I have, I think, 5 miles of the Strawberry River, a lot of ranches that I have acquired, I have not homesteaded any of them; I have bought the ranchers out in order to get out there a little cattle range, in the sale, Mr. McPhaul's 1917 sale, I bought about five or six sections at the sale at Provo, running on the section line north—running north and south on the line, leaving an area in here between of the very rough land. The sections that I had were up on the top where there was occasionally a flat and could be pretty fair grazing up there on the section line where I could fence—the sheep trail running out of that country—I run cattle; I am not running sheep—the sheep trail running out backward and forward through the country runs in that section of land—the road does. My object in buying those was to run a fence along so I would not be bothered with trespass. I took the matter up at Provo with Mr. McPhaul, and he said I would not be allowed to put a fence around Government ground, and this piece was in these very rugged hills; it is almost worthless; in fact, worth nothing to anybody but me. Occasionally cattle drift up into these rugged places, but I could not afford to buy them. I was borrowing money to buy what we did buy.

Mr. Welling. Did you own the land back of them on the higher land?

Mr. Murdock. Yes; those are the sections I said I bought at the sale.

Mr. Welling. And the lands below them on the river?

Mr. Murdock. Yes, sir; below them on the river, leaving them inclosed by me entirely. After we had left the sale and come up to Salt Lake and came back we met Mr. McPhaul in Provo. He said, "I have got a proposition to make to you, Mr. Murdock." I said, "You ought to have made it before I went to Salt Lake. I am worse off now than I was when I went there, but," I says "what is it?"
He said, "If you will take those tracts through there that you own the land around, and take the whole thing, every 40 in there, clean it up, so that you might fence it, as you stated you would like to before going away, you may have it for 50 cents an acre." I says, "I haven't the means to cover that at all." "Well, you can take time to get them."

And I talked it over with the boys that were there and others that were interested in that family—my son-in-law, one in particular—and they decided that likely it would be the best thing I could do; but I was criticized for doing it by one of the little fellows.

It is a very worthless piece of ground. Mr. McPhaul will bear me out in that. I criticized one of the boys for buying a pony when we were raising horses. I said it would appear that in doing so there might have been more money than brains in the transaction. When I went home and said I had bought that piece of ground there he said, "Father, would not that same rule apply that you gave me before you went away about the pony?" He says, "What use is that ground to you or any other man?" saying I had more money than brains or I would not have bought it. Notwithstanding that, we did buy it under those circumstances.

The CHAIRMAN. How many acres?

Mr. MURDOCK. There were something like 5 or 5½ sections, I think.

The CHAIRMAN. When did you get your title? In whose name were the patents issued?

Mr. MURDOCK. I don't remember just exactly who they were now; each section—

The CHAIRMAN. Were they members of your family?

Mr. MURDOCK. Relatives and friends.

The CHAIRMAN. Were they of your immediate family?

Mr. MURDOCK. Yes; part of them, I think.

The CHAIRMAN. Were they your sons and daughters?

Mr. MURDOCK. Sons or sons-in-law. I don't remember just what names now. I could tell if I had my papers up here.

The CHAIRMAN. Were there anyone else outside of your sons and daughters?

Mr. MURDOCK. I could not answer that question exactly; I think there were.

The CHAIRMAN. You do not know whether or not you got some one who was not a relative of yours?

Mr. MURDOCK. Yes; they were not all relatives.

The CHAIRMAN. Did they afterwards deed to you?

Mr. MURDOCK. I think so.

The CHAIRMAN. They still hold the title?

Mr. MURDOCK. No, sir; I think most of them deeded to me after receiving final certificates.

Mr. MAYS. Did they furnish affidavits?

Mr. MURDOCK. I think they did; yes; afterwards, but not at the time.

The CHAIRMAN. But your understanding with them is that you own the land; your money paid for it?

Mr. MURDOCK. Yes; my money paid for it; no question about that. But my sons and sons-in-law own ground there with me.

Mr. FINNEY. They are associated with you in this stock business, are they?
Mr. Murdock. Yes; they all have interest in that stock, three sons-in-law and all the boys.

Mr. Mays. Do you consider what you have in the way of stock is held for the benefit of your family?

Mr. Murdock. Absolutely.

Mr. Mays. You feel that when you bought land on which to graze this cattle the members of the family would be benefited by such purchase?

Mr. Murdock. Yes, sir; entirely.

Mr. Raker. You have not formed a partnership, have you?

Mr. Murdock. Not as yet. It has been contemplated over a year.

Mr. Raker. Have you ever formed a corporation?

Mr. Murdock. No.

Mr. Welling. Just exactly how was this purchased, Mr. Murdock? Did you pay Mr. McPhaul individually for the land, or who did you pay for it?

Mr. Murdock. I gave a check for the whole amount.

Mr. Welling. Who to?

Mr. Murdock. Judge McPhaul.

Mr. Welling. Did you pay it direct to him, McPhaul?

Mr. Murdock. Yes, sir.

Mr. Welling. Put the check into McPhaul's hands?

Mr. Murdock. Yes, sir.

Mr. Welling. For the whole business?

Mr. Murdock. Yes, sir.

Mr. Welling. Your own check?

Mr. Murdock. Yes, sir.

Mr. Welling. What sort of receipt did you get for the money?

Mr. Murdock. Well, we got a receipt like we all get for it, you know.

The Chairman. Did you pay Mr. McPhaul or the receiver of the land office?

Mr. Murdock. He had his man right there. That was after the sale, at Provo. They were there. He was managing the business, I suppose the clerk—he consulted him in the matter and asked him what he thought about the trade and he said he thought it was a good one.

Mr. Welling. The men of whom you purchased that land, have they ever furnished the necessary affidavits to the Government?

Mr. Murdock. I think they have.

Mr. Welling. Have patents been issued to those lands?

Mr. Murdock. I think so, nearly all of them.

The Chairman. Is there anything further you wish to state, Mr. Murdock?

Mr. Murdock. No; I don't know of anything else, only this: I don’t want this body of men to think that in my opinion those gentlemen there who conducted the sales—I never saw one solitary thing in all three sales, that would induce any man to believe that there was any collusion in any way, shape, or form between them and the buyers, or between the buyers.

Mr. Taylor. Or anything wrong with the sales?

Mr. Murdock. Absolutely nothing; I think they have adopted the best method and that they have done it for the interest of the Indians.
Mr. Taylor. And for the interest and development of that country?

Mr. Murdock. And for the interest and development of that country.

Mr. Benham. Who has been injured?

Mr. Murdock. I can't see that anybody in the wide world has been injured.

There was mention made here yesterday about the petition coming from Heber City. They are 50 or 75 miles away from this ground, and that is my home town. I know those petitioners, every one of them, from boyhood up, and it is what anybody would call a kindergarten petition to-day.

The Chairman. When did you see the petition?

Mr. Murdock. I saw it and read it over, and took the names, one after the other; there are six stockmen and farmers represented in the 167 names and there is not a staunch man on it. There only about four old men, as I remember it. They had just gone around in the stores and places were people can easily be found, that class of people.

The Chairman. Where did you see that petition?

Mr. Murdock. I saw it here.

The Chairman. Here in the room?

Mr. Murdock. Yes, sir.

The Chairman. You read it over and examined all the names?

Mr. Murdock. Yes, sir; examined it.

Mr. Welling. Who are the other people? People over there in the town?

Mr. Murdock. Yes; just boys. You have an affidavit from them there that it was misconstrued.

The Chairman. I read into the record a telegram.

Mr. Murdock. This other petition from Tabiona, this man Cran-dall started out with a little bunch of sheep, and if there is a man who—why, the people up and down the river want to hang him. He drives up and down that river; he won't stay in his own country. He has been ejected twice this last fall from people's land. He just sponges on people, one after the other. Senator Colton knows him. He tried to get his father to buy ground.

This man Jones, when the first sale came on, I made it possible for him to borrow some money to buy this section of ground. He asked Thomas if he would not let him have it. Why, there were 20 or 30 fighting Thomas, and Jones would not pay more than $1.50 for it. He could have borrowed the money. It was borrowed, just like we got it. He would not borrow the money, and he just sat there and growled and complained over the proposition until he got with an old batch up there that is now dead, that was the postmaster, and never owned a cow since he has been there, and they formed a letter to send a protest in here. That was the first one that ever started this proposition. So these petitions are not of the business men of the country.

Mr. Welling. Was there any agreement among those farmers, or those ranchmen, to keep the price of those lands down in bidding, Mr. Murdock?

Mr. Murdock. I never saw any collusion of any kind. The most spirited bidding that went on in the sales was right amongst our
own men. There came near being a scrap right in the house; so there was no collusion whatever.

The CHAIRMAN. What is the genesis of this man Andrew McDonald?

Mr. Murdock. I don't like to tell you.

Mr. Vaile. He asked you for his genesis, not his exodus.

Mr. Murdock. It has always been my policy if I can't say anything good about a man not to say anything bad.

The CHAIRMAN. You have done first rate on these other men.

Mr. Murdock. In a case of this kind it aggravates a man. I will say this, however, that in the first place he was not man enough to head his own petition. He misrepresented the conditions to these boys that had affidavits, the five of them they had here, told them what it was one way, while the facts were that is was just to the contrary. He has not done anything for himself at all, he has never made any effort to buy any lands, these lands that were bought from the State, you know, but he bought them directly or indirectly of little fellows, and went into this Little Valley Cattle Co., and he has bought them out and got some little holdings there, but does not run any cattle out the other way at all.

Now, these fellows are there in that condition to-day, and at the sale they bought three sections right along beside these sections of mine here [indicating on the map], and they have sold them, and they are camped to-day right on my ground there with 400 head of cattle, and some of the cattle comes down in our ground. They have a large number up there, and they do not own a foot of ground in that country, and the cattle have been allowed to run over the sheep men and over my ranch, and there was never a word said about it. Never a one of them ever paid a dollar. I fed 15 head of their cattle all last winter, and they are camped to-day on my ground, and there is ground within 50 or 60 miles. They are wintering there, so that you can see that they do not want anything to come up that they may have to buy any land. They want it for nothing, and they have got to get it in the forest reserves, get the grazing in the forest reserves.

The CHAIRMAN. Have these lands been improved any since the purchase of 1910, 1912, and 1917 in the way of fences and buildings?

Mr. Murdock. Oh, yes; to a large extent. We have all tried to improve, and we have got dipping vats and cisterns and corrals and fences and have made fences for the pasture for our horses and bucks. We have done what we could in that regard.

There was a water question that came up here yesterday, the question of these water holes. I want to say this, that there is not a watering place on the whole of my land but what was homesteaded before any of these lands were ever sold, and not one solitary one, and that is possibly the case nearly all over this land that has been sold. The watering places, somebody has homesteaded them, and they sold them to the sheep men and the cattle men, and the watering places may make it profitable for a man to stay there.

Mr. Welling. Do you know anything about the Strawberry Valley that has been spoken of here?

Mr. Murdock. Yes, sir.

Mr. Welling. How far are the strawberry lands from these lands involved in these suits?
Mr. Murdock. The strawberry lands? Oh, they are more than—they run right up against the Reclamation Service.

Mr. Welling. But now what I want to get at is, Mr. Tallman, of the land office, said yesterday that these strawberry lands were, in his judgment, worth from $6 to $8 an acre, as I recall it. Do you think that those lands, compared with these lands, are equal in grazing value?

Mr. Murdock. Oh, there is no more comparison—why, they are worth—the strawberry lands—are of a different character, they are sodded land and meadow practically. The reclamation project is good grazing land. All over these other countries there is a little grass in flats now and then, and ragged and broken, and cedars, and you could not get a bale of hay from 5,000 acres in some of those places.

Mr. Welling. And there is no just comparison between the strawberry lands and these lands involved in these suits?

Mr. Murdock. No, one acre of that land is worth 500 of these lands involved in these suits. There is no comparison whatever between the lands. That would be said by anybody that ever went through there. There is no comparison whatever.

Mr. Mays. How much did you have to pay per head for the grazing of the sheep on the Forest Service?

Mr. Murdock. Well, I am not familiar with that.

Mr. J. S. Murdock. Well, I can tell you.

Mr. Mays. How much?

Mr. J. S. Murdock. Forty cents for cattle and 10 cents, I think, for sheep—40 cents a year for cattle and 10 cents a year for sheep.

Mr. Mays. And if you pay 10 cents a head to the Forest Service for each sheep, would you save any money by grazing upon the forest reserve rather than by buying the property and paying the taxes. Which would be the most economical for a sheepman, to use the forest for 10 cents a head per year or to own his own land?

Mr. Murdock. Well, you have got to have both. You can not only use the forest, you know; they don’t let you out, and you have got to have both to do it.

Mr. Welling. In that connection just how do you use this land that you have purchased? I mean by that do you use this land the year around or what is the kind of use that you have with this land?

Mr. Murdock. Well, the only use that you get out of that—the majority of that—down through those countries is that you get a trail and a camping ground, and it is used after you get off of the forest reserve with the sheep before going to the winter range. The sheep move along, and there is no watering places on the ground, and you have got to haul your water, there being no watering places there, after you get beyond the main trail until you pass Duchesne, and then you only strike one or two; and, of course, they belong to individuals in the sheep industry; and if a fall of snow comes early there and you get a little moisture and in the spring the snow remains there some start to lamb down in the lowlands, where the warm cedars are, and then work up as they lamb, depending upon the snow and the moisture.

Mr. Welling. Then, as I understand it, Mr. Murdock, you use the lands in the spring as you go up into the forest and the fall as you come down toward the winter range?
Mr. Murdock. Yes, sir; that is right.
Mr. Welling. That is as I understood it.
Mr. Mays. Tell us, Mr. Murdock, about how much of the whole year do you use it on an average.
Mr. Murdock. Well, I think in the spring they use probably from four to six or seven weeks, not longer than that, because they have to get out where there is a little food. They use the protection of the cedars in the warm places as you go up, and in the fall you can use it. If you do not get the snow, you have got to beat it anyhow and let her go. If there comes a snow, you can use the land.
Mr. Raker. Now, returning to the reservation, Mr. Murdock, let me ask you how long have you been there on that reservation?
Mr. Murdock. Well, I think I have been on the reservation 35 years last November.
Mr. Raker. Thirty-five years last November, did you say?
Mr. Murdock. Yes, sir.
Mr. Raker. Well, your age is some, then.
Mr. Murdock. My age is 63.
Mr. Raker. And do you know the general value of the land through that country—the agricultural land and grazing land—or did you know it during 1910; and, if so, will you tell the committee?
Mr. Murdock. Well, I am pretty familiar with the lands, and I have handled quite a lot of them and sold quite a lot of them, and we are selling our ground out to-day for $35 an acre, with the water, down on the river bottom.
Mr. Raker. And that is farming lands that you are now referring to, are they, Mr. Murdock?
Mr. Murdock. Yes, sir; very good; that is, they are not cultivated and are not now in alfalfa, but the water right is proven up on them. I have tract of about 600 acres, where we are offering the whole thing for $35 an acre.
Mr. Mays. Is that in this reservation?
Mr. Murdock. Yes, sir.
Mr. Mays. Uncultivated?
Mr. Murdock. Uncultivated, and it is fenced with a combination wire fence, that is, about two hundred and odd acres of it.
Mr. Mays. And do agricultural products grow in that country?
Mr. Murdock. Yes, sir.
Mr. Mays. You mean by that grain, wheat, rye, oats, and barley?
Mr. Murdock. Yes, sir; anything that you have a mind to grow.
Mr. Mays. That is, down in the valley?
Mr. Murdock. Yes, sir; but not up on this land.
Mr. Raker. About what is the—or what has been—increase in the value of the land, this Uintah, scattered all over the reservation, from 1910 to the present time? What is the value of it in percentages? Is it 50 per cent or 30 per cent?
Mr. Murdock. Oh, I would not say that it is more than 25 per cent. I know that Indian grounds that are offered for sale to the Indian will range from $10 now up to $30, and with some specially good pieces, $35.
Mr. Raker. And how much land are they allowed?
Mr. Murdock. Oh, 40 acres or 80 acres. You know they are only allotted and taken out of the best pieces.
Mr. Raker. And does that include the water rights?
Mr. Murdock. Yes, sir; that guarantees the water rights; yes, sir.
Mr. Raker. But all of that grazing land has increased in value the last five or six years quite a little bit, hasn't it?
Mr. Murdock. Well, I don't know. There is a case of my own, where I had an opportunity to get more land, and I sold a tract for just exactly what I gave at the sale for it, and I had it for three years without any interest on the money.
Mr. Raker. How long ago was that, Mr. Murdock?
Mr. Murdock. That was in 1914.
Mr. Raker. In 1914?
Mr. Murdock. Yes.
Mr. Raker. Now, do you really think that that is a fair way of putting the matter? I have seen a time when I could have gotten land for 25 cents an acre, and to-day you could not buy it for $75 an acre, and it is not more than 15 years ago.
Mr. Murdock. Oh, yes; that occurs.
Mr. Raker. And what you could have gotten for it five years ago and 10 years ago is not a good criterion of what conditions are now!
Mr. Murdock. And four years ago the same class of land changed hands again for $2.25 an acre.
Mr. Mays. Did you ever buy any lands in Wyoming?
Mr. Murdock. No, sir.
Mr. Mays. In your judgment, what would you think was the increase in the percentage of grazing lands through that country within the last 10 years? Take 10 years ago and then take the last year, what would be the increase?
Mr. Murdock. Oh, they might have increased in proportion to the farm ground.
Mr. Raker. And that would be about a fair estimate, would it?
Mr. Murdock. Yes, sir; I suppose so.
Mr. Raker. In other words, grazing lands are becoming more valuable all the time, are they not?
Mr. Murdock. Oh, yes; and everything is being closed up, and they are bound to be more valuable, you have got to have ground of your own, you must do that or go out of business, and that makes it more valuable.
Mr. Welling. You heard what Mr. Meritt read into the record here, about the wrongs that were being inflicted or had been inflicted by the white men upon the red men. Have you ever scalped any Indians? What is the attitude of these fellows toward the Indians?
Mr. Murdock. Well, I want to say that if it were not for the cattlemen and the sheepmen I do not know what would become of the Indians. In every instance if a sheepman has got a mutton hanging up the Indians use it just like it was their own mutton. I want to say now that they are on the very friendliest terms, however. They give them flour if they are destitute, and if they are short a horse or have lost their horses they help them out in that way. To-day if there was an Indian to go into Duchesne and should drive into Duchesne, it has been my policy, he would take his team and turn it loose in my yard, and he would go away when he pleased, and he could use the cabin, the second cabin that was built in the town.
And in the annual dances that they have out there there has never been a time when they did not have from one to three beeves which have been given to the Indians and from 1 to 100 pounds of flour, and it was given to them gratis, by the sheep and the cattle men. I will say that we are on good terms with them.

