

## SPECIAL PROCEEDINGS.

December 26th, 1911.

Hon. Albert J. Galen,  
Attorney General,  
Helena, Montana.

Dear Sir:—

Pursuant to instruction from you I left for the city of Washington, D. C., on December 1st, 1911, for the purpose of presenting to the various government departments at Washington certain matters relating to public lands and also to argue before the supreme court at Washington the case then pending of Quong Wing v. Kirkendall, County Treasurer. This duty I have performed and beg leave to report as follows:

After the consultation had by you with the Honorable Commissioner of the General Land Office, and also after yourself and His Excellency, the Governor of Montana, had discussed with the President of the United States and the Honorable Secretary of the Interior questions herein referred to relating to public lands. I submitted in writing the various propositions to the heads of the departments and with one exception received replies thereto.

2.

On December 11th, 1911, I had the honor to address a communication to the Honorable Commissioner of the General Land Office asking for extension of time for and on behalf of the Carey Land Act Board of the State of Montana until January 16th, 1912, to enable the the Board to meet the requirements of the Honorable Commissioner in regard to Segregation List No. 14, in said State of Montana. This request was granted by the Honorable Commissioner under date of December 14th, 1911. Correspondence relating thereto is hereto attached marked "1."

2.

On December 11th, 1911, I also addressed to the Honorable Commissioner of the General Land Office a communication calling attention to a custom prevailing in this state by which filings were permitted by private individuals upon lands situated within school sections 16 and 36 upon statement made by the entryman that he had settled said lands prior to survey and of the further fact that the state of Montana was not at all times notified of such claim by the settler until years afterwards when the settler made application for final proof, and that by reason of such custom and practice the state was deprived of the opportunity of contesting the claim made by the settler as to his settlement upon such land prior to survey. This matter also received the favorable action of the Honorable Commissioner and the contention of the state that it was entitled to notice immediately upon the acceptance of filings by such settlers was sustained. The correspondence relating thereto is hereto attached marked "2."

3.

On December 11th, 1911, I also addressed to the Honorable Commissioner of the General Land Office a communication relating to the

claim made by certain Indians that they had the right to relinquish the Trust Patents which had been issued to them for their allotments and to select other lands in lieu thereof, and that some of these subsequent selections so made by the Indians were within the limits of sections 16 and 36, which had been by the Act of Congress of April 23, 1904 granted to the State of Montana. The claim by the state being that this grant was a grant in praesenti subject only to allotments made to the Indians prior to the time of the opening of the reservation. This contention of the state was also sustained by the Honorable Commissioner of the General Land Office in a communication dated December 16th, 1911. The correspondence relating thereto is hereto attached marked "3."

## 4.

On December 11th, 1911, I also addressed a communication to Honorable R. G. Valentine, Commissioner of Indian Affairs, transmitting to him a copy of letter written to the Honorable Commissioner of the General Land Office relating to the claim of the state respecting its rights to sections 16 and 36 on the Flathead Indian Reservation. To this letter I received no answer. A copy of the letter so addressed to the Honorable Commissioner is hereto attached marked "4."

## 5.

On December 11th, 1911, I also addressed a communication to the Honorable Walter L. Fisher, Secretary of the Interior, calling attention to the Honorable Secretary to the regulations or custom in the State of Montana by which the sixty day preference right granted by the Acts of Congress of March 3, 1893, Chapter 208, 27 Stat. 592, and of the Act of August 18th, 1894, Chapter 301, 28 Stat. 391, were practically nullified. In this communication attention of the Honorable Secretary was called to the fact that large areas of land within the State of Montana were withdrawn for investigation as to coal deposits, and during such withdrawals or after said land had been classified as coal land, private entries were allowed thereon upon the entryman waiving his right to the coal taking only a surface right to the land, but that this privilege was denied to the State of Montana, the result being that the state could make no selection of any lands within the limits of the land so withdrawn. To this communication no reply has as yet been received. However, as some doubt seems to exist as to the authority of the Honorable Secretary to permit the State to make selections of land within the areas withdrawn for investigation as to coal, a bill was drafted and introduced in the House of Representatives by the Honorable Chas. N. Pray, Congressman from the State of Montana, which bill is known as H. R. 15455, which is designed to give to the State of Montana full authority to make selections of land, and if it so chooses, to waive the right to the coal which may be found therein. A copy of the letter addressed to the Honorable Secretary of the Interior together with a copy of said H. R. 15455, are hereto attached marked respectively 5 and 6.

In discussing these various matters presented to the Departments

relating to public lands attention was repeatedly called to the fact that the state's selections of lands had not been acted on for several years and that the state was thereby very much hampered in its attempt to fill its land grants and that by reason of the delay in acting upon such matters the irrigation projects under the Carey Land Act were also hampered, if not in danger.

## 7.

I also called at the department known as Bureau of Animal Industry and discussed with the department the conditions in Montana relating to tuberculosis among dairy cows and requested that the department furnish assistance to the State Veterinarian in testing dairy cows for tuberculosis. Dr. Melvin, whom I was informed was at the head of the Bureau was not in the city at the time and I was referred by Dr. Farrington to Dr. Hickman, with whom I discussed the proposition and while no direct promise was given of immediate assistance for the reason that at the time the entire force of the Bureau was engaged, but that he would take the matter up with Dr. Melvin as soon as he returned, and thought that some assistance might be given within the near future.

## 8.

I also called upon the Honorable Geo. W. Wickersham, Attorney General of the United States, and discussed with him the proposition relating to the reconveyance by the State of Montana of the lands heretofore patented to the state and known as the "Dearborn Irrigation Project." The conclusions reached were that if the state could remove from the land the cloud that now rests upon the title thereto that the government would accept the reconveyance made by the state, but if conditions were such that the state was unable to remove this cloud upon the title, that the government would necessarily be forced to bring suit to set aside the patent as having been obtained through fraud on the part of the state's then agents.

## 9.

On December 19th, 1911, the case of Quong Wing v. Kirkendall, County Treasurer, was argued and submitted to the Supreme Court.

Respectfully submitted,

W. H. POORMAN,

Assistant Attorney General.