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The Aztec Land & Cattle Co. sought to exchange 85,000 acres of land in the Sitgraves National Forest in Arizona for timber to the value of $100,000. Very shortly after this proposal was made I received a protest from the county authorities, claiming that this 85,000 acres of land were now taxable in the county, and were included in certain high-school districts where bonds had been issued. In order to determine whether the county would gain or lose, I referred the matter to the United States Forest Service, and found that if this land were included within the national forest and became thereby a basis for the apportionment of road and other funds, in truth and in fact the county would not lose anything; and I therefore so advised the board of supervisors, and, as I understand, they have withdrawn their protest against the proposed exchange.

AMENDMENT TO FEDERAL AID ROAD ACT

Another illustration of how the Federal Government makes up to the public-land States for the loss of revenue by reason of the inability of the States to tax Federally owned land is found in the act of November 9, 1921. The original Federal aid act of July 11, 1916, provided that for every dollar appropriated by Congress the States should provide a like amount for the construction of public roads. The money appropriated—and it now amounts to $75,000,000 a year—is apportioned among the several States in proportion to their area, their population, and the mileage of post roads. Area is about all that we have in many of the Western States that amounts to anything as a factor in obtaining Federal-aid road funds; but that very fact emphasizes the burden which we have forced upon us in the building of many, many miles of Federal-aid highways across lands that are nontaxable because they are the property of the United States.

This so-called 50-50 proportion we found to be unbearable in the West. The State of Montana was utterly unable, one year, to meet the sum of money apportioned for Federal aid, and allowed over a million dollars to lapse into the Federal Treasury, because it could not be matched. I know that my own State has experienced difficulty in meeting the apportionment of Federal aid that has been made to it, and it is only in some cases by reason of county road-bond issues that that cooperation could be made.

In recognition of that fact, Congress provided in the act which I have cited—

> That when the Secretary of Agriculture approves such surveys, plans, specifications, and estimates, he shall notify the State highway department and immediately certify the fact to the Secretary of the Treasury. The Secretary of the Treasury shall thereupon set aside the share of the United States payable under this act on account of such projects, which shall not exceed 50 per cent of the total estimated cost thereof—

Now, note these words:

> except that in the case of any State containing unappropriated public lands exceeding 5 per cent of the total area of all lands in the State, the share of the United States payable under this act on account of such projects shall not exceed 50 per cent of the total estimated cost thereof plus a percentage of such estimated cost equal to one-half of the percentage which the area of the unappropriated public lands in such State bears to the total area of such State.

THE ODDIE ROAD BILL

Recently, both Houses of Congress passed a bill introduced by the junior Senator from Nevada [Mr. ODDIE], which contained a further recognition of the fact that by reason of ownership by the United States of large areas of lands within the Western States, maintained in public ownership in many instances to carry out the national policy of conservation, the States wherein these reserved lands are located were utterly unable to build a proper highway system. The bill, S. 3674, to amend the act entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, as amended and supplemented, and for other purposes, provided that for the purpose of carrying out that act there might be appropriated $3,500,000 for each fiscal year during the next three years for the construction of main roads through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations.

In his report upon that bill the Senator from Nevada [Mr. ODDIE] pointed out that in 11 Western States there are great areas of land owned by the Federal Government.

In the State of Washington the percentage of the total area Federally owned is 30.6 per cent; in Montana, 30.8 per cent; in Oregon, 45.6 per cent; in Idaho, 57.3 per cent; in Wyoming, 51.8 per cent.

In the State of California the Federal Government owns 40.7 per cent of the total area of the State; in Colorado, 32.2 per cent; in New Mexico, 37.7 per cent; in Utah, 63.3 per cent; in Arizona, 66.8 per cent; and in Nevada, 84.2 per cent.

The Senator from Nevada presented an argument to the Senate which was so convincing that the Senate, by a vote of yeas 57 to nays 22 sought to pass this bill over the President's veto. The Oddie bill was a further recognition of the principle that the Federal Government should contribute to make up the loss to States caused by withholding public lands, forest reserves, Indian reservations, and national parks from local taxation.

Let me assure the Senate that the junior Senator from Nevada [Mr. ODDIE] is just as earnest and just as insistent as the senior Senator from that State [Mr. PITTMAN] that full and complete justice shall be done to the State for which they both speak in this body. Like his colleague, Senator ODDIE fully realizes that if the power generated at Boulder Canyon is sold in California at a fair price it will be exceedingly profitable to the people of that State and that they can well afford, without in any way hampering the growth and prosperity of California, to pay to Arizona and Nevada just compensation for the use of their lands and their waters.

The junior Senator from Nevada is a trained engineer, a man of mathematical mind, who can conclusively demonstrate to the Senate the great benefits which will flow to California from the proposed development at Boulder Dam. He can likewise prove—and I am sure that the Senate will be glad to have him do it—that if every demand that Nevada and Arizona now make were complied with to the letter the people of southern California would still receive a cheaper and a more certain supply of electrical energy than will be available to them from any other source in the years to come.