Mr. Raker. These people are good workers, aren't they?

Mr. Murdock. Yes; and they are getting better all of the time. We are taking pretty good care of them.

Mr. Raker. Is there an Indian agent there caring for those Indians?

Mr. Murdock. Yes, sir; there is an Indian agent there all the time. They have practical farmers to look after them and to see that they are doing the farming in the right way, and all of them have good teams, and they put up their grain and hay and so on. Of course, they could do better than they are doing, but they are improving all of the time.

The Chairman. Now, gentlemen, I want to state to the committee that unless you have some objections I think we should limit the testimony. We have heard a lot of testimony as to the value of these lands, and I think that the committee has pretty well made up its mind as to the value of the lands, and I think it will be well for the rest of the witnesses to confine themselves to the extenuating circumstances or the inducements held out to them to purchase the lands in quantities of more than 640 acres. That is the thing that appeals to me as the important thing in this case now. I would like to close this hearing to-night by 5 o'clock, if we can do so. I think what we want to know are the extenuating circumstances that misled these men to think they were not violating the law.

Mr. Taylor. I think that is a good plan, Mr. Chairman.

The Chairman. Who is the next witness?

Mr. Evans. May J. S. Murdock be heard?

The Chairman. You have another witness besides Mr. Murdock, have you not?

Mr. Evans. No; we have no more, but I think that Senator King desires to make a short statement if he has the time to come in here.

The Chairman. Well, we will hear from Mr. Murdock.

STATEMENT OF MR. JAMES S. MURDOCK.

Mr. J. S. Murdock. I will say that all of the sales, that I attended all of the sales of 1910 and 1912 and 1917, and I heard Judge Witten in the opera house make the remark that we could buy lands for our families, and I bought some land at the 1910 sale. And at the 1912 sale, why, it went about the same way, and as we were found on the reservation, with our interests there as lessors of the reservation, and the lease made by the forest reserve, we were left with no place to put our sheep from the 1st of April, as you may say, until the 1st day of July. Consequently, we had to provide ourselves with land.

And in 1917 I bought some land, a big tract of land, after talking with Mr. McPhaul, and he afterwards said that I had misunderstood him, but I understood him in that way, anyhow. And I want you to understand now that these men that sold these lands were honest; that there is not a man who ever hinted otherwise, and there has
never been a man that I heard in our country that would even hint that they were not doing the right thing, and that they were working in the interest of the Indians in selling the land, and they thought they were doing the thing that was for the best interest of the individuals and of the Indians and of the Government, and I bought a tract of land of about 14 sections that we marked out in the hotel at Duchesne.

The Chairman. What year was this?

Mr. J. S. Murdock. That was the sale in the year 1917, and in the hotel in Duchesne we were talking in the hotel, and I told Judge McPhaul that I had no powers of attorney, and he remarked that I did not need them, and he said that—he said that I could furnish them to him, and in talking with him last summer when I was here, he said that he might have overlooked saying that, I was to furnish the power of attorney later, but I did not understand it in that way. He absolutely told me that I would not need them. I bought this tract of land, and I paid for it 55 cents an acre, and there was no opposition, and I bought 14 section, and he said that if I would take all of it, or all that was left in township 4——

The Chairman (interrupting). Where is your land on that map?

Is it toward the bottom of it?

Mr. J. S. Murdock. My land is contiguous.

The Chairman. The 14 sections?

Mr. J. S. Murdock. The 14 sections, it is right across here [indicating on the map].

The Chairman. And the Mr. Murdock who preceded you is your brother?

Mr. J. S. Murdock. He is my brother.

The Chairman. And were these 14 sections near his land?

Mr. J. S. Murdock. They are right upon the hill, on a height from Duchesne City, where it shows, where Duchesne and the Strawberry River, and Duchesne is right back up about a mile and a half to the south of the northwest corner.

The Chairman. How many sections did you buy at the 1910 sale?

Mr. J. S. Murdock. I bought one section—I bought about 8 or 10 sections in the 1910 sale for the company of us that were together. There was one of my brothers and the two sons in the sheep business.

The Chairman. Was it a partnership?

Mr. J. S. Murdock. It was a partnership business; yes, sir.

The Chairman. And they were bought for the partnership?

Mr. J. S. Murdock. Yes; we bought them for the partnership.

The Chairman. And you used the names of relatives in the 1910 sale in order to buy it?

Mr. J. S. Murdock. Not other than our immediate family; no.

The Chairman. And how many acres did you buy in the 1912 sale?

Mr. J. S. Murdock. I think about five sections.

The Chairman. About five sections?

Mr. J. S. Murdock. Yes, sir; from the Government. Now, I won't be sure. It may be only four sections; it was four sections or five sections.

The Chairman. It is not important. Did you use your relatives' names then?
Mr. J. S. Murdock. Yes, sir; and I used the name of an employee, too, in the 1912 sale.

The Chairman. You used the name of an employee?

Mr. J. S. Murdock. Yes, sir; I used his name with his permission.

The Chairman. And did he deed the land to you?

Mr. J. S. Murdock. Yes, sir; he did later.

The Chairman. And he had no interest in it whatever?

Mr. J. S. Murdock. Well, no; he had no interest in it.

The Chairman. Now, in the 1917 sale, whom did you use there?

Mr. J. S. Murdock. I used friends and the wife's family.

The Chairman. How many friends—by "friends" do you mean friends as distinguished from relatives?

Mr. J. S. Murdock. Yes, sir.

The Chairman. And how many friends did you use—how many names?

Mr. J. S. Murdock. Oh, I don't know—four I guess—about four.

The Chairman. About four friends.

Mr. J. S. Murdock. Yes, sir.

The Chairman. In the 1917 sale?

Mr. J. S. Murdock. Yes; and they did not file any power of attorney.

The Chairman. Yes.

Mr. J. S. Murdock. And this had never come up. I was to get the final certificates. They were sent straight to me, the ones that I got. They were not sent to the people which I used the names in that trade, and when this investigation started these powers of attorney were sent to these people of whom I had furnished the names, and when they came I told them not to sign it, and I said that it was not their trade, that I am all right, Judge McPhaul told me so, and I told them that I would not have them tell a lie for a whole section of land and I did not want them to sign the affidavits.

The Chairman. And did the receipt run to you?

Mr. J. S. Murdock. It came to me.

The Chairman. But was it in your name?

Mr. J. S. Murdock. It was sent to me. No; they had the name of the people of whom I furnished the news on the receipts.

The Chairman. As the purchasers of the land?

Mr. J. S. Murdock. Yes, sir; as the purchasers of the land.

The Chairman. And were patents issued to those lands?

Mr. J. S. Murdock. No, sir; we never signed the powers of attorney which we had to sign, so they said, before we could get the land.

The Chairman. And those powers of attorney were sent out before any patent of attorney had been issued?

Mr. J. S. Murdock. We did not sign them.

The Chairman. Had any patents been issued for your 1917 purchases?

Mr. J. S. Murdock. No, sir. I told Mr. Tallman that if they wanted the land the Government was welcome to it, that I thought we had been cheated enough.

The Chairman. And you say there were four friends' names used in 1917?

Mr. J. S. Murdock. Yes, sir; I think so.
The CHAIRMAN. Did you have any talk or understanding with those four friends before you handed in their names?

Mr. J. S. MURDOCK. No, sir. I had no idea of buying when I came there.

The CHAIRMAN. But you told them afterwards that you had used their names, did you?

Mr. J. S. MURDOCK. Yes, sir.

Mr. MAYS. And they never said anything, did they?

Mr. J. S. MURDOCK. No, sir.

Mr. MAYS. And they never signed anything?

Mr. MURDOCK. No, sir.

Mr. MAYS. They never signed any affidavits?

Mr. J. S. MURDOCK. No, sir.

Mr. MAYS. And they never signed any powers of attorney?

Mr. J. S. MURDOCK. No, sir.

Mr. MAYS. And was the money received by Judge McPhaul?

Mr. J. S. MURDOCK. No; it was not received by Judge McPhaul, but by Mr. Page—was not that the receiver’s name?

Mr. MAYS. And do you know about the Land Office wanting you to furnish the power of attorney?

Mr. J. S. MURDOCK. They called on the people whose names I had furnished.

The CHAIRMAN. And that has not been furnished and therefore no powers of attorney were issued?

Mr. J. S. MURDOCK. No, sir.

Mr. BARBOUR. Didn’t you know, Mr. Murdock, that this limitation on the land that you had purchased, or that these requirements were matters of law, or whether or not they were controlled by regulation of the Land Office?

Mr. J. S. MURDOCK. Well, I thought the officer in charge had the right to make the rules for the selling of this land?

Mr. BARBOUR. And you thought that they were mere regulations on the part of the Land Office?

Mr. J. S. MURDOCK. I never signed one of the affidavits of 1917, and I never seen any of them until after this investigation started, and I had never noticed them. I was out and I drove down from the herd to the sale.

Mr. BARBOUR. In other words, you thought that the sale was conducted under rules and regulations laid down by the department and that the department, having laid down the rules and regulations, had a right to change them?

Mr. J. S. MURDOCK. Yes, sir; to make their rules according to the sale.

Mr. BARBOUR. And if he wanted to he could change his rule?

Mr. J. S. MURDOCK. Of course; if he wanted to he could do it.

Mr. WELLING. Did you get a receipt for the money paid for the 17 sections of land?

Mr. J. S. MURDOCK. Yes; they were in the form of receipts that they gave you.

Mr. WELLING. And the receipts were not issued until after the affidavit had been furnished, were they; that is, the certificates?

Mr. J. S. MURDOCK. The receipts were furnished to us at once, and then the final certificates came after the receipts. We got the receipts at the time of the sale.
Mr. Welling. And before the final certificate was received you had to furnish the affidavit, ordinarily?

Mr. J. S. Murdock. If they had followed the law I would have had to before I got them—yes; I would have had to furnish a power of attorney if we had followed the law, but I did not.

Mr. Welling. You got the receipts from the Government for the money that you paid to them for the land, and you never have furnished a power of attorney; is that right?

Mr. J. S. Murdock. Yes, sir; that is right.

Mr. Raker. According to your statement, after you got the slips, after the bidding you went to the receiver and he gave a receipt for the money?

Mr. J. S. Murdock. Yes, sir.

Mr. Raker. And afterwards issued to you the formal receipt. Which one did you receive?

Mr. J. S. Murdock. I got both of them.

Mr. Raker. And you got the receipts of the amount at the time, and the final receipt showing the full payment?

Mr. J. S. Murdock. Yes, sir; and final certificates.

Mr. Raker. And authorizing the land office to issue the patents?

Mr. J. S. Murdock. Upon the surrender of the final certificate you received them, and in cases they furnished that deed on the cash certificate before they received their patents.

Mr. Raker. And they asked you for these powers of attorney—they never did ask you for them until after the proceedings had started for the cancellation of these sales?

Mr. J. S. Murdock. No, sir; they never asked for it, and I never knew anything about it, and as quick as I found it out I wrote to Judge McPhaul and he has the letter here, I think.

Mr. Raker. Now, these sons and daughters, in your particular case, to whom the land was sold at those sales in 1910 and 1912 and 1917—

Mr. J. S. Murdock. 1912 would be the first one.

Mr. Raker. Well, what did they get out of it?

Mr. J. S. Murdock. What?

Mr. Raker. What did they get out of these 640 acres of land that they deeded to you?

Mr. J. S. Murdock. Why, the relations did not get anything out of it—my immediate people did not. There was some of them children, and they sold them their land in their name.

Mr. Raker. Minors?

Mr. J. S. Murdock. Yes; and in one case the land has been traded for another piece of land with one of my neighbors, who bought right in amongst our land.

Mr. Raker. How much did this hired man get for deeding the land to you?

Mr. J. S. Murdock. He did not get anything.

Mr. Raker. He was a good fellow.

Mr. J. S. Murdock. Well, the way we done that, in regard to the deed of the land, if he did not want to do it, he would not have had to have deeded it back, and he could have kept it, so we told them that he could deed it back if he wanted to. It was no good to him, the 640 acres.
Mr. Raker. Did the people there in that community understand what you have told us to-day before this investigation came up—was that generally understood by the people of that community?

Mr. J. S. Murdock. I believe it was; yes. There was nobody afraid of it, and everybody talked it over, talked about the case, and it was thoroughly understood among everybody.

Mr. Raker. And you people went along feeling contented and satisfied that you had made a legal purchase of the land and that you had paid a fair price for it and that the land was yours and you were expecting no trouble?

Mr. J. S. Murdock. Well, we were satisfied. We did feel, I know I did, and that everybody else did, that we had paid a full value for it. I paid my neighbor $7.50 on a piece, and I know that I paid all it was worth then, because it was a kind of a jog in the land, and I paid that for it.

Mr. Raker. You did not want somebody else to come in there?

Mr. J. S. Murdock. Well, he was jogging me and it made a crooked line.

Mr. Raker. And you wanted that piece of land so it would square it up with the rest of the tract?

Mr. J. S. Murdock. Yes, sir.

Mr. Mays. Did you ever try to conceal anything about the transaction?

Mr. J. S. Murdock. Conceal anything?

Mr. Mays. Yes, sir.

Mr. J. S. Murdock. No, sir.

Mr. Mays. Commissioner Tallman yesterday stated something about the question of whether the department here would ever find out about it. Have you fellows been frank with the department officials in regard to the facts?

Mr. J. S. Murdock. Why, we gave every man's name to the investigator—Pillow, I think his name was—and we told him there was not anything to conceal in the facts, and we told him just how the transaction went, just as I have stated it here.

The Chairman. Evidently you are not holding anything back here now.

Mr. J. S. Murdock. Not that I know of. If you ask me, I will try to tell you just how everything happened. There is not anything there worth holding anything out. When it takes 10 sections of land to support a few head of sheep, and when you have got the use of the land up to the last of April and stay on it until the last of June and for about a week in the fall, there is not very much to conceal, I guess.

Mr. Mays. Have you been compelled to buy any feed there? Have you been feeding grain?

Mr. J. S. Murdock. Yes, sir; our sheep are in very hard shape there on the reservation and we have shipped in five cars of corn, and we have made a rush order for the corn to get it in there, and I have a telegram in my pocket that it is snowing out there, and the corn—in fact, there is no corn, and the country is in bad shape.

Mr. Raker. And how much do you have to pay for that corn?

Mr. J. S. Murdock. Five cents out there, 3 cents at the railroad, and a cent and one-half for hauling, and then we pay $8 for the teams after they get there.
The Chairman. Have you anything further that you desire to add?

Mr. J. S. Murdock. I have not.

The Chairman. I understand that Senator King is here and wishes to make a brief statement.

STATEMENT OF HON. WILLIAM H. KING, OF UTAH, UNITED STATES SENATOR.

Senator King. It is not my purpose to submit any statement in this case. In fact I do not think I could add anything to the testimony which has been submitted here, and I know that you gentlemen here are anxious to get the facts and not opinions. I know but very little about this transaction. I am familiar with these lands and have been since 1883 or 1884.

The lands are comparatively valueless, and unless the owners of the land can acquire a considerable territory they are of no use. You have got to have a large tract of land in order to make the lands available. If you can find the purchaser to 640 acres of land, there would be little if any value to it. I rode over the land years ago, and as I stated, I know the physical characteristics of the land and the topography of the country. I became very much interested in the lands when I was in Congress some years ago, because I attempted to secure the opening of the reservation and had occasion, before going to the House, to make further investigation of this territory, in order that I might properly be ready to answer any questions by Members of Congress or by members of the Indian Affairs Committee.

When the bill was passed which opened this reservation, I remember having a conversation with some Congressmen and some Senators. I happened to be in Washington at the time, and at that time I expressed to them the opinion that if they placed a limitation of 640 acres with respect to a large portion of the reservation, they would be unable to make any disposition of it; that it was so situated that it would be available for grazing purposes at only short periods of the year, while the sheep were going to their winter and their summer ranges; that as to the parts susceptible of agricultural development, the limitation would be entirely proper, but as to these mountainous districts, where there are only rocks and scrub cedars, it would be very unwise to place a limitation of 640 acres in the bill.

I was anxious to get as much as possible for the lands for the Indians, and I told them that if they placed that limitation in the bill it would have a disastrous effect upon the sale of the land, and that you would not get as much for the land as if the limitation were not placed in the bill, and if the interest of the Indian was the primary consideration, then they ought not to place the 640-acre limitation in the bill with respect to the sale of the nonagricultural lands, or the poorer grazing lands. The suggestions which I made were not followed and the limitations were placed in the bill. Some time after these purchases were made by Mr. Murdock and others, and I remember stating to some of the neighbors of these men that I would not be sure, but that I thought in my opinion that their pur-
chases were made in the face of the letter of that law, but that I realized that the Government officials in vending the land had adhered strictly to the letter of that statute, and that they would not have sold most of this land in controversy under a policy of the 640-acre limitation. That is my present view.

With my knowledge of the land, I think that the men paid what the land was worth. In fact, I think some of the land, if it were resold now, notwithstanding the advance in the prices, would not bring as much as they paid for it. I know of lands which were more valuable than these that have been purchased at prices much less than what these men paid.

Now, I believe that these men acted in the utmost good faith. I know these men and all of the conditions. They are men of integrity and character and standing in their respective communities. I do not think there is one of them that would knowingly do a wrong, and I do not think there is one of them who would knowingly defraud the Government or anybody else. They are hard-headed, progressive men, some of whom have gone out there in the early days and settled on that part of our territory and helped to develop it.

Really, I think that this bill will work a hardship upon them. I believe there is too much power at least for their good in the hands of the Department of the Interior, and while I have the utmost respect and confidence in the officials of the department, I make the prediction now that if this bill passes it will be oppressive upon these men, and they will not get very much benefit out of this bill.

Now, Mr. Chairman, I will be glad to answer any questions the committee desires to ask me.

The CHAIRMAN. We are very much obliged to you, Senator.

Senator KING. I thank you.

STATEMENT OF MR. J. W. WITTEN, ASSISTANT ATTORNEY OF THE INTERIOR DEPARTMENT.

The CHAIRMAN. Judge Witten and Mr. McPhaul are here and we would like to hear from you, Judge Witten. Will you give the reporter your name?

Mr. WITTEN. J. W. Witten. As has been repeatedly stated, I conducted the sales in 1910 and 1912——

The CHAIRMAN. Please give us your official position for the record.

Mr. WITTEN. I am assistant attorney of the Interior Department. At that time I was superintendent of the opening and selling of Indian lands.

The CHAIRMAN. And how long have you been with the department, Judge Witten?

Mr. WITTEN. I have been connected with the Interior Department for nearly 27 years.

The CHAIRMAN. Now, Judge Witten, you have heard the statement of Mr. Pope, and the two Mr. Murdocks, about how these sales were conducted, and what you stated to them about their right to buy for their relatives and their relatives to buy for them. I wish you would give the committee your version of that.
Mr. WITTEN. I have no distinct recollection of having a conference with these gentlemen. It is altogether probable that such a conference took place. I have conducted a great many sales of this kind. I have had one universal policy throughout these lands. The lands involved in many of the sales were, to an extent, similar to the lands here, but none, unless it be in portions of the Shoshone and the Wind River Reservations, were as nearly worthless as these lands.

I have always stated generally that a man could, if he was acting in good faith, purchase the limit of the lands for himself and for any members of his family, or for relatives, if he made the purchase for them and not indirectly through them; that is, for his own use and benefit. I have no doubt that I made such a statement, that I made a statement of that kind on that occasion. I regret, if there were any misconception of the words used at that time, which led these gentlemen to believe that they could purchase through and buy dummy bidders, in their own interest. I certainly could not have used language which ordinarily construed would have left that impression. The law did not prescribe any qualifications or any limitations except the limitations as to the area of that 640 acres or for four quarter sections.

The CHAIRMAN. Well, Judge Witten, did you caution them that if they purchased for a relative that that in itself would be a suspicious circumstance and in a sense might lay them open to a charge of fraud?

Mr. WITTEN. I could not say that I did, Mr. Chairman, but if that was called to my attention I probably made that statement.

I was charged with the drafting of the orders and the regulations under which these and similar lands were sold. I incorporated in those orders this statement—I think I can give the exact language in this case—which I will put in the record at this time:

No person shall be permitted to purchase more than 640 acres in his own right, or at less than 50 cents per acre.

All persons are warned under the penalty of the law against entering into any agreement, combination, or conspiracy which will prevent any of said lands from selling advantageously or which will result in any one person becoming the purchaser of more than 640 acres at said sale, and all persons so offending will be prosecuted for so doing.

The CHAIRMAN. What were you reading from then?

Mr. WITTEN. That is a memorandum I made up of this matter when it was made up some time ago. I did not make it up for this occasion. It is a memorandum of my connection with this. That is a quotation from the original order for the sale.

I was ordered to sell about 800,000 acres of Crow lands and about 700,000 acres of Uintah lands at public auction during October and November, 1910, and in order to give these sales the largest publicity I formulated and forwarded to the postmaster at the county seats of about 700 or 800 counties west of the Mississippi River for posting in their respective offices large placard notices of the sale over my own name, and also sent to them statements concerning the sales to be furnished by them for publication in the local newspapers. These placard items and news notices contained the statement that "any one person can buy not more than 640 acres in each of these reservations either in person or through an agent bidding at the
I of my own motion, and without precept or direction, required each bidder at the 1910 sale to take and subscribe the following oath, which was attached to a memorandum receipt:

"I, the undersigned, do solemnly swear that the above-named purchaser has not purchased and will not purchase from the United States in his own right more than four quarter sections of the land opened for sale at which the above-mentioned purchase was made.

I will also state that I incorporated a further statement to the same effect, only in a little stronger language, in the final certificate that was issued, knowing as a lawyer the provisions of the statute and having of my own motion drafted these regulations, and it can be hardly thought that I would, after giving it as large publicity to the limitations as I had, tell the people that they could buy through dummy bidders. I possibly might not have been explicit enough in explaining to them. I might possibly better have told them the consequences in the conversation that I had.

The Chairman. In what do you think you were not explicit enough?

Mr. Witten. I might have told them that if they did buy through dummy bidders that they would lay themselves liable to criminal prosecution, and that they would have the patents canceled. I do not know that I told them that.

Mr. Raker. Mr. Witten, you heard the statements of the two Messrs. Murdock in regard to the sale of a large tract of land to Mr. Murdock—

The Chairman. That was the 1917 sale.

Mr. Raker. Oh, that was the 1917 sale?

Mr. Witten. Yes; that was Mr. McPhaul.

Mr. Barbour. Do you know whether, as a matter of fact, they were bidding through dummy bidders, Judge Witten?

Mr. Witten. No; and I might in a measure extend that. I did not know they were bidding through dummy bidders, and I had no strong reason to suspect they were.

Mr. Barbour. Was there anything that would indicate that to you at the time that possibly they might be bidding through dummy bidders?

Mr. Witten. No, sir; on the other hand, I knew that the same men were bidding in a good—that a good many men were bidding in a good many tracts—that is, each individual was bidding in a good many tracts.

There were no bidders for a large part of the Uintah lands at the 1910 sale, and the unsold and unreserved lands were again on sale in 1912, after being advertised in connection with over 1,000,000 acres of Crow and Shoshone lands in a manner similar to that of the 1910 sale.

I drafted the departmental order for the 1912 sale, and of my own motion and without direction inserted therein the following:

No person will be permitted to purchase more than 640 acres in his own right, or to purchase any area which, when added to lands purchased by him at the former public offering of said lands, will amount to more than 640 acres.

All persons are warned under the penalty of the law against entering into any agreement, combination, or conspiracy which will prevent any of said lands from selling advantageously, or which will result in any one person becoming the purchaser of more than 640 acres at said sale and the sale heretofore held, and all persons so offending will be prosecuted criminally for so doing.
I also, of my own motion and without precedent or direction, required of each bidder at the 1912 sale the following oath:

I, the undersigned, do solemnly swear that the above-named purchaser has not and will not purchase from the United States, in his own right, at this sale, any lands the area of which, when added to the area of lands purchased by him at the former sale of Utah lands in November, 1910 (if any) exceeds 640 acres.

I also formulated and drafted a certificate of sale which was issued to each person, and of my own motion and without direction incorporated therein the following:

All rights in the above-described land and all moneys paid therefor will be forfeited to the United States if the bidder has, or shall, either directly in his own name, or indirectly in the name of some other person, become the purchaser from the United States at this sale of any area of land which will, when added to the area of lands (if any) purchased by him at the former sale of these lands in November, 1910, exceed 640 acres.

If you will bear with me just a moment I will explain the way that I conducted the sales. I found that it was necessary in an auction sale, or at least conceived it to be necessary, to conduct the sale as rapidly as possible. When you are trying to sell a man, you do not want him to think very much, and consequently I did not pause between my sales. I got the crowd in the spirit of buying as much as I could and then I sold just as rapidly as I possibly could. I had a large sheet before me in which there was marked off in sections the tracts that I was selling. I would call tract numbered so-and-so, and the tracts were all marked out, and I had lists out, and I would call tract numbered so-and-so, the south half of section so-and-so, or whatever it may be, and I would urge rapid bidding, and as soon as I reached the point where I thought there would be no bidding I said "sold," and went to the next one just as rapidly as I possibly could. I had clerks there, and the bidders went to the clerks in order to get their certificates. They gave the statements and the names. The bidder went to the clerk of the sale and obtained a memorandum, and these memoranda were taken by the bidder to the receiver of the Vernal land office, who had a temporary office in Provo, apart from the building in which the sales were conducted. The receiver then made up his receipts and certificates from the names indorsed on the back of the memoranda, and I had no connection with his part of the work and spent little time in his office. Therefore I had no means of knowing personally to whom the tracts were being sold or for whom the bids were being made. If I heard some one holler out "$1.25" and another one holler out "$1.50," and if I had no more bids, then I would sell the tract to the man who had bid $1.50, and therefore I lacked opportunity to have personal knowledge of who made the bids.

As I said, the certificates were taken to the receiver's office in another building, with the names for whom the bid was made indorsed on the back of the memorandum, and the clerk and the receivers made up the papers.

I had nothing to do with that, and therefore I did not have very much opportunity of knowing by whom or for whom the lands were being sold.

I recognized the fact that the largest latitude should be allowed consistent with the demands of the department. Our dealings in
the sale of Indian lands, the only object which animated me was to get as much money as we possibly could for the Indians and the only complaint I ever heard was that sometimes I got more than I ought to have gotten. I would allow the largest latitude in bidding, and I will say to you that I was not in sympathy with the provisions of the statute.

Mr. Barbour. Let me ask you, Judge Witten, and you may answer or not, just as you see proper, and if you do not answer it it will be all right: Do you think that those people ought to be prosecuted under the circumstances? Now, I am not going to insist upon an answer to that question.

Mr. Witten. Well, I will be frank with you, or I would be frank with you if I were at liberty to do so; but I do not feel at liberty to do so, since I know nothing—I had nothing to do with the recommending of those suits and I have no knowledge which would justify me in expressing opinions, and I know nothing about the individual cases.

Mr. Mays. Do you recall that at the beginning of these sales they proceeded very slowly?

Mr. Witten. Yes; I remember that fact.

Mr. Mays. And do you recall that after making some—do you recall making any public announcement to a group of prospective bidders to the effect that, in your judgment, the law would permit a man to buy for himself and members of his family?

Mr. Witten. I have no independent recollection of that fact; but if those gentlemen came to me, as they say they did, and I do not doubt their word, I told them that could, but always with the understanding, of course, what I meant to convey to their minds was that it must be a purchase for them and not in their own interests or a gift or donation from them.

Mr. Mays. Do you recall that there was more spirited bidding after some such announcement as that had been made?

Mr. Witten. Well, I can not say. The bidding became more spirited as the sale went on. That might have been due to the fact that the gentlemen had in mind that the limitation was hindering the bidding, or it might have been due to the fact that the lands were not desirable where I began to sell them. I usually began on one side of a reservation, and taking a reservation like this, that covers 66 miles as the crow flies, across the reservation, there would be a great difference in the various sections of the land. It is possible that the lands that I offered first were not attractive. Then, again, there is another reason, which comes from my experience, that usually the bidding becomes more spirited as the sale goes on.

Mr. Mays. Did not you first offer those lands in small tracts, which might be attractive to farmers, settlers, or homesteaders?

Mr. Witten. No; not generally. My recollection is that I began selling over on the east side of the reservation.

Mr. Pope. It was at the northwest corner, and went south.

Mr. Witten. But I began there and I went south on that township, and so on, until I ran clear down here [indicating on the map]. When I came to a township where there were settlers, when I found a tract of homestead land adjoining the tract, I paused and asked if there was anyone present who desired any lands out of the tracts
listed, and what tracts he desired to bid on, and I gave him an opportunity to do that.

Mr. MAYS. Do you remember what prices those particular tracts brought, in comparison with what these gentlemen stated?

Mr. WITTEN. I have not any independent recollection, but I would say, very generally, and I think it is a compliment to Mr. Meritt and Mr. Tallman, that when the four sales occurred that the settler had but little competition. That is my experience generally.

Mr. MAYS. As a rule, then, particular lands did not bring any more, those particular lands, than the rest of them did, if as much?

Mr. WITTEN. Well, I would not like to make that statement, but I think, as a rule, I would say that they did not.

Mr. MAYS. Did you get any evidence of collusion among these buyers?

Mr. WITTEN. None whatever.

Mr. MAYS. And you do not believe and did not believe that any existed?

Mr. WITTEN. No, sir. I saw no evidence of any desire or inclination on anybody's part to be crooked, with the exception of one man. One man came to me and said that he wanted 5,000 acres of the land, and that it would be worth five $100 gold pieces. I waited a minute and I said to him, "You must think that I am buying cheap. That is too low." Then I took out my pencil and I said to him, "Give me your name, please." Then he began to get somewhat excited. He gave me his name and I put it down, and I says, "Do not be surprised, my friend, if the United States marshal calls on you after the next grand jury adjourns." He left the room and he was not there after and did not buy any of the lands.

Mr. MAYS. Was that at this last sale?

Mr. WITTEN. That was the 1912 sale.

Mr. WELLING. Would you care to state, Judge Witten, whether or not it was any one of the defendants?

Mr. WITTEN. No, sir; he was not. As I say, he did not buy any of the land.

The CHAIRMAN. Was he one of the insurgents?

Mr. WITTEN. Well, possibly; I do not know, sir. I have forgotten his name. I did not have him indicted. I was too busy and did not take the time to have him indicted.

Mr. WELLING. Judge Witten, during the progress of this sale was not there a good many of the sales that were not finally concluded and confirmed by the paying over of the money that the purchaser agreed to pay in this bidding?

Mr. WITTEN. My recollection is that when we would give a man a slip that sometimes he did not take it. I always marked them off with a blue pencil, the tracts that I had sold. My recollection is that my list showed some tracts that were afterwards proven not to be paid for. That is usually the case.

Mr. MAYS. Now, Mr. Witten, may I ask, from what you learned of the land over there, do you regard it as being a sensible thing for a man to buy an isolated tract of 640 acres of this grazing land?

Mr. WITTEN. Why, no, sir; as land usually runs; according to the way it has been described to me and as I conceive it to be from the
topography and the locality, 640 acres, in my opinion, would be practically useless.

The Chairman. Judge, Mr. Colton quoted you as follows in his statement. Now, I am quoting:

He told us that he did not believe the Government would go back of that affidavit; that they would make that affidavit and that it would be all right; and he felt quite certain that if a man bought in the name of his wife or children it was absolutely all right; that there would not be any question made of such a transaction.

What have you to say as to that?

Mr. Witten. I have not any recollection of using those words nor any similar words. It is possible that I did say something on the subject, and it is more than likely that Mr. Colton heard me say that a man could buy for his wife and children. It is possible that I said that the Government was not likely to inquire into the truthfulness of the statements that the man made.

The Chairman. And what statement in that did you have reference to?

Mr. Witten. I had reference that the bidder had not bought and would not buy any more than four quarter sections at that sale.

The Chairman. Is it likely that you made this statement: “And he felt quite certain”—that is, referring to you—“if a man bought in the name of his wife or children it was absolutely all right”?

Mr. Witten. No; I did not use that language. I certainly would not say it; and if I did, it would be that I meant for his wife and children.

The Chairman. Can you state positively that you did not make such a statement?

Mr. Witten. No, sir; I did not make that statement, in the main, if by that statement it is meant to imply that he could buy for himself in their name.

The Chairman. Do you wish to add anything further, Judge?

Mr. Witten. No, sir.

Mr. Colton. If the chairman please, may I rise and make a little statement in justice to Judge Witten?

The Chairman. Yes.

Mr. Colton. May I, in justice to him, say that I did not attempt to relate his exact words, but that I was giving the substance of what I understood him to say. He may have used “for” instead of “in the name of.”

I wish to say further that I have never met a man that tried to be more honorable than this man did, and I do not wish to make any statements that might cast aspersions upon him in any way, shape, or form. I want that understood.

The Chairman. Then you will agree with him that what he had in mind, and the impression which he meant to leave, was that one could purchase for members of his family, provided that it is a bona fide purchase?

Mr. Colton. I believe absolutely that he intended to convey that idea, but I doubt whether he did.

The Chairman. Your doubt is as to what he conveyed or what you gentlemen understood. Your doubt is as to what they understood?

Mr. Colton. Yes, sir; that is so; entirely.

The Chairman. We would like to hear from Mr. McPhaul.
Mr. McPhaul. Shall I proceed in narrative form or do you desire to ask questions?

The Chairman. I would like to have you first tell how long you have been in the department.

Mr. McPhaul. I am chief law clerk of the General Land Office. I have been in the department something over 26 years, connected with the General Land Office. When the sale was held with which my name has been connected, that of 1917, when that sale was conducted I held the position of superintendent of sale of Indian lands.

I might state, Mr. Chairman, if it will not weary you too much, that before conducting this sale I went out over it three days in an automobile, over the land, and I am rather familiar, from my different trips in the Juanita Basin, with the lands and their values.