Senator ODDIE knows that the Colorado River, where it forms their common boundary, is a natural resource, an asset, of the States of Arizona and Nevada in which the two States share equally. He knows that the people of Arizona and Nevada are entitled to enjoy a fair share of the benefits which will flow from the development of this gift which nature has made to them, which is theirs and which does not belong to the people of California who would use it. He will not fail to expose the cleverly designed plan of the Californians, first, to induce the United States to go into the power business, and second, to use that Federal activity as the excuse for mulcting Arizona and Nevada out of their taxes.

PURCHASE OF LANDS FOR INDIANS

A few days ago the senior Senator from New Mexico [Mr. BRATTON] directed the attention of the Senate to a proposal to purchase lands for the Navajo Indians. No one in my State objects to the purchase of such lands, except that where privately owned lands now upon the tax roll are purchased for the use of Indians, the title to the property then vests in the United States, and the lots are thereby automatically taken out of taxation.

The Navajo Indians on the Fort Defiance jurisdiction in Arizona desired to purchase the surface rights to 90,598 acres of leased railroad-grant lands in Apache County. The lands are only valuable for grazing purposes, and are assessed, if my information is correct, at 93 cents an acre.

The board of supervisors of Apache County, Ariz., when they were advised of the proposal to purchase these railroad-grant lands which are now leased by the Indians, wrote to me protesting that it would be unfair to the county to allow these lands to be bought by the Indians, and thereby taken out of taxation. The same condition exists in other counties in Arizona. The Indians of the western Navajo Reservation desire to purchase 26,000 acres of land belonging to the Babbitt Bros. Trading Co., valued at about $3 an acre. That value is primarily due to the fact that upon these lands is located a bountiful supply of water at Tappan Springs. The western Navajos also desire to purchase adjacent areas owned by the Campbell Francis Co. and the M. I. Powers Cattle Co. The Navajos of the Leupp jurisdiction desire to purchase 11,520 acres owned by Mrs. E. J. Marty.

About a year ago Chee Dodge, the president of the Navajo tribal council, and a number of other Navajo Indians came to Washington to see if an arrangement could be made whereby these lands could be purchased by them through an appropriation out of the Federal Treasury, later to be reimbursed by money received from oil wells that have been found on their reservation. The Navajo Indians express a perfect willingness to pay a tax to the State of Arizona. They realize that the counties are required to furnish police protection over these areas of land, that they have bonded themselves to build roads and schools, and that it would be a grave injustice to the county to allow lands of this character to be purchased by the Indians and taken out of State taxation.

I make this statement as one other illustration of the fact that it is a matter of very great importance to many States

of the West as to whether, when the Federal Government engages in some new activity, however beneficial it may be, that activity will deprive them of a revenue to which they would otherwise be entitled.

THE LITTLE SILVERSMITH CASE

In this connection I am going to take the time of the Senate briefly to read a letter from the Commissioner of Indian Affairs with respect to the case of Little Silversmith. It may be that some one will think I am straying a bit from the direct line of my argument, but I assure the Senate that this has just as much to do with the Boulder Canyon Dam as the invention of cast-iron plows or sewing machines to which the senior Senator from California referred a few days ago. The letter is as follows:

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 27, 1928.

Hon. CARL HAYDEN,
United States Senate.

MY DEAR SENATOR: Referring to your telephone call this morning making inquiry about a decision as to the right to tax the sheep of the Navajo Indians, there is inclosed a copy of the opinion of the circuit court of appeals in the case of United States *v.* Burr W. Porter, et al., which passes on that question, as applied to sheep not on the reservation.

I understand that there are some other cases pending in the United States district court involving other phases of this question, but so far as our records show, no decision has been rendered.

Cordially yours,

CHARLES H. BURKE, *Commissioner.*

Now, I read the decision of the circuit court of appeals in the Silversmith case.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

United States of America, as guardian of Little Silversmith, Mrs. Little Silversmith, his wife, and Ann Silversmith, Mary Silversmith, and Jane Silversmith, daughters, Indian wards of the United States, appellant, *v.* Burr W. Porter, John H. Udall, and W. F. Lesueur, members of the board of supervisors of Apache County, in the State of Arizona, J. A. Minker, county assessor in and for said Apache County, and George Jarvis, treasurer of said Apache County, appellees. No. 5237

Upon appeal from the United States District Court for the District of Arizona.

Before Gilbert, Rudkin, and Dietrich, circuit judges.