Now, the basin itself, as you see by the map, is about 100 miles one way by about 60 the other, and the rest of it, it runs up to the top of the Wasatch Mountains, which reach an altitude of between nine and twelve thousand feet, and runs back east toward Vernal, the valley lands, and rising from the lower lands here [indicating on the map], and there is a series of hills and low mountains, covered with a growth of cedar and pinon, which is absolutely worthless for anything except to look at, or possibly firewood, and if it was possible to get at them they would make good Christmas trees; but, with the exception of that, that cedar has no commercial value whatever.

The Chairman. Is it cedar or juniper?

Mr. McPhaul. Well, Mr. Chairman, I may be at fault there, because I am not much of a botanist, but I classed it as cedar and a kind of pinon. The cedar will shade the ground, and it comes up about that high, a couple of feet, and the cedar itself shades the ground as far as 20 feet, or maybe more than that, from tip to tip, so that all of that ground is shaded, and nothing grows under that, and in between those cedar trees and pinons there is a growth of bunch grass that seems to be very nutritious and upon which cattle especially thrive.

Now, where those lands are not watered, and much of them, I say, were not watered, because the lands that were watered, Judge Witten had sold the lands off, or those that had water on them had been taken up by the farmers in quantities of 640 acres, and they are just about as nearly worthless as it is possible to conceive lands to be, and the entryman was a very unfortunate one, so I thought.

Now, I have been quoted here, and I do not think that anybody who visited my sale and remained at it obtained the impression that these gentlemen said that they did.

I started out by reading their regulations and explaining the meaning of the law, and reading the affidavits which they had to take before they purchased, and I think that Mr. Pope will remember——

The Chairman (interrupting). Have you any of the affidavits here?

Mr. McPhaul. Yes, sir.

The Chairman. Will you read it, please?
Mr. McPhaul. Yes, sir. Do you want me to read the part from the regulations that no person shall be permitted to purchase more than 640 acres?

The Chairman. I think that you had better read what you read us before. That is what I am interested in.

Mr. McPhaul. Yes, sir; that was read by Col. Drury, of my force, before we started the sale in the Provo Theater in the city of Provo. The affidavits were always read, and the form of the affidavits.

It will take a good deal of time if I read it.

The Chairman. I would like to have that impressed upon my mind right now.

Mr. McPhaul. There were two of them, one for a person who purchased in his own right and the other where he purchased through an attorney in fact. I will read it:

I, ______, of ______ (street and number or other address, city or town, county and State), ______ (male or female), ______ (married or unmarried), solemnly swear that I will not purchase more than 640 acres of land within the former Uintah Indian Reservation under departmental regulations approved March 22, 1917, and the act of Congress approved March 3, 1905 (33 Stat., 930), or any amount which, added to the area in the reservation heretofore purchased in my right at public sale exceeds 640 acres; that I am 18 years of age or over; that I have not authorized and will not authorize anyone to purchase for me, as agent at said sale; that I have not purchased and will not purchase land at said sale, in my name, for other than my own exclusive use and benefit; and that I have not made, and, prior to the issuance of register's final certificate for land purchased in my name, at the said sale, will not make any arrangement or agreement with any person whomsoever whereby the title I will secure to such land from the United States will inure either directly or indirectly, in whole or in part, to the benefit of any person except myself.

(Signed here with full Christian name.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by ______, of ______ street and number or other address, city, town, county, and State); that I verily believe affiant to be a qualified applicant and the identical person hereinafter described; and that the said affidavit was duly subscribed and sworn to before me at ______ (town, county, and State), this ______ day of ______, 1917.

_______ of United States Land Office at ______, Utah.

Mr. Mays. That was the 1917 sale, was it not, Mr. McPhaul?

Mr. McPhaul. That was the 1917 sale; yes, sir.

Mr. Mays. Do you remember whether the affidavits were signed there?

Mr. McPhaul. That I will explain a little later on.

Now, the one made through the attorney in fact. Immediately after those affidavits were read I am quite sure it was Mr. Pope across and stated that they did not have those powers of attorney, that he was representing there quite a number of farmers, and that it would be impossible for him to get to them if I strictly enforced the regulations requiring the attorney in fact to submit that affidavit before bidding. And then I called upon other people and I found that they were similarly situated, and I found out how many other there were there without having the powers of attorney prepared, and I think perhaps 50 or more—quite a number, anyway—were there in that predicament. Then I consulted a little bit with the people themselves about what I should do. I was very much taken back. I had
drawn the regulations myself, and I knew that on account of the
Government declaring war shortly after the regulations were issued
that the Department of the Interior had been very much delayed in
securing the printing, and very few people—and I think Mr. Pope
himself had not secured copies. And I then waived the presentation
of that affidavit to me before the bidding, and I stated then, openly,
as all of these people here know, that that affidavit would have to be
presented to the receiver when they paid the money, and, in any
event, before they received the final certificate, and that I would go
ahead and conduct the sale and allow those people to bid, provided
they would furnish that affidavit which was required by the regu-
lations prior to completing their transactions.

Now, the sale proceeded for about three days in the Provo Theater,
and then they went over every tract, and after that I adjourned the
sale to the Federal building and kept the sale going on three days
more; and I did that in order to save expense; and during those
three days the sale was being continued at the Federal building,
and the transaction with Mr. A. M. Murdock took place, and it was
almost identical with the words described by him—with the words
described by Mr. A. M. Murdock himself. Mr. Murdock's statement,
according to my recollection, was almost literally correct.

The CHAIRMAN. With reference to what?
Mr. McPHAUL. The language with reference to that particular
body of land that he bought.

The CHAIRMAN. That was Mr. Murdock, the first one who made
a statement here to-day?
Mr. McPHAUL. Mr. Al Murdock is what we called him and the
name he is known by by the people out there.

The CHAIRMAN. That is five and a half sections?
Mr. McPHAUL. That is five and a half sections; and I urged him
to buy, just as he says, because he owned land all around it, and
he could fence his land, and without this land he could not do it
without getting into trouble. I urged him to buy it, and I had been
selling it at 75 cents an acre; and I reduced the price, too, as he
state; and the statement was almost absolutely correct; but I did not
have any idea that he understood me to mean that I was waiving the
regulations or the conditions of the law.

The CHAIRMAN. If that was the purport of the language, how
could he understand anything else?
Mr. McPHAUL. From that language, could he understand it?

The CHAIRMAN. If you state that what he stated is correct—
Mr. McPHAUL. Well, in connection with that, I will say that he
stated that he did not have the affidavits there. I understood that.
I said, "All right." A good many of these other people had not sub-
mitted them. I will state, further, that Mr. Murdock had been very
careful in these transactions, and I do not think he would ever ask a
favor or that he ever had asked any before. I think before that he
had every affidavit. I said, "You can have the same privileges as all
the other fellows have had."

The CHAIRMAN. He has accused you of requesting him to buy. Is
that right?
Mr. McPHAUL. Well, he was representing his family, and he and
his representatives had bought around this particular tract—
The Chairman. But did you request him to buy that land?
Mr. McPhaul. Yes, sir; I did.

The Chairman. But not for himself?
Mr. McPhaul. No; not for himself; and I do not think that he understood it that way. I thought that his purchase was very good, and I think so yet. He has a great, big family; he has sons and he has sons-in-law and he has brothers-in-law and he has children; and I stated to him and to all of them that they could buy for the children if they wanted to, and it was perfectly lawful, I told them, and it is lawful. I have no apologies to make for it. They can buy for their relatives if they want to, and I told them that; but the purchase must be for the person named; and I told them that, too; and I never told anybody that they could use their relatives as a dummy, and I never gave them anything by which they could infer that.

The transaction with Mr. J. S. Murdock was clearly a misunderstanding.

The Chairman. That was the 13 sections?
Mr. McPhaul. That was the 13 sections. We had quite a number of conversations about it, and after that transaction Mr. Murdock wrote me and told me his understanding of it. I replied to him and I said that he misunderstood me, and I think it was a perfectly square transaction, and I think that the whole of the Murdock transaction is legal, and I think they are truthful men.

Now, I want to say this, to give this instance, in regard to Mr. Murdock, that happened out there. Mr. Murdock told me that one of his children would soon be 18 years of age; and he said further that he had sons and sons-in-law and a brother-in-law, and that he had given each of them a 640-acre tract, and that he wanted to buy that for the son who was only a little less than 18 years of age; and I told him that if he was not 18 years of age he could not do it. He was buying for the members of his family. I do not think there has been any change in the transfers since.

The Chairman. Did you have any talk with him about these friends, who were not members of his family?
Mr. McPhaul. No; I do not think that I did with him. I do not know just what occurred between me and Mr. J. S. Murdock; but I do not think that could have occurred; in fact, I do not remember Mr. J. S. Murdock at all. As I remember, I remember Mr. A. M. Murdock very well, and I knew him much better. I will admit that I came to like him first rate. I did not know Mr. Jim Murdock quite so well, but he wrote his letter to me, showing absolutely that the transaction was unlawful, Mr. Chairman, and there was no disguising it at all, and he stated frankly what he did. Now, if he had been intending to violate the law, he would never have written any such a letter as that to me.

The Chairman. Now, the second affidavit. You were going to read another affidavit.
Mr. McPhaul. Did not I read that second affidavit?

The Chairman. No; you only read one, which was to be executed by persons purchasing in person.
Mr. McPhaul. Under the regulations the affidavit ought to have been presented to me then, as I have detailed. That was waived by me, and I think it was at Mr. Pope's instance that it was waived. Wasn't it you, Mr. Pope, that raised the question? I waived it
then and there, and I never again required that affidavit. I think it was generally understood that they had to present the affidavits before they got the certificate, except in Mr. Jim Murdock's case; he did not do that, I know. In fact, the register and receiver should not have taken his money without it being filed. His money is in the Treasury of the United States, and it ought not to be there. The one that took it violated the directions, and if they had not violated them he would have been protected. He has not furnished a single false affidavit.

The Chairman. Did either one of the Murdocks furnish an affidavit in the 1917 sale?

Mr. McPhaul. Oh, Mr. Al Murdock furnished all the affidavits in regard to his purchase, and I do not know of any of them that are not all right.

The Chairman. But how about Mr. Jim Murdock?

Mr. McPhaul. He did not furnish anything.

Now, this was the affidavit and the form of power of attorney, the 640-acre affidavit to be executed by the persons purchasing the lands by agents [reading]:

I, ________, of ________, ________, ________, ________ (street and number or other address, city or town, county and State) ________, ________, ________, ________ (married or unmarried) hereby appoint ________, ________, ________, ________ (street and number or other address, city or town, county and State) to act as my true and lawful agent at the sale of Uintah Indian lands, Utah, under departmental regulations approved March 23, 1917, and the act of Congress approved March 3, 1905 (33 Stat., 1069), and I hereby authorize my said agent to purchase acres for use at said sale. I do solemnly swear that I have not heretofore purchased in my right, at public sale, such an amount of land in the former Uintah Indian Reservation as added to that which I have herein above authorized my agent to purchase, exceeds 640 acres; that I am 18 years of age, or over; that I will not purchase any land at said sale in person and that I have not authorized and will not authorize anyone other than the above-named agent to make such purchase for me; that I have given my said agent no power of attorney other than this; that this power of attorney is given for the purpose of securing title for my exclusive use and benefit to land which may be purchased hereunder and not directly or indirectly, in whole or in part, in the interest of any other person; that my said agent has no interest present or prospective in the premises; that I have not made, and, prior to the issuance of register's final certificate for land purchased hereunder will not make, any arrangement or agreement with my said agent, or with anyone else, whereby the title I will secure to such land from the United States will inure either directly or indirectly, in whole or in part, to the benefit of any person except myself; and that this affidavit was not sworn to in blank.

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed his signature thereto; and that affiant is to me personally known (or has been satisfactorily identified before me by ________, ________, ________, ________ (street and number or other address, city or town, county and State); that I verily believe affiant to be a qualified applicant and the identical person hereinafter described; and that said affidavit was duly subscribed and sworn to before me at my office in ________, ________, ________, ________ (town, county and State), this ________ day of ________, 1917.

[seal.]

(Sign here with full Christian name.)

The Chairman. Do you know whether there have been any purchases in violation of that, in 1917, or whether it has been claimed by the Government that there have been any purchases in violation of that?
Mr. McPhaul. I think that reports in the so-called cases, there was some intimation in the reports of the special agents that some of my sales were off-color, too.

The Chairman. In the Albert Smith cases?

Mr. McPhaul. The cases now in suit; there are 13 or 14 suits that the Government had.

The Chairman. I was not informed that any of the suits were under the 1917 sales.

Mr. McPhaul. No; they were all under the 1912 sales. You asked me if my sales were questioned?

The Chairman. Yes.

Mr. McPhaul. I do not think that there have been any reports from special agents on any of my sales; as far as I know there have not, but we have the J. S. Murdock letter, which he voluntarily presented to the department, and, of course, I presented it to the Secretary, and he replied to him.

The Chairman. Mr. Colton quotes you as follows, and he gives this as hearsay, having been heard by him and referring to you:

He was very emphatic that the purpose of the sale was to get money for the Indians, and that it would be all right if they got this land in the name of other parties, provided that those other parties had not made purchases, or other names had not been used in the purchase of any of that land.

What have you to say about that?

Mr. McPhaul. I never said anything of that sort, nothing that smelt like it, or tasted like it, or looked like it, or indicated it, and I deny it absolutely.

Mr. Wellin. Mr. McPhaul, have you read the bills of complaint against these men in the suits that are pending?

Mr. McPhaul. No, sir; I have not.

Mr. Wellin. Do you know in a general way what is contained in those bills of complaint against these men in the suits that are pending?

Mr. McPhaul. Yes, sir.

Mr. Wellin. And do you think, in view of all the circumstances surrounding these sales, that those men ought to be prosecuted as criminals under the law?

Mr. McPhaul. Well, I do not think that it is intended to prosecute them as criminals.

Mr. Wellin. Do you think they ought to be prosecuted at all? Do you think that the suits ought to be suppressed?

Mr. McPhaul. I do not know anything about the case. I am like Judge Witten in that respect, and must answer as he did, that I do not know enough about the case in order to judge. If a man deliberately bought more land than he was entitled to buy, and knew that he had bought more land than he was entitled to buy, I think that he ought to be prosecuted.

Mr. Wellin. And did you see any evidence of that sort in the buying of the land out there, Mr. McPhaul?

Mr. McPhaul. No, sir; I did not.

Mr. Wellin. And you did not see any evidence of men trying to herd their men away from the sale, in order to keep others from getting hold of the land?

Mr. McPhaul. No; but I will tell you what I did see, and I did not think anything of it. I saw Al Murdock, if anybody came on
his preserves Al chased him, and I mean by coming on his preserves, I mean by coming in the neighborhood of where he was located. If any man bought over in another part of the reservation, he paid no attention to him. I did not think that was anything strange at all.

The Chairman. What do you mean by "chasing him"? You said that he "chased him." What do you mean by that?

Mr. McPhaul. Why, I mean by that he took the land. Al Murdock always got the land in that case.

Mr. Raker. You have a letter from Mr. Murdock and your reply. Will you read those, please?

Mr. McPhaul. They are pretty long. I will read them if you wish.

The Chairman. They should go into the record, I think.

Mr. McPhaul. My replies are rather long winded; they are like myself.

The Chairman. You may furnish them to the reporter and they will go into the record.

(See close of McPhaul testimony, p. 224.)

Mr. McPhaul. They are the only copies that we have of this correspondence, and I would like to have the reporter copy them in shorthand.

The Chairman. That may be done. Now, are there any questions that the members of the committee desire to ask Judge McPhaul?

Mr. Mays. There is one question that I would like to ask him, if I may be permitted to do so. That is in reference to what Senator Colton said as to what he heard that you stated. Now, let me ask you what do you understand is the distinction between his version of it and what you told us?

Mr. McPhaul. Well, I understand it as the difference between a thing that is unlawful and a thing that is lawful. His statement—

The Chairman. The difference between buying for himself and using a name—

Mr. McPhaul (interrupting). The difference between buying for himself and the use of anybody's name. What I think I said was that if he wanted to buy for relatives—if they wanted to buy for relatives, they could do it. If that is what they stated, that is what I said. They could do that, and that is the law.

Mr. Mays. That is the law as you understand it, is it?

Mr. McPhaul. Yes, sir; and it is the law.

The Chairman. But at the same time it is rather a suspicious circumstance, is it not?

Mr. McPhaul. Well, on one occasion we warned some prospective buyer of the fact that the title must not go back to that other person that furnished the money; that if it did it would form such a set of circumstances as would get them into trouble—

The Chairman. That was at the sale?

Mr. McPhaul. That was at the sale; and I called attention to the limitations of the law and warned them that they had better be careful how they bought.

Mr. Mays. From your acquaintance with the land—you say that you went over the land and you looked it over, went over it in an automobile—and from your acquaintance with it would you regard it as a sensible business proposition or transaction for a man to purchase an isolated tract of that kind of 640 acres?
Mr. MCPHAUL. I certainly would not.

Mr. MAYS. Therefore you thought if you sold any man 640 acres that he was really getting the worst of the bargain?

Mr. MCPHAUL. No; I thought this: That it was a Mormon community, where the families were very large and the bidders were largely members of the Mormon Church, and they had large families, and that they could legitimately and lawfully buy large areas; that is what I thought about it, and I think about it the same way yet.

The CHAIRMAN. Are there any other questions?

(No answer.)

The CHAIRMAN. We are very much obliged to you, Mr. McPhaul.

Mr. MAYS. Mr. J. S. Murdock wants to say a word or two at this time.

MURDOCK-M'PHAUL LETTERS.

HEBER CITY, UTAH, February 27, 1918.

Hon. J. H. McPhaul,
Superintendent of the Opening and Sales of Indian Reservations, Washington, D. C.

DEAR Sir: I am in a dilemma regarding some grazing lands on the former Uintah Indian Reservation, which you sold at Duchesne, Utah, on July 2 or 3, 1917, but believe you are in a position to and will afford me relief in the matter.

You will no doubt recall the fact that at the Provo, Utah, sale held in June last, there were a number of large tracts of land, valuable only for sheep-grazing purposes, for which you were unable to secure bids, the principal reason being that being virtually desert lands and remotely removed from adjacent farm properties they were of value only for grazing purposes in tracts large enough to provide for grazing sheep in range herds, and no one would buy or bid for them in 640-acre tracts, because they would have no value in such parcels.

Appreciating this condition you adjourned the sale to Duchesne, the county seat of Duchesne County, in which these lands are located. You will probably also recall a conversation with me at Duchesne wherein you suggested that I bid for some of these lands, without the formality of the affidavits prescribed under regulations contained in circular No. 537 (copy of which, with accompanying affidavit, I inclose), using the names for purchasers of persons who would be agreeable to bidding for these lands. This I accordingly did, and receipts were given by Hon. Samuel L. Page, receiver of the Vernal, Utah, land office, for the amounts paid. Later, but bearing same dates, i.e., July 3, 1917, the register of the Vernal land office, Hon. Peter Hanson, issued his certificates in the names of the parties whose names I furnished at the sale, certifying to the purchases, and stating that on presentation of certificates the purchasers should be entitled to patent, etc. (Form 4-159.) After receiving their certificates these parties all conveyed to me by deed the purchased lands.

Under date of February 13, 1918, the receiver, Hon. Samuel L. Page, addressed me a communication as follows:

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
Vernal, Utah, February 13, 1918.

SIR: I inclose copies of notice to certain persons for whom you purchased lands at the June sale at Provo, that patent will not issue until 640-acre affidavits have been furnished. These will apprise you of the necessity of immediate action and no doubt if you take this matter up with each one of them you can expedite matters very much.

A copy of the affidavit blank has been mailed to each of the persons named in the names for purchasers of persons who would be agreeable to bidding for these lands. This I accordingly did, and receipts were given by Hon. Samuel L. Page, receiver of the Vernal, Utah, land office, for the amounts paid. Later, but bearing same dates, i.e., July 3, 1917, the register of the Vernal land office, Hon. Peter Hanson, issued his certificates in the names of the parties whose names I furnished at the sale, certifying to the purchases, and stating that on presentation of certificates the purchasers should be entitled to patent, etc. (Form 4-159.) After receiving their certificates these parties all conveyed to me by deed the purchased lands.

Under date of February 13, 1918, the receiver, Hon. Samuel L. Page, addressed me a communication as follows:

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
Vernal, Utah, February 13, 1918.

JAMES S. MURDOCK,
Heber, Utah.

SIR: I inclose copies of notice to certain persons for whom you purchased lands at the June sale at Provo, that patent will not issue until 640-acre affidavits have been furnished. These will apprise you of the necessity of immediate action and no doubt if you take this matter up with each one of them you can expedite matters very much.

A copy of the affidavit blank has been mailed to each of the persons named and I also inclose a few extra for you in case you should find use for them to replace any that may be lost or destroyed.

Respectfully,

SAMUEL L. PAGE, Receiver.

Inclosed with said letter were copies of the letters referred to, one of which, that to George Knox, 07674, I inclose you for reference. The receiver also inclosed to each of the persons in whose names these lands were bought a copy of circular No. 537, with the 640-acre oath attached.
Now, the difficulty which presents itself before me with regard to obtaining these affidavits. Some of the parties (including George Knox, copy of whose letter I inclose) are in France, others in different camps in military service, while the others are widely scattered, and it may be that even if I should attempt to secure the affidavits at this time, some of the parties who are accessible may be averse to subscribing the affidavits at this time, and subsequent to the sale, when as a matter of fact they had not, as you are aware, been consulted prior to the sale upon the question of permitting the use of their names, and I do not see how I can now ask them to subscribe the affidavits, the requirements of which, I understood, you waived at the sale at Duchesne for the obvious reason that they could not be obtained, and the fact that their requirements then would have prevented the sale of the lands.

In order to relieve this situation I would ask if you will kindly adjust this matter with the honorable the Commissioner of the General Land Office and ask him to waive or rescind his instructions in letter "C" of January 30, 1918, addressed by him to the officials of the Vernal, Utah, land office.

I inclose a list of the sales in which I am interested, but would suggest that there were other sheep operators who also bid in lands at Duchesne at said adjourned sale who are in a similar situation, and it may be as well to relieve them all from the requirements of supplying the prescribed affidavits, which as you will understand can not now be obtained without considerable difficulty, or possibly in many cases not at all.

I apologize for taking up so much of your valuable time as a perusal of this communication with inclosures will require, but I believe you will appreciate the situation and accept the apology and procure for me (and others) the relief necessary to obtain titles to the lands bought.

Very respectfully yours,

JAMES S. MURDOCK.


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DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 12, 1918.

Mr. JAMES S. MURDOCK,
Heber, Utah.

MY DEAR Mr. MURDOCK: I am in receipt of, and have given consideration to your letter of February 27, relating to certain purchases made by you as attorney in fact for various parties at the sale of Uintah Indian Reservation lands held at Duchesne, Utah, July 3, 1917.

162423—20—15
I am very much surprised at the statements made in your letter, and it is my opinion that such statements impute motives, both in yourself and me, of such character that I am not at liberty to treat your letter as a personal matter, but must refer it as an official communication to the Commissioner of the General Land Office for such action thereon as he may see proper to take. The statements are so much at variance with what I did or intended to do that I can explain them only upon the theory of a misunderstanding on your part of what was said and done at the sale.

The act under which the lands in the Uintah Basin were sold expressly limited the right of purchase of any one person to an area not exceeding 640 acres, and the regulations of the department, approved March 22, 1917, were based on said statute and were intended to effectuate its provisions. Such regulations required one bidding for any of said lands through an attorney in fact, to furnish to such agent a power of attorney in the form of an affidavit wherein such person represented that he had not theretofore purchased in his own right any lands in the former Uintah Reservation which, added to the areas he had authorized his agent to purchase, exceed 640 acres. It was further provided that this power of attorney and affidavit must be executed prior to the sale and presented at the sale.

As I recall, you were present at the theater in Provo on the morning of June 18, 1917, when the sale began, and it developed at the outset that large numbers of people from the Uintah Basin were in attendance with oral authority to purchase small tracts for their neighbors and other settlers, and that few, if any, of such agents were provided with the necessary powers of attorney. Mindful of the fact that owing to war activities in Washington there had been considerable delay in securing the printing of the necessary forms, I acquiesced in their use, and to insist under the regulations of the department, approved March 22, 1917, that each person representing that he was entitled to under the law, but even if that be true, I do not believe that the commissioner or the Secretary will waive the regulations at this time and thus permit you to acquire title to an area greatly in excess of that fixed by the statute.

I am perfectly willing that my official superiors should pass in judgment upon the act, and I am quite confident that where the person so bidding was orally authorized to act, and where he subsequently produced the necessary power of attorney, no question will be raised by the Commissioner or the Secretary as to the legality of such sales, where everything else was regular.

But I am amazed at the statement that you make that I suggested to you the propriety of holding on these lands in quantities greater than 640 acres and that you furnish the names of people whom you had not consulted. I made no such statement to you, and if you so understood, I regret very much that anything I did say led you to that conclusion. I did not at any time extend to you any privilege not accorded to others and you made no request that I do so. During the course of the sale I repeatedly pointed out the limitations of the statute and called the attention of numerous purchasers to the fact that they could not use powers of attorney as the means of acquiring more land than they were entitled to under the law.

It is true that the sale was adjourned from Provo to Duchesne, but the adjournment was not in furtherance of any plan to dispose of the land in larger quantities than was provided for in the act opening said lands to sale. The sale was adjourned to Duchesne because under the regulations providing for the sale of town lots at that place I was required to be there on the 2d of July, and as there were large quantities of undisposed lands in the vicinity of that place the sale was adjourned there under the authority expressly conferred by the regulations, to the end that further sales might be made in the manner prescribed by law, if any person duly qualified sought to purchase them.

Your high standing as a man and a citizen in the community in which you live impels me to the conclusion that you acted under a misapprehension of the law; but even if that be true, I do not believe that the commissioner or the Secretary will waive the regulations at this time and thus permit you to acquire title to an area greatly in excess of that fixed by the statute.
It may be that Receiver Page and Register Hansen were of the opinion that they had as much right to waive the regulations as I had and that they acted upon that assumption. I think, however, that their course was owing either to inadvertence or a misunderstanding of the law and regulations. In any event, no certificate should have issued to the several parties until the necessary powers of attorney were furnished the local officers.

It is quite true that the land bought in by you as an attorney in fact for several people was not sought by any other person in quantities of 640 acres, and it is altogether likely that if the sale had not been made to the parties represented by you such lands would have remained unsold, and I quite agree with you that there are large areas of such lands that are practically worthless in quantities of 640 acres. In my official report on the Uintah sale I recommended the repeal of the law fixing the limitation that anyone could purchase at 640 acres and subsequently took the matter up with the private secretary to Senator King. At a later date he advised me that the Senator had written to various people in the reservation and that there seemed to be very little interest in the matter. It is quite likely, therefore, that no legislation can now be obtained repealing the restrictive provisions of the act under which such lands are directed to be sold, and I am of the opinion that in the absence of such legislation the various certificates mentioned will be canceled and in all probability the moneys paid in in connection therewith declared forfeited.

I regret exceedingly that the matter has assumed the form in which you presented it to me, but I do not believe that I can be of any assistance to you. The fact that you immediately took deeds to yourself from the various parties whose name you used, as you state, without authority, leads, I think, inevitably to the conclusion that the purchases were made in your interest and not for the benefit of those whose names you assigned.

While it is probably unnecessary to mention the fact in this connection, I may add that I had and could have had no motive in inducing purchasers to buy the lands in unlimited quantities. I was paid a fixed salary for my services and my compensation did not depend in any manner on the number of sales or the prices received for the land. My only purpose was to aid intending purchasers as far as I could in securing the lands they desired in the manner and in quantities authorized by law. I had, therefore, no reason to deceive you, and I did not advise you that by resorting to a sorry expedient you could acquire the title to any of said lands in excess of 640 acres. But if I had been weak enough, or vile enough, or foolish enough to have so advised you, and if the Secretary should now revoke the regulations, it would be the duty of the commissioner, as I understand the law, to cancel the several certificates of purchase. Back of any advice that I may or may not have given you and beyond the regulations is the law, and it is written very plainly.

It is manifest from your letter that the several persons for whom you purported to act could not at any time heretofore, and can not now truthfully execute the affidavit required by the regulations containing the statement that the lands to be purchased were for the exclusive use and benefit of such persons, and that you, the agent, had no present or prospective interest therein; and under the facts disclosed by the letter you can not lawfully be a party to procuring or filing any such affidavit. I do not mean to say that where such action would subserve the ends of justice and conform to the statute, the Secretary would not waive the regulation and direct the issuance of patent; but, as heretofore pointed out, the effect of waiving the regulation in these cases and of issuing patents on the several certificates of purchase would be to pass title to you to very much larger areas than you were entitled under the law to secure.

As the matter now stands and in the absence of the proofs called for by the commissioner, you will probably lose the lands and the moneys paid in connection therewith; but if, in order to relieve yourself from the condition in which you are now placed, you should procure and file the affidavits and powers of attorney, or permit it to be done, the consequences to you will be very likely more serious.

I have gone into this matter quite fully because I do not believe that you are a man who would knowingly violate the law and I want to make the matter very plain to you. This letter is in no wise an adjudication of your claims or of the claims. The commissioner of the General Land Office will in due time take such action thereon as the facts and law may warrant, and you are not to take anything that I say in this letter as excusing you or the
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parties you represent from complying with the directions of the commissioner. I am merely suggesting that a condition might be brought about more disastrous than the loss of the land.

Very respectfully,

JOHN MCPhAUL

STATEMENT OF MR. J. S. MURDOCK.

Mr. J. S. Murdock. What I wanted to say was only in regard to a couple of sales that were made. It was in regard to this land where Commissioner Tallman told me yesterday where he thought it was worth a great deal of money.

Now, four years after this land was bid in, in 1910, I bought from J. R. Murdock 7,220 acres of land at $2.25 an acre, and I sold it to my boys, and we traded around—we had it in bulk—and we traded in order that we could get it into two separate pieces, and the boys got four sections in 1912, and they traded with Ab. Smith for the Government price—that had been paid to the Government—charging nothing for the time of bidding it and for the time consumed in going to the sales and buying the land, and we sold to Ab. Smith at the Government price, and the money was got by J. R. Murdock.

The CHAIRMAN. That was in order to get your land in more compact shape, was it?

Mr. J. S. Murdock. I want to say that I think some of them have overestimated the value of this land, as we have traded and bought it and joined up our pieces. It has taken us two or three years to do it, and we paid principally at the Government prices, what they charged for the land.

The CHAIRMAN. I understand there are no other witnesses and we promised Mr. Loughran an opportunity to be heard here.

Mr. WELLING. If I may say a word right here at this time, Mr. Chairman, I would like to say that the gentlemen who came here in favor of the bill brought counsel with them, but they have not felt that it was necessary for them to make any argument before the committee, but we would like to file a statement, and I have here a statement with me, or a brief, and I would ask that this go into the record.

The CHAIRMAN. Without objection it may go in.

Mr. WELLING. It is a statement concerning the lands involved in the proceedings brought by the United States Government to cancel patents for certain lands in the former Uintah Indian Reservation, Utah. That may be considered in the record, Mr. Chairman?

The CHAIRMAN. Yes, sir.

(The statement referred to is here printed in full in the record, as follows:)

STATEMENT CONCERNING LANDS INVOLVED IN PROCEEDINGS BROUGHT BY THE UNITED STATES GOVERNMENT TO CANCEL PATENTS FOR CERTAIN LANDS IN THE FORMER UINTAH INDIAN RESERVATION, UTAH.

The lands in question were formerly a part of the Uintah Indian Reservation in the State of Utah. Prior to the opening of the reservation for settlement the Indians had been allotted the most valuable lands on the reservation. Under the acts of May 27, 1902, and March 3, 1905, Congress provided, in substance, that the unallotted lands, excepting such tracts as may have been
set aside as national forest reserves and Indian grazing lands and certain mineral lands which had been disposed of by act of Congress, should be disposed of under the general provisions of the homestead and town-site laws of the United States, and provided further that all lands thus opened to settlement and entry under the homestead and townsite laws undisposed of at the expiration of five years were to be sold and disposed of for cash under rules and regulations to be prescribed by the Secretary of the Interior, not more than 640 acres to any one person. The proceeds of the sale of such lands to be paid to the Indians as provided in the act of Congress of May 27, 1902, and acts amendatory thereof and supplemental thereto.

It will thus be seen that the lands in question were the remnants of the reservation which were not allotted to the Indians and which were not entered by citizens of the United States, and the only way they could be disposed of was to sell them at public auction for cash.

The regulations provided that no sale should be made of said lands for less than 50 cents per acre. The lands in question are not timber, coal, nor mineral lands, but valuable only for grazing purposes. The lands are used only during the lambing season in May and June of each year and for a part of October. It requires from 3 to 5 acres of the kind of land in question to graze each sheep during the season just mentioned, and as the law and regulations prevented any one person from purchasing more than 640 acres of land so small a tract was of no practical value to the live-stock man, as such a tract would only be sufficient to graze approximately 110 head of sheep or about 15 head of cattle. In order to carry on successfully the sheep business one must have several hundred head of sheep, and it was not feasible for these men to buy only 640 acres of land for grazing purposes.

The first sale was held in 1910. The law provides that the sale was to be a public sale, the lands to go to the highest bidder, and that all money derived from the sale of the lands was to be used for the benefit of the Indians. And, as we understand it, money at that time was necessary for immediate use in the construction of irrigation canals and ditches to convey water to lands allotted to the Indians. There were substantially no sales of grazing lands made during the early part of the sale owing to the restriction in the law which prohibited the purchase by one individual of more than 640 acres. This matter was discussed with the superintendent representing the Government in charge of said sale with a view to holding a successful sale and keeping within the spirit and intent of the law. The affidavit required of the purchasers was considered, and it was thought that no fraud would be perpetrated and no wrong done if one person used the names of members of his family and friends in acquiring sufficient land upon which to graze his stock successfully and carry on his business, it being understood that any person whose name was used for this purpose would thereupon exhaust his right to purchase lands after having once purchased 640 acres. Had this policy not been adopted there would have been practically no sales of these grazing lands, because no one would bid for them except stockmen, and they would not bid unless some means were provided for them to acquire sufficient acreage upon which to graze their stock during the lambing season.

The bidding upon the land was open and spirited. The price paid ranged from 50 cents to $7 per acre, which price was the fair and reasonable market value of the lands at that time. At the close of the 1912 sales a number of tracts of land which had been bid in but not taken were again offered for sale and sold for about one-half of the original price bid. These transactions took place the Monday following the close of the sales.

Prior to the sale of the lands in question a movement was started by the stockmen interested in the passage of this bill to have a forest reserve created out of these lands, but the Utah protestants against this bill opposed the creation of such a forest reserve.

At the sale in 1917 agents of the Government pursued the same policy that had been pursued in 1910 and 1912 and in a number of instances offered for sale and sold to one person larger tracts of land than 640 acres. In one case, a tract consisting of about 14 sections was sold to James S. Murdock, Mr. Murdock informing the Government agent at the time of sale that he did not have powers of attorney for other people. The agent assured him that it would be all right and that if he would buy the tract in question that the cash certificates for these lands would be sent direct to him and not to the individuals in whose names the purchases were made. In accordance with that agreement
the cash certificates were so sent to Mr. Murdock, and not until months afterwards and after this investigation had commenced were the parties named as purchasers called on for affidavits in connection with the sale.

There can be nothing in the contention that Congress is delegating through this legislation any of its powers relating to the disposition of these lands to the Secretary of the Interior, as that power is already vested in him under the act of May 27, 1902, and March 3, 1905. Senate bill 3016 removes the restriction that not more than 640 acres of land can be sold to one individual, and provides that where the validity of purchases heretofore made under the act of March 3, 1905, have been or may hereafter be questioned in any departmental or court proceeding on the ground that a larger area than 640 acres has been, directly or indirectly, acquired by one person or corporation, the Secretary of the Interior is authorized, in his discretion, to accept a reconveyance of the lands involved in such proceedings and to repay to the purchaser or his assigns the purchase money paid therefore, or to validate, ratify, and confirm such sales, or to examine and determine the present value of said lands and upon payment by the patentee or purchaser or his assigns of the difference between the amount heretofore paid such ascertained value, to validate, ratify, and confirm such sales.

JACOB EVANS,
E. R. CALLISTER,
Attorneys for Defendants.

Mr. WELLING. I would like also to present a telegram which came to my house this morning from the Hon. Joseph R. Murdock, who was unable to come to this hearing. He is known to these gentlemen who conducted the sales, and it conveys resolutions which were adopted by the Heber Horse and Cattle Growers' Association.

The CHAIRMAN. You may read that if you so desire.

Mr. WELLING. I will read it, sir.

Hon. Milton H. Welling,
Member Congress, House of Representatives, Washington, D. C.:
The following resolution was adopted today by a majority of 43 to 25 by the Heber Horse and Cattle Growers' Association:
"Whereas complaints have been filed in the Federal court at Salt Lake City, Utah, and service has been made upon a number of the citizens of Salt Lake and Wasatch Counties charging them with illegally purchasing public-range land; and

"Whereas the United States Senate has passed a bill the purpose of which is to grant relief to the present holders of record titles to land sold at said sales and validating such titles on certain conditions prescribed in said bill; and

"Whereas the Heber Horse and Cattle Growers' Association of Wasatch County neither as an association nor by its board of directors has taken any action against the purchase of said lands; Therefore be it

"Resolved by the members of this association in annual meeting assembled, That we firmly believe that the Government sales at which these lands were purchased were conducted fairly and honestly by the Government officials in charge of the sales, and that said Government officials were fully aware of the conditions and manner under which the purchases were made; and be it further

"Resolved, That as an association we are opposed to the further prosecution of the parties who purchased said lands and respectfully ask that Senate bill No. 3016, which passed the Senate, receive further favorable action and be enacted into law."

JOSEPH R. MURDOCK.

Mr. BARBOUR. What did you say the vote was?
Mr. Welling. The vote was 43 to 25. I may say, gentlemen, one word of explanation of this telegram, that is the only thing that brought this whole matter to the attention of the committee, was the protest that was filed by Mr. Loughran and with Mr. McDonald, and influential men and members and leading men in that Heber Horse & Cattle Growers' Association; and that resulted in the presentation of a petition of some 170 of the young men in this locality.

The Chairman. Who is here who presented this brief?

Mr. Welling. The counsel for these gentlemen, Mr. Evans and Mr. Collister.

Mr. Raker. And this is just a recapitulation of the arguments, as I understand it?

Mr. Welling. Yes, sir; it is a brief summary and statement of the conditions. It was not felt that it was worth while to inflict it upon the committee and read it into the record.

The Chairman. Now, we will hear from Mr. Loughran.

STATEMENT OF MR. PATRICK H. LOUGHRAN.

Mr. Loughran. Mr. Chairman and gentlemen of the committee, I have attended these hearings during the past three days with a view to learning the probable defense of the parties defendant in the suits now pending in the United States court. Now, gentlemen, I call this committee’s attention to the fact that none of the defendants in those proceedings has appeared and taken the stand here before this committee. The Murdocks have been here, but they are not parties defendant in those proceedings. I also call your attention to the fact that a great deal has been communicated to the committee through the reading of the telegrams and letters expressing the belief of some of the people of Utah that the transactions in question in the bills were perfectly legal and expressing great confidence—

Mr. Vaile (interrupting). Those are communications on the other side.

Mr. Loughran. But I think that the committee has heard enough to cause it to realize and to apprehend what the nature of the defense in the equity proceedings will be.

We find that the defendants, in their last resort, are really besmirching the fair name and the honorable motives of the gentlemen who are employees in the Land Department, gentlemen who have been connected with that service for many years under successive administrations, who have achieved very creditable records, extending over a great many years, and it is hardly possible that a defense resting upon the charge that these defendants were misled by these tried, trusted, and experienced representatives of the Commissioner of the General Land Office, experienced in these land matters, would have any great weight with either a court or a jury or with this committee.

I do not want it to be misunderstood, however, that I am here as the persecutor of the cattle and sheep men present, or the men involved in this suit. On the contrary, I have a great deal of genuine sympathy for them in the plight in which they find themselves. But I am not in sympathy with the suggestion made in the letter to me from Mr. McDonald, which I filed with the committee, namely, that those lands be considered in connection with an addition to the
forest reserve. I am not in sympathy with the forest-reserve policy, and aside from that, I view these men as victims of unwise legislation by Congress.

In its ultimate analysis, gentlemen, the situation is this: We find the Murdocks and the Smiths and the others upon these forbidding wastes, so described here by these men, which are not capable of supporting men in agricultural pursuits.

We find the Murdocks and the Smiths and others upon these forbidden wastes, so described here, upon lands which are not capable of supporting persons in agricultural pursuits. We find that they were there in early pioneer days as lessees of these lands from the Indians. Now, that is their land, as they view it; it is their pursuit; those are the means of supporting themselves and their families. Congress then deliberates upon the method of opening these Indian lands to the public, and in its deliberations the committees and Congress adopted the unwise policy of limiting to 640 acres, the area that any one individual could acquire of land of the character that has been described here.

Now, Mr. Chairman and gentlemen, if you will excuse me I will say that it is simply in accordance with elementary human nature, which can not escape consideration of this committee in connection with this bill, and it certainly would be a strong appeal to a jury that these men, whose homes, whose hopes, were there, whose families depended upon the maintenance of their flocks and herds, were dispossessed of their lands in that way. They yielded to the temptation. Few men, not supermen, would have been able to resist the temptation. Congress did an unwise thing in this connection, gentlemen, and I wish to be understood that I speak with all respect of Congress when I have alluded to its actions and characterized its actions as I have; but it did the same unwise thing in this connection that it did in connection with the timber and stone act and the coal land law. The folly, for instance, of offering the timber reserves of the country at $2.50 an acre, and declaring in the act so offering them that no person should acquire more than 160 acres, as if that area of forest could be economically utilized so far as producing lumber is concerned by an individual. You had men of enterprise, business men, sorely tempted, and the result was a raid upon the wealth of the forests of Oregon and Washington. That unwisdom is still applied in the coal land legislation.

Mr. Chairman and gentlemen of the committee, contemplate for a moment that you, custodians of the public lands, charged with the keeping of the people's vast wealth within that vast domain, should have offered the coal reserves at $10 per acre, or $20 per acre, according to the location of the area with respect to the nearest constructed line of railroad. What was the result? The result was that enterprising men, knowing that it was impossible for an individual to develop coal lands in a small way, immediately yielded to the temptation, and procured others to make entries for them.

This was done in connection with this land. It has now been demonstrated to you beyond any shadow of a doubt that it was unwise for Congress to have limited the area to 640 acres. No man, woman, or child could have possibly been attracted to such a limited area of these lands, with the expectation of being able to maintain themselves thereon.
It is in evidence here—so far as I may consider any unsworn statement as evidence—that it is quite impossible for any man to utilize this land with resultant contribution to the wealth of the country in areas of less than 5,000 acres or 10,000 acres.

Now, Mr. Chairman and gentlemen of the committee, I am always primarily a citizen of the United States and secondarily an attorney. No man can buy my positive convictions. That is impossible. This proposed legislation, Senate bill 3016, has excited my criticism and aroused my opposition because of its viciousness. It can not be successfully defended by any man who has the attainments of a lawyer and who is jealous of his reputation and standing at the bar.

Mr. Chairman and gentlemen, contemplate the fact that the lands in suit are not public lands; that they are private lands in the same sense and to the same extent as the home that covers your wife and baby, patents having passed from the United States. The lands that Smith owns is the Smiths' private property. The lands that any one of the other several defendants owns are his private property, and yet Congress is asked to do the unprecedented thing of creating a tribunal with peculiar powers over a particular lot of privately owned land. You are asking the Department of the Interior, which has been organized for the purpose of administering the public domain, to sit as a court of equity over privately owned property. Why clothe the Secretary of the Interior with the powers of this special tribunal? Is there any special reason for so doing? Why clothe any officer of the government with power over that land? It is not public land. It is privately owned land.

Mr. Barbour. Why not let us settle it by confirming those titles, Mr. Loughran?

Mr. Loughran. Mr. Chairman, I am going to have the temerity to suggest to this committee a measure in substitution for Senate bill 3016. I will act upon the suggestion made by my friend from Denver yesterday, that everything following the enacting clause be stricken—

Mr. Taylor. That was not my suggestion. It was my interpretation of your suggestion.

Mr. Loughran. Well, Mr. Taylor, it was such a wise suggestion that I submit it as emanating from you.

I therefore suggest to the committee that it consider the following as a substitute for Senate bill 3016, which, in my judgment, can not possibly meet the approval of a majority of this committee or of any considerable number of the Members of the House of Representatives. As I read this I trust that you gentlemen will listen to it, and these gentlemen here from Utah with a view of determining for themselves whether or not my proposed measure deprives them of any substantial right, whether it curtails any of their rights, whether it takes from them any benefits which they would otherwise receive.

The Chairman. How long is that, Mr. Loughran?

Mr. Loughran. It is not long. It is in manuscript form and it is not very long. It is so interlined with my hieroglyphics that I shall ask the reporter to take it in shorthand. He could not read it:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That defendants in suits in the United States District Court for the District of Utah which have been, or may hereafter be,
instituted by the United States for the purpose of cancelling patents to the United States for lands within the former Uintah Indian Reservation, which were sold under the authority of the act of March 3, 1905 (33 Stats., 1048, 1070), may, upon acceptance by them in writing of all the provisions of this act, within 60 days from the approval hereof as to the defendants in such suits as are pending at time of such approval, and 60 days after service of subpoena ad respondam as to the defendants in such suits as may be filed thereafter, reconvey the title to such lands to the United States from and clear of any and all liens and encumbrances whatsoever and thereafter avail of the provisions of this act.

Sec. 2. That any lands reconveyed to the United States in pursuance of the first section hereof, and all lands of the former said reservation which remain unsold under the provisions of said act of 1905, shall be appraised by the Secretary of the Interior with view to the offering of same for sale to the highest bidder therefor, at public auction, at such times and places as may be fixed by the Secretary of the Interior, at not less than the appraised value, and in compact units or parcels conforming to the legal subdivisions of the public surveys, if the land be surveyed, and in rectangular bodies, if unsurveyed, comprising such areas as may be determined by the said Secretary to be adequate for the economic use of each unit or parcel as a range for such number of food animals as the raising of which upon such tract or parcel would maintain a family.

Sec. 3. That upon reconveyance by any such defendant as provided herein, and acceptance of the reconveyance by the Secretary of the Interior, the purchase moneys paid by the defendant or his grantor or grantees to the United States for the lands so reconveyed, less any proportion thereof the said Secretary may, in his discretion, deem fair and reasonable as a consideration for the use of such land for the period during which the title to the same was outstanding under the patent therefor, shall be refunded to such defendant from any money in the Treasury not otherwise appropriated, and shall be paid to him by the Treasurer of the United States upon certificate by the Secretary of the Interior of compliance by such defendant with the provisions of this act.

Sec. 4. That during the period intervening a reconveyance under this act and the subsequent sale of a tract or parcel containing any of the land so reconveyed, the grantor to the United States shall be permitted to retain possession of the land reconveyed in the same manner and to the same extent as before reconveyance thereof, as against anyone except the United States, and in event of the sale to someone other than the defendant reconveying of any tract or parcel on which if situate the dwelling house, the shearing sheds, the corrals, or any other structures owned by such defendant, or another, and erected prior to June 1, 1919, the Secretary of the Interior is hereby authorized to grant the defendant a reasonable time after the sale for the removal of same, and the purchaser shall buy subject to the granting of such time for such purpose, or, in the event the defendant so desires, the said Secretary may appraise the value of such improvements and require the appraised value thereof to be paid to such defendant before issuing a certificate of sale of the land to the purchaser.

Sec. 5. That in appraising the lands preliminary to sale thereof the Secretary of the Interior shall also determine the places at which water for the food animals grazing the land is accessible, and shall in the patents issued to the purchasers reserve to the United States such areas including such places and such lands for driveways as will insure as far as practicable against exclusion from such watering places.

Sec. 6. That no individual or corporation shall purchase under the provisions hereof more than one of such units or parcels and any individual or corporation procuring or inducing another individual or corporation to purchase a unit or parcel otherwise than for the exclusive benefit of the purchaser, shall be guilty of a misdemeanor and upon conviction shall be liable to a fine in the amount of $1,000 or to imprisonment for six months, or both, in the discretion of the court.

Sec. 7. That all acts or parts of acts to the extent that they may be inconsistent herewith are hereby repealed, the United States hereby reserving unimpaired by any of the provisions hereof its right to recover title to any lands in the said former reservation heretofore acquired from it in contravention of then existing law.

Now, Mr. Chairman, I suggest this because of my disinterested sympathy for these men. I suggest it as a substitute for this pending bill because, in event of a reconveyance, you have the Secretary
of the Interior functioning with respect to public lands, lands over which he has jurisdiction, while if the present bill be enacted, he will be functioning in regard to privately owned lands and will be determining equities for those people at Washington, at a place remote from the lands.

I think that is all I desire to state at this time.

Mr. Evans. Mr. Chairman, we have not seen fit up to this time to inject ourselves into these hearings at all, and we do not think, from anything that has occurred—

The Chairman (interposing). By "we," whom do you mean?

Mr. Evans. The other attorney, Mr. Callister, and myself, who came here representing the defendants in the various suits. Nothing has occurred since to change our minds. In other words, we leave the matter to the good judgment of this committee.

The suggestion was made here before this committee by a gentleman a few moments ago that the proper thing would be to validate and confirm these matters, and we agree with him, and we think that that is the thing that this committee should do. I think it is the logical thing for the committee to do. We took that matter up with the department when we came down here, and we believe that the first thing that should have been done was to dismiss these suits, and if that could not be done, then they should validate and confirm the title; but the department did not agree to this, and they preferred this legislation, and consequently this legislation comes from them.

Mr. Raker. Where do you get any viewpoint as to the validating of the title?

Mr. Evans. Because the titles are being attacked by a bill in equity.

Mr. Barbour. The Government claims that the titles are not good.

Mr. Raker. I know that that is true. That is a fact. How are you going to validate something that somebody else says is invalid; they are either valid or invalid, are they not?

Mr. Barbour. Yes.

Mr. Raker. And the ground upon which they are invalid; that is, on the ground of fraud, so it is alleged. Are you going to ask to have titles validated on the ground of fraud?

Mr. Evans. We think that this measure should have been passed, validating these titles; that was our first view; our first view was that the suits ought to be dismissed.

Mr. Raker. And why do you suggest validation?

Mr. Evans. Simply because the department refused to dismiss the suits.

Mr. Raker. The mere fact that there is a suit pending does not affect your title.

Mr. Taylor. It will if the suit is decided against the defendants.

Mr. Raker. I am not arguing with counsel about the effect of suits, but the filing of the suits did not affect the title.

Mr. Evans. It affects it to the extent of the suit being filed, so long as that is pending.

Mr. Raker. How is that?

Mr. Evans. It affects it to the extent of the suit being filed, and probably a lis pendens has been filed.
Mr. Bailey. You would not advise a client to buy land where the suit has been brought against that land, would you?

The Chairman. Inasmuch as Mr. Loughran has commented on the fact, I will ask—on the fact that we had none of these defendants before us in these suits—I will ask you what you have to say about that?

Mr. Evans. Well, we did not think it was necessary that we should bring them here. We thought it would be much better to bring people here to testify before this committee who are wholly disinterested and knew substantially the same things that the defendants in that suit knew concerning the transaction.

The Chairman. I understand that one of the defendants in this suit is here?

Mr. Evans. Yes, sir.

The Chairman. Which one?

Mr. Evans. Mr. Albert Smith.

The Chairman. Mr. Albert Smith?

Mr. Evans. Yes, sir.

The Chairman. And he is the owner of 15,000 acres, is that right?

Mr. Evans. Yes, sir.

Mr. Raker. Now, if Congress or this committee reports out a bill validating certain patents, it is confessing, is it not, that they are invalid for some specified reason? Would not that be the natural inference drawn in such a case?

Mr. Evans. That may be so; but the Department of Justice says that these suits will be prosecuted if some action is not taken by Congress. In other words, they say now that the suits have been started, they have not any authority to dismiss them; and, because a record has been made in the land office there that they have searched this thing and believe some of these lands were bought by one individual and traded back in 640-acre lots.

Mr. Raker. Still you do not quite get my viewpoint. The fact that the suit has been brought does not of itself affect the title as to the legality or illegality—

Mr. Evans. That is true.

Mr. Raker. And the parties who bring a suit have the authority, without doubt, to dismiss it?

Mr. Evans. That is true.

Mr. Raker. And for Congress to take up and pass a bill validating the title is a concession that, upon the reading of the bill, the titles are illegal.

Mr. Taylor. No; that there is a doubt existing in regard to the title. We have had many bills for removing a cloud from the title.

Mr. Mays. We are passing every session bills to clear titles.

Mr. Raker. I asked Mr. Evans that question, and I have got two responses from him.

Mr. Evans. Are they not satisfactory to you?

Mr. Raker. Well, I do not say whether the responses are satisfactory or not. If they are not, and would not be so construed, I think that it would be foolish to pass any legislation or to pass any bills validating a title that is not invalid.

Mr. Evans. I do not know what the opinions of the different people are. Here is a title attacked by a suit, and that suit is pending, and certainly if Congress wanted to draw a bill, a bill could be drawn affecting this particular thing and validating these titles.
The CHAIRMAN. Is it your contention that the titles in all the 13 suits are valid?

Mr. EVANS. That they are all valid, no; I do not think I would go quite that far, but I would go this far, and say that probably a majority of those suits, if they actually go to trial, in many of the cases, the land that is attacked, the Government will not be able to set aside some of those titles, and the result of that will be that it will leave a mere checkerboard of this land. There will be people owning little tracts here and there and elsewhere, and the Government owning other tracts. If they are set aside by reason of this litigation, it may be long drawn out, and it will cost a world of money, and we thought that matter could be settled by an act of Congress without the Government and these people spending the necessary money that would be required in order to litigate these matters. If, after these titles are set aside, if any of them should be set aside, we would be left in a position where our land would be valueless to us, and the land surrounding us would be of no value, and the Government could not sell it to anybody else.

Mr. RAKER. Well, Mr. Evans, I will put it in another form, and that is, the committee being satisfied that the titles are valid, no wrong having been done whereby the Government or the Indians had been injured—

Mr. EVANS. Yes—

Mr. RAKER. We could by a simple resolution direct the Attorney General to dismiss all these cases.

Mr. EVANS. Yes.

Mr. RAKER. And that would cover it, wouldn't it?

Mr. EVANS. Yes, sir; and we would like to have you do that.

Mr. RAKER. But on the other hand, to pass a bill and come to the conclusion that the titles should be validated, we must determine, in coming to that conclusion, that it appears to us or appears to the committee that there are acts, facts, and conditions that if presented to a court would invalidate the title.

Mr. EVANS. I will admit that your proposition would be a much better proposition than the other, and it would satisfy us very well. We would be very glad to have such a resolution adopted, and which would do justice to all of the parties, and that would be the end of it. The Department of the Interior would probably oppose that kind of a resolution.

Mr. McPHERSON. Well, the Secretary of the Interior and the Commissioner of the Land Office and I myself are all in favor of S. 3016.

The CHAIRMAN. If there is nothing else before the committee, the hearing will be closed and the meeting adjourned.

(Whereupon, at 5.45 p. m., the hearing was closed and the committee adjourned.)

APPENDIX A.

COMMITTEE CORRESPONDENCE ON S. 3016 PRECEDING THE HEARING.

October 23, 1919.

HON. NICHOLAS J. SINNOTT,
House of Representatives, Washington, D. C.

DEAR SIR: As chairman of the House Committee on the Public Lands you are, of course, desirous of knowing all the facts in a situation with respect to which remedial legislation is sought by citizens of the country.
Concerning S. 3016, entitled "An act to authorize disposition of certain grazing lands in the State of Utah, and for other purposes," I respectfully call your attention to the fact that the title of the bill is really misleading, as the aim and object of the measure is to oust the United States District Court for the District of Utah of jurisdiction over suits instituted by the United States to cancel patents for public lands which have been procured through the practice of fraud and to quiet the title of the United States in and to such lands.

Within the period from April to June of the present year the United States filed 12 bills of complaint in the said district court with view to canceling patents for 100,000 acres, or more, of public lands of the United States which, as alleged in said bill, were procured fraudulently from the United States and in violation of the provision of the act of March 3, 1905 (33 Stat., 1069, 1070), to the effect that no person should acquire more than 640 acres of such lands. It is set out in the Government's bills of complaint that certain persons induced other persons to lend the names of such other persons in effectuation of a plan to acquire fraudulently for one or more individuals a larger area of the lands authorized to be sold under said act than any individual was permitted to acquire.

The suits to which I refer are numbered in the said district court as Nos. 5549, 5550, 5551, 5552, 5561, 5562, 5563, 5565, 5566, 5567, 5568, and 5601. The defendants named in these proceedings have not answered the bills, they having requested and obtained an extension, by stipulation, of the time for answering.

I think I may state that it is well understood that the extension of time for answering was sought and granted because the defendants, and those interested in them, intended seeking relief through a special act of Congress. It is plain that S. 3016 is the measure in which these defendants are interested and which they are desirous of having enacted by the Congress and approved by the President. You will observe on reading the said bill that it undertakes to amend the act of March 3, 1905, by striking therefrom the provision which said defendants are alleged to have violated, to wit, the provision that no person should acquire more than 640 acres of the lands authorized to be sold under said act of 1905. Furthermore, if the pending bill is enacted and approved by the President the District Court of the State of Utah will be ousted of jurisdiction over the suits now pending.

Another purpose sought to be accomplished by S. 3016 is that of clothing the Secretary of the Interior with authority to do pretty much what he would desire to do with respect to the 100,000 acres, or more, which said defendants are alleged to have procured fraudulently from the United States. I have never seen any bill a more complete delegation of the constitutional authority of Congress with respect to the public lands than that proposed in S. 3016, for said bill seeks to clothe the Secretary of the Interior with the power to confirm and ratify the fraudulent purchases which are the subject of the said suits. The bill seeks to do more than that, as its object is to condone the crimes against the United States perpetrated by the defendants in the acquisition of the patents to the 100,000, or more, acres of the public lands.

There is now on the statute books of the United States what is known as a repayment law relating to entries and filings under the public land statutes. Such repayment law forbids the return of money in cases where the filings or entries were tainted with fraud or were made in attempt at the perpetration of fraud. S. 3016 proposes amendment of such repayment law to the extent of the purchases which are condemned by the United States in the said bills of complaint, for S. 3016 provides that the persons to whom the fraudulently procured title under the patents passed may surrender the patents for cancellation and obtain a refund of the amounts paid in making the purchases. The policy of the repayment law now on the statute books is to penalize, by retaining fees and commissions, any person who has attempted fraudulently to appropriate the public lands.

I am writing you in order that through you the members of the House Committee on the Public Lands may be apprised of the facts of which you are entitled to have notice and which were not given your committee in the report, under date of September 19, 1919, I believe, made by the Secretary of the Interior on S. 3016. No one reading the report of the Secretary of the Interior on said measure could possibly infer therefrom that the purpose of the bill was to oust the United States district court for the district of Utah of jurisdiction over the said bills in equity filed by the United States, nor would anyone reading the said report of the Secretary of the Interior infer there-
from that it was the Department of the Interior that recommended to the Department of Justice the institution of the suits now pending in said district court for cancellation of the patents fraudulently procured. It was on April 23, 1919, that the Secretary of the Interior wrote the Department of Justice requesting that suits be instituted to vindicate the law and to regain for the United States lands believed to have been stolen therefrom.

Previous to this recommendation of the Department of the Interior to the Department of Justice the peoples' money had been expended by the Department of the Interior in defraying expenses incident to investigations which he had ordered to ascertain the facts with respect to the purchases under the act of 1905 which the pending bills in equity by the United States so completely condemn as being unclean and unlawful. In short, already has the United States, at the expense of the people, ascertained to the satisfaction of two branches of the executive departments and the Department of Justice, that more than 100,000 acres of the public lands had been fraudulently acquired, and yet the Congress of the United States is now about to enact legislation, under a misleading title, the effect of which would be to condone the fraud against the United States and to perpetuate in the perpetrators of the fraud title to lands of the people acquired in contempt of law and through the practices of deceit and fraud.

I say to you that such legislation as is contemplated under S. 3016 is of a special privilege character and of a nature calculated to excite distrust and suspicion in our Government and to breed and foster a spirit of I. W. W.'ism and Bolshevism, which is rampant in the country to-day.

If you ask me whom I represent in this matter, I reply that this bill was brought to my attention by a resident of Heber, Utah, but only after the bill had passed the Senate, had been reported favorably from the House Committee on Public Lands, and held an advantageous place on the Union Calendar and the Unanimous Consent Calendar of the House of Representatives. If you ask me what benefit will accrue from defeat of this measure I reply that the benefit will be increased confidence in the agencies of Government as well as notice to persons who have willfully violated the law that they need not apply to the Congress of the United States to be relieved from the proper consequences for contempt of the will of Congress.

It is significant that the defendants in the suits referred to have not answered the bills but have sought to oust the courts of jurisdiction to hear and determine the merits of the allegations of the bill, thereby justifying the inference that the defendants are absolutely without any defense against the charges of wrongdoing which have been formally and seriously preferred against them in the name of the people of the United States.

The lands to which the suits and the said bill relate are grazing lands, and the bill, enacted and approved by the President, will result in the acquisition by sheep or cattle interests of a range which they obtained from the United States fraudulently and which the Congress of the United States proposes perpetrating in them.

It is no defense of the bill to say that it clothes the Secretary of the Interior with power to do this or to do that in protection of the interests of the United States. Whatever interest the United States now has in these lands would doubtless be fully protected in and under the decrees of the courts entered in the proceedings which the United States has instituted. Before the judiciary—not before any executive officer—should the defendants in the said bills make their defense, just as any American citizen less influential than they would be obliged to do in similar circumstances.

I have in my office a letter from a gentleman in Heber, Utah, which I shall be very glad to present to your committee, and in which will be found a statement indicative of the righteous indignation against this measure which some people of Utah feel and would have no hesitancy in voicing.

I was told by you this afternoon that I should present a statement in this matter in writing to-day, as you thought an attempt would be made in the House to-morrow to obtain unanimous consent for the passage of S. 3016. The above and foregoing is the only statement I think you should insist upon having in order to place you upon inquiry as to the real objective of the measure which your committee has reported to the House of Representatives and recommended be enacted. In my judgment, it is your duty, permit me to suggest, to cause the said bill to be recommitted to the House Committee on the Public Lands until such time as the verity of the representations appearing in this
communication to you can be established, as they can readily be established, on inquiry at the Department of the Interior and the Department of Justice. I am quite sure that no House resolution would be necessary to bring to it from the Department of the Interior and the Department of Justice a complete statement concerning the 100,000 acres or more which both of those departments have concluded were fraudulently obtained from the United States, and which S. 3016 undertakes to confirm in the persons who violated the law in obtaining that vast area from the Government.

Very respectfully,

PATRICK H. LOUGHRAN.

OCTOBER 24, 1919.

PATRICK H. LOUGHRAN,
Attorney at Law, Mills Building, Washington, D. C.

My Dear Sir: I beg to acknowledge your letter of October 23, by special delivery last evening.

Kindly give me the name of the person referred to in your letter giving you the information therein contained.

Very truly, yours,

N. J. SINFOTT.

OCTOBER 25, 1919.

Hon. Chas. J. Sinnott,
House of Representatives, Washington, D. C.

(Senate 3016. Now on Unanimous Consent and Union Calendars of the House.)

Dear Sir: Complying with the request made in your letter to me of the 24th instant I have pleasure in sending to you herewith an exact copy of a letter to me from Mr. Andrew McDonald, of Heber, Utah.

Aside from those statements in my letter to you of the 23rd instant, which are of the nature of criticisms and conclusions, the representations of said letter to you are fully sustained by the records of the General Land Office and of the Division of Public Lands, Department of Justice.

Permit me to state that my activities against Senate 3016 have not been wholly induced by the statements appearing in Mr. McDonald's letter to me nor by the small remittance to me which accompanied that letter. The said bill is essentially vicious and as perfect an example of the spirit of special privilege seeking to have Congress accommodate and serve it as could be found anywhere on earth.

It seems to me that it would be but duty performed if Congress requested the Secretary of the Interior or the Attorney General to report to it the findings of the investigations which were made preliminary to filing of suits by the United States to cancel the alleged fraudulently obtained patents and thereby recover a vast area of the public lands alleged to have been fraudulently acquired.

If you are of opinion that it would serve a public interest if I were to appear before your committee and present my criticisms of the bill orally, I shall be very glad to do so.

Very truly, yours,

PATRICK H. LOUGHRAN.

[Copy.]

HEBER HORSE AND CATTLE GROWERS' ASSOCIATION,
WITH WALLSBURG LIVE STOCK ASSOCIATION, LESSEES OF UNITED STATES RECLAMATION LANDS, STRAWBERRY VALLEY,
Office in Bank Block, Heber, Utah.

Mr. Patrick H. Loughran,
Attorney at Law, Washington, D. C.

Sir: I received your letter dated October 11 and am herein sending you the check for $50.

We feel that if the bill can be held up until the report of the special investigators can reach Washington the bill will never pass. This report will probably be in Washington within the next 15 days.
We feel that this land matter is the biggest steal ever pulled off in the State and the people in general to a man are disgusted with the perpetrators and with the officers and legislators who are so vigorously attempting to ratify the deal with new legislation.

This investigation was instigated by the homesteaders and farmers of Duchesne County. Their reasons for asking for such an investigation were that the Government had required them to spend five years of the best of their life on 160 acres of land while their rich neighbors from Salt Lake City and elsewhere were permitted to purchase as much as 40 or 50 sections of land adjoining them at the nominal price of 50 or 75 cents per acre. To-day these farmers can not turn an animal out of their own corral without trespassing on some of this stolen land. The men who purchased these lands excuse their unlawful acts by contending that the Government agent who sold the land knew they were purchasing the lands fraudulently and aided them in the deal. It is our positive knowledge that the agent at the land sale repeatedly said, "Gentlemen, remember the law and do not buy more than 640 acres."

While we have not lost faith in the honesty of the majority of the Members of the Senate and the House, yet we do feel they have been misinformed with reference to this matter and have allowed the bill to get as far as it has through ignorance of the facts in the matter rather than through intent to relieve these willful violators.

We feel certain that if this bill is delayed until this session of Congress adjourns it will never again be presented and the courts will take this land away from these men, and it is then we want you to assist us on the big job of getting this land put into the forest reserve, where we feel it properly should be and where we feel it can be put. The people are back of having this land placed in the forest reserve, because they are the ones to receive the benefits.

Respectfully,

(Signed) Andrew McDonald.

October 29, 1919.

Hon. Franklin K. Lane,
Secretary of the Interior, Washington, D. C.

My Dear Mr. Secretary: In regard to S. 3016, Sixty-sixth Congress, first session, upon which following action has been taken:
September 16, 1919, introduced in Senate by Mr. Smoot.
September 22, 1919, reported favorably by Mr. Smoot from the Public Lands Committee, Report No. 211.
September 22, 1919, passed the Senate.
September 23, 1919, referred to House Committee on Public Lands.
October 10, 1919, reported to House, Report No. 371.

I am inclosing herewith a copy of the bill and House report on same.

The files of the committee contain a letter written by you on August 21, 1919, to Senator Smoot, being a report on S. 2768 and S. 2769.

A few days ago Patrick H. Loughran, an attorney of this city, called upon me in regard to this legislation, protesting against the same on behalf of certain parties in Utah, whom he said that he represented. I asked him to write to me the substance of his protest. He did this, and I inclose letter from him dated October 23, 1919. Upon receipt of same I asked him to write me the name of the party referred to in the above letter. He did so and I inclose the letter, which is dated October 25, and also the inclosure with said letter.

I am this morning in receipt of several telegrams from Heber, Utah, protesting against the passage of S. 3016. I inclose herewith copies of same for your further information.

I should be glad to have you write to me at once giving your views on the matters brought out by Mr. Loughran in his letters and referred to in the telegram from Utah. The bill is now on the Unanimous Consent Calendar and may soon be reached for consideration by the House, so I would appreciate this information as soon as you can conveniently furnish it.

Kindly return Mr. Loughran's letter with your reply.

Very truly, yours,

N. J. Sinnott.
DEPARTMENT OF THE INTERIOR,
Washington, November 8, 1919.

Hon. N. J. Sinnott,
Chairman Committee on the Public Lands,
House of Representatives.

My dear Mr. Sinnott: I am in receipt of your letter of October 29, 1919, inclosing copies of letters dated the 23d and 25th ultimo, respectively, from a local attorney, together with copies of various telegrams from residents of Heber, Utah, opposing the enactment of S. 3016. You request my views on the matters brought out by the letters of the attorney and telegrams mentioned.

It is asserted by the attorney that "the aim and object of the measure is to oust the United States District Court for the District of Utah of jurisdiction over suits instituted by the United States to cancel patents for public lands which have been procured through the practice of fraud and to quiet the title of the United States in and to such lands." It is respectfully submitted that the bill, if enacted into law, would not necessarily in any manner affect suits now pending to cancel certain patents for lands within the former Uintah Indian Reservation. The principal purpose of the act is to remove the limitations as to future sales of the act of March 3, 1905, in so far as it was provided thereby that not more than 640 acres of such lands could be sold to any one person, and it is also provided that where the validity of purchases heretofore made under the act of March 3, 1905, have been or may hereafter be questioned in any departmental or court proceeding on the ground that a larger area than 640 acres has been, directly or indirectly, acquired by one person or corporation, the Secretary of the Interior is authorized, in his discretion, to accept a reconveyance of the lands involved in such proceeding and to repay to the purchaser or his assigns the purchase money paid therefore, or to validate, ratify, and confirm such sales, or to examine and determine the present value of said lands, and upon payment by the patentee or purchaser or his assigns of the difference between the amount heretofore paid and such ascertained value to validate, ratify, and confirm such sales.

The bill, if enacted into law, will not ratify any fraudulent sale nor furnish the defendants against whom suits are now pending or in cases where suits may hereafter be brought any defense, either equitable or legal. It does not nor will it in any manner deprive the person against whom such suit may be brought of any right he now has. The proviso, as aptly stated by your committee, does, however, offer a solution as to the settlement of suits now pending affecting the title to upward of 60,000 acres of land and as to other tracts against which proceedings are now pending or may hereafter be brought in the courts or in the department. It is claimed on behalf of some, if not all, of the parties against whom suits are pending that the purchases were made under a misapprehension of the law, but as ignorance of law will not constitute a good defense all of such patents will necessarily be set aside by the court if it be found that the purchases were made in contravention of the aforesaid act of Congress. The bill merely authorizes the Secretary of the Interior to inquire into these matters and, in his discretion, to extend certain relief. If the Secretary of the Interior should conclude that the facts in any given case did not warrant the exercise of his supervisory authority, the suits now pending or that might hereafter be brought could be prosecuted in the manner now authorized by law.

It is deemed quite necessary, in the interest of the Indians to whom the proceeds of the sale will go, that the provision in the act of 1905, restricting the amount that anyone may purchase to 640 acres, be eliminated. Approximately 180,000 acres of grazing lands, for the most part of inferior quality, remain to be disposed of, and I am advised that such lands in quantities of 640 acres are well-nigh worthless, but that in larger quantities could probably be disposed of to advantage.

In my letter of October 7 to Hon. John E. Raker, of your committee, I gave the names of the parties against whom and the areas involved in the suits now pending upon the charge that lands in excess of 640 acres had been procured.

Upon further consideration, in the light of the matters suggested in the inclosures with your letter, I find no reason to modify my previous recommendation that S. 3016 be enacted into law.

Cordially yours,

FRANKLIN K. LANE.
Secretary.
The ATTORNEY General,

Department of Justice, Washington, D. C.

MY DEAR GEN. PALMER: I inclose herewith copy of S. 3016, Sixth-sixth Congress, first session, upon which the following action has been taken:

Sept. 16, 1918, introduced in Senate by Mr. Smoot.
Sept. 22, 1919, reported favorably by Mr. Smoot from the Public Lands Committee. Report No. 211.
Sept. 22, 1919, passed the Senate.
Sept. 25, 1919, referred to House Committee on Public Lands.

Also inclose copy of report thereon made from the House Committee on Public Lands. This report contains a copy of letter from Secretary Lane, dated September 19, making favorable report on the bill.

After the same was reported, I received a letter from Patrick H. Loughran, an attorney of this city, dated October 25, 1919, of which I inclose a copy. I inquired of Mr. Loughran the name of his informant as to the statements alleged in his letter in regard to the matter. In reply thereto I received a letter from him dated October 25 of which I inclose a copy, and also copy of letter sent by him with said last-mentioned letter.

You will note that Mr. Loughran refers to certain suits which have been instituted by your department in the United States District Court for the District of Utah. In view of this I wish you would be good enough to make a report to me for the benefit of the committee on the whole matter. You will also note that Mr. Loughran suggests that the passage of the bill might be an embarrassment to your department in the further prosecution of such suits.

I am also informing the Secretary of the Interior from whom I have asked a further report, that I am requesting a report from your department. In view of the fact that this bill is on the House Calendar would appreciate as prompt action in this matter as you can consistently take. With best wishes,

Very truly yours,

N. J. SINNOTT.

OFFICE OF THE ATTORNEY GENERAL,
Washington, November 6, 1919.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands,
House of Representatives.

MY DEAR MR. SINNOTT: I have the honor to acknowledge the receipt of your letter of the 1st instant, inclosing a copy of Senate bill 3016, entitled "An act to authorize the disposition of certain grazing lands in the State of Utah, and for other purposes," and requesting a report thereon, in view of certain communications addressed to you by Patrick H. Loughran, an attorney of this city, with reference to this proposed legislation.

Thirteen suits were instituted in the United States District Court for the District of Utah against various individuals, arising out of alleged unlawful transactions in the acquisition of certain lands in the former Uintah Reservation in that State which were disposed of by the Land Department at public sale pursuant to the authority contained in the act of Congress approved March 3, 1905 (33 Stat., 1069). The area involved is reported to be about 100,000 acres.

The basis of the bills was that the restriction in the law limiting acquisition to 640 acres by one person was violated, and that the ostensible purchasers of the lands involved did not acquire the lands for their own use and benefit, but solely in the interest of others who sought to acquire a greater area than was permitted under the law.

I have not the facts before me upon which these suits were predicated, for the reason that at the time recommendation for the institution of them was made by the Department of the Interior, reports had not yet been received by that department. One of its agents had procured the facts, and as it was essential that suits be instituted within a few days in order to avoid the statute of limitations (sec. 8 of the act of Mar. 3, 1891, 26 Stat. 1065, 1069), telegraphic authority was given the United States attorney at Salt Lake City to take such action as was warranted under the law upon the facts presented to him by the agent.
For your information I am transmitting a photographic copy of the bill of complaint in case No. 5601, and although I have not copies of all the other bills, I take it that this is typical of the allegations made in the bills in the other cases.

With respect to the bill S. 3016, which has passed the Senate, it seems clear that under the proviso contained therein the Secretary of the Interior would be vested with authority to settle not only cases pending in his department in which violation of the restriction on acreage was alleged, but also the litigation which is pending in the United States District Court for the District of Utah.

I may state that after the bills were filed, persons who were involved in this litigation conferred with the Assistant Attorney General then in charge of the Public Lands Division as to the attitude of this department with respect to proposed legislation to settle this litigation. Representations were made which were urged as extenuating circumstances in connection with the acquisition of these lands by the methods used. The suggestion was made to these persons that inasmuch as the litigation was instituted by this department at the request of the Secretary of the Interior, the question of relief legislation ought more properly to be taken up with him.

Very respectfully,

A. Mitchell Palmer,
Attorney General.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 7, 1919.

Hon. N. J. Sinnott,
Chairman Committee on Public Lands, House of Representatives.

Dear Mr. Sinnott: Supplementing my letter of yesterday relative to Senate 3016, I am sending you a copy of a communication addressed to Hon. Louis C. Cramton, House of Representatives, in answer to a letter from him making inquiry with respect to the same proposed legislation.

I forward this copy for the reason that it contains information additional to that in my letter to you, and which is responsive to certain special inquiries made by Mr. Cramton.

Very respectfully,

For the Attorney General.
Frank K. Nebeker,
Assistant Attorney General.

November 7, 1919.

Hon. Louis C. Cramton,
House of Representatives.

Dear Mr. Cramton: I am in receipt of your letter of the 4th instant, relative to Senate bill 3016 entitled "A bill to authorize the disposition of certain grazing lands in the State of Utah, and for other purposes."

I am transmitting for your information a copy of a communication dated November 6, 1919, addressed to Hon. N. J. Sinnott, chairman of the Committee on Public Lands of the House of Representatives, making a statement regarding this bill and which covers a number of the inquiries which you make in your letter.

I am also sending you herewith a copy of the bill of complaint in case No. 5601. As is indicated in my letter to Mr. Sinnott, no report on the legislation had been made by this department.

So far as the records of this department show, no answers have been filed by the defendants to these bills. In view of the fact that endeavors were being made to secure relief legislation, and in pursuance of a request made in behalf of the persons involved in the litigation, instructions were issued to the United States Attorney at Salt Lake City authorizing him to agree to an extension of time for answer in the several cases and to hold the prosecution of these cases in abeyance pending further instructions. So far as I am advised, the court in which the cases are pending has taken no formal action in the matter, nor has the question of extension of time been presented to it.

An enumeration of the 13 cases which are pending follows:

5549. United States v. David Smith, instituted April 29, 1919.
GRAZING LANDS IN UTAH.

5565. United States v. Thomas Jones et al., instituted May 7, 1919.
5569. United States v. Thomas Tones et al., instituted May 7, 1919.
5570. United States v. William T. Coleman et al., instituted May 12, 1919.
5572. United States v. Wm. J. Lindsay, instituted June 25, 1919.

Very respectfully,

For the Attorney General.

Assistant Attorney General.

DECEMBER 15, 1919.

HON. A. MITCHELL PALMER,

Attorney General of the United States, Washington, D. C.

Dear Mr. Palmer: I am in receipt some time ago of your letter of November 6 with reference to Senate bill 3016. In view of the fact that it has been charged that the aim and object of said bill "is to oust the United States District Court for the District of Utah of jurisdiction over suits instituted by the United States to cancel patents for public lands which have been procured through the practice of fraud, and to quiet the title of the United States in and to such lands," I feel that the Committee on the Public Lands of the House is entitled to know whether or not you approve of this bill, and would greatly appreciate a report from you as to whether or not you approve this bill.

Very truly, yours,

N. J. S Fnott.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., December 18, 1919.

HON. N. J. SInnotT.

Chairman Committee on the Public Lands,

House of Representatives.

Dear Mr. Sinnott: I have yours of 15th instant relative to Senate bill No. 3016. Complying with your request that I let you know whether I approve of the bill, I can only say that I am not sufficiently advised as to the grounds upon which legislative relief is urged to enable me to form an opinion one way or the other.

From the file in this department relating to the suits brought by the United States attorney for the district of Utah involving lands purchased by the defendants under the act of March 3, 1905, I infer that the defendants in those suits claim that there are extenuating circumstances in their favor which should be taken into consideration by the Government. The department is satisfied that the extenuating circumstances referred to; whatever they may be, constitute no defense to the pending suits, and that whether they are worthy of consideration at all is a matter for the Congress to determine. The passage of the act referred to would undoubtedly put an end to the suits, but that fact, as I view it, is immaterial if the Congress determines that there is a just basis for the relief provisions of the bill.

Without having before me considerably more information than is contained in the department file, I would be unable either to approve or disapprove the bill.

Very truly, yours,

A. MITCHELL PALMER,

Attorney General.

DECEMBER 22, 1919.

HON. A. MITCHELL PALMER,

Attorney General of the United States, Washington, D. C.

My Dear General Palmer: I have your letter of December 19 relative to Senate bill No. 3016. The House Committee on the Public Lands set the following date for a hearing on this legislation: January 5, 1920, at 10 o'clock a. m.
I should be glad if you will send a representative of your department who is informed concerning this legislation to appear before the committee at that time.

Wishing you the compliments of the season, I remain, Yours, very truly,

N. J. Sinnott.

APPENDIX B.

ACT OF MAY 27, 1902.

[32 Stat., 263, 264.]

That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes of Ute Indians, to be ascertained as soon as practicable by an inspector, shall cause to be allotted to each head of a family eighty acres of agricultural land which can be irrigated and forty acres of such land to each other member of said tribes, said allotments to be made prior to October 1, 1903, on which date all the unallotted lands within said reservation shall be restored to the public domain: Provided, That persons entering any of said land under the homestead law shall pay therefor at the rate of $1.25 per acre: And provided further, That nothing herein contained shall impair the rights of any mineral lease which has been approved by the Secretary of the Interior, or any permit heretofore issued by direction of the Committee of the Interior to negotiate with said Indians for a mineral lease; but any person or company having so obtained such approved mineral lease or such permit to negotiate with said Indians for a mineral lease on said reservation, pending such time and up to thirty days before said lands are restored to the public domain as aforesaid, shall have in lieu of such lease or permit the preferential right to locate under the mining laws not to exceed six hundred and forty acres of contiguous mineral land, except the Raven Mining Co., which may in lieu of its lease locate one hundred mining claims of the character of mineral mentioned in its lease; and the proceeds of the sale of the lands so restored to the public domain shall be applied, first, to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions; and the remainder, under the direction of the Secretary of the Interior, shall be used for the benefit of said Indians. And the sum of $70,064.48 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid to the Uintah and the White River tribes of Ute Indians, under the direction of the Secretary of the Interior, whenever a majority of the adult male Indians of said tribes have consented to the allotment of lands and the restoration of the unallotted lands within said reservation as herein provided.

Said item of $70,064.48 to be paid to the Uintah and White River Utes covers claims which these Indians have made on account of the allotment of lands in the Uintah Reservation to Uncompahgre Indians and for which the Government has received from said Uncompahgre Indians money aggregating $60,064.48; and the remaining $10,000 claimed by the Indians under an Act of Congress detaching a small part of the reservation on the east and under which Act the proceeds of the sale of the lands were to be applied for the benefit of the Indians.

ACT OF MARCH 3, 1905.

[33 Stat., 1069, 1070.]

That so much of the Act of March 3, 1905, as provides that the grazing lands to be set apart for the use of the Uintah, White River Utes, and other Indians on the Uintah Reservation, as provided by public resolution numbered 31, of June 19, 1902, shall be confined to the lands south of the Strawberry River, be, and the same is hereby, repealed.

That the time for opening to public entry the unallotted lands on the Uintah Reservation in Utah having been fixed by law as the 10th day of March, 1905, it is hereby provided that the time for opening said reservation shall be extended to the 1st of September, 1905, unless the President shall determine that the same may be opened at an earlier date and that the manner of opening such lands for settlement and entry, and for disposing of the same, shall be as
follows: That the said unallotted lands, excepting such tracts as may have been set aside as national forest reserve, and such mineral lands as were disposed of by the Act of Congress of May 27, 1902, shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settled upon, occupy, or enter any of said lands, except as prescribed in said proclamation, until after the expiration of sixty days from the time when the same are thereby opened to settlement and entry: Provided, That the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish War or Philippine insurrection, as defined and described in sections 2304 and 2305 of the Revised Statutes, as amended by the Act of March 1, 1901, shall not be abridged: And provided further, That all lands opened to settlement and entry under this Act remaining undisposed of at the expiration of five years from the taking effect of this Act shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one person. The proceeds of the sale of such lands shall be applied as provided in the Act of Congress of May 27, 1902, and the Acts amendatory thereof and supplemental thereto.

That before the opening of the Uintah Indian Reservation the President is hereby authorized to set apart and reserve as an addition to the Uintah Forest Reserve, subject to the laws, rules, and regulations governing forest reserves, and subject to the mineral rights granted by the act of Congress of May twenty-seventh, nineteen hundred and two, such portion of the lands within the Uintah Indian Reservation as he considers necessary, and he may also set apart and reserve any reservoir site or other lands necessary to conserve and protect the water supply for the Indians or for general agricultural development, and may confirm such rights to water thereon as have already accrued: Provided, That the proceeds from any timber on such addition as may with safety be sold prior to June thirtieth, nineteen hundred and twenty, shall be paid to said Indians in accordance with the provisions of the act opening the reservation.

SALE OF UNENTERED UINTAH INDIAN LANDS.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 9, 1910.

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

Sir: It is directed that all of the unreserved, nonmineral lands within the former Uintah Indian Reservation in the State of Utah, opened to settlement and entry under the proclamation of July 14, 1900, which remain unentered on August 28, 1910, and to which no valid existing rights have attached under the public-land laws, be offered for sale at public auction under the supervision of James W. Witten, superintendent of the opening and sale of Indian lands, at the city of Provo, Utah, on November 1, 1910, and thereafter, in legal subdivisions approximating 160 acres each, as near as may be, except in cases where the owners or purchasers of lands adjacent to offered tracts shall request the offering of such adjacent tracts in smaller legal subdivisions.

No person shall be permitted to purchase more than 640 acres in his own right, or at a less price than 50 cents per acre, and the purchaser of each tract must pay the entire purchase price thereof to the receiver of the Vernal United States land office, then temporarily at Provo, before 4.30 o'clock p. m. on the second day after the sale thereof, and if he fails to so make such payment, he will forfeit all right to the tract so purchased, and the tract will be again offered on the next day after he makes default in such payment, and any person so defaulting will not be permitted to bid for or purchase other tracts at this sale.

The superintendent of the sale will be authorized to prescribe such rules for the proper conducting of the sale, not in conflict herewith, as the exigencies may require, and he may at any time suspend or indefinitely postpone the sale, or adjourn it to such time or place as he may deem advisable, and may reject
any and all bids which in his opinion are less than the actual cash value of the land offered.

All persons are warned under the penalty of the law against entering into any agreement, combination, or conspiracy, which will prevent any of said lands from selling advantageously, or which will result in any one person becoming the purchaser of more than 640 acres at said sale, and all persons so offending will be prosecuted criminally for so doing.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

APPENDIX C.


An act to authorize the disposition of certain grazing lands in the State of Utah, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the act of Congress approved March 3, 1905 (Public, Numbered 212), as limited the sale of Indian lands in the former Uintah Indian Reservation, in Utah, remaining undisposed of five years from the taking effect of the act to disposition in tracts of not more than six hundred and forty acres to any one person be, and the same is hereby, repealed, and such lands shall remain subject to disposition as provided by law, under rules and regulations to be prescribed by the Secretary of the Interior: Provided, That where the validity of purchases heretofore made under the act of March 3, 1905, have been or may hereafter be questioned in any departmental or court proceeding on the ground that a larger area than six hundred and forty acres has been directly or indirectly, acquired by one person or corporation, the Secretary of the Interior is authorized, in his discretion, to accept a reconveyance of the lands involved in such proceeding and to repay to the purchaser or his assigns the purchase money paid therefor, or to validate, ratify, and confirm such sales, or to examine and determine the present value of said lands and upon payment by the patentee or purchaser or his assigns of the difference between the amount heretofore paid and such ascertained value, to validate, ratify, and confirm such sales.

Passed the Senate September 22, 1919.

Attest: GEORGE A. SANDERSON, Secretary.