Rudkin, circuit judge: The present suit was instituted by the United States against the taxing officers of Apache County, Ariz., to restrain them from assessing, levying, and collecting taxes on about 1,000 head of sheep and 100 head of cattle, owned by certain Indians belonging to the Navajo Tribe. From a decree of dismissal the present appeal was prosecuted. The material facts, taking the view most favorable to the appellant, are as follows: The Indians on whose behalf the suit is prosecuted are members of the Navajo Tribe and have never severed their tribal relations. By article 12 of the treaty of 1868 between the United States and the Navajos it was agreed that the sum of $150,000, appropriated or to be appropriated, should be distributed as follows:

"Second. The purchase of 15,000 head of sheep and goats at a cost of not to exceed $30,000." (15 Stat. 670.) Under date of August 10, 1870, the agent for the Navajo Tribe reported to the superintendent of Indian Affairs that a count of the Navajos, made on the 18th of the previous October, disclosed a total of 6,181 Indians, including men, women, and children; that on November 25 he received 14,000 head of sheep and 1,000 head of goats, in accordance with article 12 of the treaty, and that the sheep and goats thus received were issued to the members of the tribe. There was further testimony tending to show that each Indian received two sheep, and that four or five years later one sheep was issued to each Indian in the like manner; that the father of Little Silversmith was one of the Indians to whom distribution was made; that many years ago the father marked four ewe lambs and gave them to Little Silversmith for herding the sheep; that the four ewe lambs remained with the father's flock until about 26 years ago, when the number had increased to 50; that the 1,000 head of sheep mentioned in the complaint are the increase of these 50; that the Indians wove blankets from wool grown on the sheep and traded the blankets to the Mexicans for horses; that the horses were exchanged for cattle; that some 30 years ago the father gave Little Silversmith a bull and a calf, and that the 100 head of cattle, described in the complaint, are the increase of these two.

Owing to the great lapse of time, the testimony tending to show that the father of Little Silversmith participated in the distribution of sheep was necessarily indefinite and weak, and some of it of doubtful competency, but we have assumed that such was the fact for the purposes of this appeal.

Section 20 of the enabling act under which the State of Arizona was organized and admitted provides "that no taxes shall be imposed by the State upon lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing as other lands and other property are taxed any lands and other property outside of an Indian reservation owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any act of Congress, but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as Congress has prescribed or may hereafter prescribe." (36 Stat. 570.)

The personal property described in the complaint is owned and held by an Indian, outside of an Indian reservation, and we perceive no reason why it is not subject to taxation by the State.

In United States *v.* Rickert (188 U. S. 432) it was held that personal property consisting of cattle, horses, and other property of like character, issued to the Indians by the United States and used by them on their allotments, was not subject to assessment and taxation by the State; but in that case the property was issued to an allottee pursuant to acts of Congress and treaties, was branded "I. D." (indicating Indian Department), and was in possession of the allottee for use on his allotment. Under such circumstances the court held that the property was in fact the property of the United States and was put into the hands of the Indians to be used in execution of the purpose of the Government in reference to them. M'Knight *v.* United States (130 Fed. 659), United States *v.* Pearson (231 Fed. 270), and United States *v.* Dewey County (14 Fed. (2d) 784) are based on similar facts. In all of these cases the property was issued to the Indians under regulations of the Indian Office providing: "When cattle are issued to Indians, either for work oxen or for breeding purposes, each animal must be branded, in addition to the I. D. brand, with a private mark to indicate the person to whom it is issued. A record of such private marks must be kept in the agency office. The agent is also required to see that the increase of all issued cattle is similarly branded." Under such circumstances it is easy to see that the property is in fact the property of the United States.

In this case it does not appear that the sheep were issued under any such regulations; and in view of the small value of the property issued to each Indian, it is not at all clear that any limitation on its use or disposition was imposed or intended. Furthermore, the Indian in whose behalf this suit is brought received no property from the United States. His lambs and calves came to him by gift or purchase from his father, and the right of the father to make such disposition of his property does not seem to be open to question. According to the testimony, he now owns and holds about 1,000 head of sheep, 100 head of cattle, 100 head of horses, and has purchased automobiles from time to time, all of which, he claims, was procured from the same source or by the same means. He lives outside of the reservation, under the protection of the State, and it would be going a long way to hold that he is under no obligation to contribute to the expenses of the State government simply because his ancestor received a couple of sheep from the Government nearly two generations ago and that ancestor gave him four lambs and two calves a generation later.

The record would seem to afford no basis for the claim that the United States has any such interest in the property as would exempt it from taxation by the State; and the decree of the court below is therefore affirmed.

(Indorsed:) Opinion filed November 1, 1927. F. D. Monckton, clerk, by Paul P. O'Brien, deputy clerk.

I read that case, Mr. President, to illustrate, not only the difficulties that we have in the Western States in taxing property wherein it is alleged the Federal Government has an interest, but to further show that whenever a favor is once granted by Congress to any person or to any group of people they immediately take pride in calling themselves instrumentalities of the United States and seeking further exemption from taxation. One would hardly think that any United States attorney would have gone to the trouble to appeal a case of this kind, and yet it was done in this case on behalf of the Indians, and it was such a flimsy case that it was dismissed by the circuit court of appeals in the manner I have indicated.

MEMORIAL BY CALIFORNIA LEGISLATURE

I now want to give another illustration of the detrimental effect of large areas of untaxed Federally-owned land within a State. Rich and powerful as is the State of California, only last year her legislature made complaint to that effect in the memorial to Congress. The memorial was in support of a bill, H. R. 7075, introduced by the late John E. Raker, a Representative in Congress from the State of California. The bill is in part as follows: