be distributed only to tribal members.[113] It may thus provide that all children born of-a marriage between a white man and an Indian woman who was 'recognized by the tribe at the time of her death shall have the same rights and privileges to the property of the tribe to which the mother belonged as have members of the tribe.[114]

Congress may authorize an administrative body to make a roll descriptive of the persons thereon so that they might be identified, to take a census of the tribes and to adopt any other means deemed necessary by the commission. It may provide that such rolls, when approved by the Secretary, shall be final, and that persons thereon and their descendants born thereafter and such persons as intermarry according to tribal laws should alone constitute the several tribes they represent^115

Enrollment does not ordinarily give a vested right in tribal property.[116] Congress may disregard the existing membership rolls of a tribe and direct that the per capita distribution be made upon the basis of a new roll, even though such act may be inconsistent with prior legislation, treaties, or agreements with the tribe.^117 Thus, the Supreme Court in the case of *Sizemore* v. *Brady*,[118] said :

> * * * Like other tribal Indians. the Creeks were wards of the United States, which possessed full power, if it deemed such a course wise, to assume full control over them and their affairs, to ascertain who were members of the tribe, to distribute the lands and funds among them, and to terminate the tribal government. * * * (P. 447.)

The Supreme Court, in holding that Congress may add to a tribal roll even though it purports to be final said :[119]

> It is not proposed to disturb the individual allotments made to members living September 1, 1902, and enrolled under the act of 1902, and therefore we are only concerned with whether children born after September 1, 1902, and living on March 4, 1906, should be excluded from the allottment and distribution. The act of 1902 required that they be excluded, and the legislation in 1906, as we have seen, provides for their inclusion. It is conceded, and properly so, that the later legislation is valid and controlling unless it impairs or destroys rights which the act of 1902 vested in members living September 1, 1902, and enrolled under that act. As has been indicated, their individual allotments are not affected. But it is said that the act of 1902 contemplated that they alone should receive allotments and be the participants in the distribution of the remaining lands, and also of the funds, of the tribe. No doubt such was the purport of the act. But that, in our opinion, did not confer upon them any vested right such as would disable Congress from thereafter making provision for admitting newly born members of the tribe to the allotment and distribution. The difficulty with the appellants' contention is that it treats the act of 1902 as a contract, when "it is only an act of Congress and can have no greater effect." *Cherokee Intermarriage Cases*, 203 U. S. 76, 93. It was but an exertion of the administrative control of the Government over the tribal property of tribal Indians, and was subject to change by Congress at any time before it was carried into effect and while the tribal relations continued. *Stephens* v. *Cherokee Nation*, 174 U. S. 445, 488; *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294; *Wallace* v. *Adams*, 204 U. S. 415, 423. It is not to be overlooked that those for whose benefit the change was made in 1906 were not strangers to the tribe, but were children born into it while it was still in existence and while there was still tribal property whereby they could be put on an equal, or approximately equal, plane with other members. The council of the tribe asked that this be done, and we entertain no doubt that Congress in acceding to the request was well within its power. (Pp. 647–648.)

In the important case of *Wallace* v. *Adams*[120] the Supreme Court held that the Act of July 1, 1902,[121] creating the Choctaw-Chickasaw citizenship court and giving it power to examine the judgments of the Indian territorial courts and determine whether they should be annulled on account of irregularities, was a valid exercise of power. This and other cases in this field are based on the theory of the ultimate power of Congress over matters of membership of the tribes and its power to adopt any reasonable measures to ascertain who are entitled to its prerogatives. If the result of one of the methods which it adopts is unsatisfactory, it may' try another.^122

Congress may make the finding of an administrative commission, approvedty the Secretary of the Interior. a final determination of tribal membership.[123] The Supreme Court in the case of *United States* v. *Wildcat*[124] said :

> * * * There was thus constituted a *quasi*-judicial tribunal whose judgments within the limits of its jurisdiction were only subject to attack for fraud or such mistake of law or fact as would justify the holding that its judgments were voidable. Congress by this legislation evidenced an intentton to put an end to controversy by providing a tribunal before which those interested could be heard and the rolls authoritatively made up of those who were entitled to participate in the partition of the tribal lands. It was to the interest of all concerned that the beneficiaries of this division should be ascertained. To this end the Commission was established and endowed with authority to hear and determine the matter.
>
> A correct conclusion was not necessary to the finality and binding character of its decisions. It may be that the Commission in acting upon the many cases before it made mistakes which are now impossible of correction. This might easily be so, for the Commission passed upon the rights of thousands claiming membership in the tribe and ascertained the rights of others who did not appear before it, upon the merits of whose standing the Commission had to pass with the best information which it could obtain.
>
> When the Commission proceeded in good faith to determine the matter and to act upon information before it, not arbitrarily, but according to its best judgment, we think it was the intention of the act that the matter, upon the approval of the Secretary. should be finally concluded and the rights of the parties forever settled, subject to such attacks scould successfully be made upon judgments of this character for fraud or 'mistake.
>
> We cannot agree that the case is within the principles decided in *Scott v. McNeal*, 154 U. S. 34, and kindred

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[113] See Chapter 9, sec. 3.

[114] *Vezina* v. *United States*, 245 Fed. 411 (C. C. A. 8, 1917). And see Chapter 9, sec. 3.

[115] See *Stephens v. Cherokee Nation*, 174 U. S. 445, 499, 491 (1899); Chapter 7, sec. 4.

Congress may also provide that for the purpose of determining the quantum of Indian blood possessed by members of these tribes, and their capacity to alienate allotted lands, the rolls of citizenship approved by the Secretary of the *Interior* are conclusive.

Act of April 26. 1906, 34 Stat. 137, and Act of May 27, 1908, 35 Stat. 312, interpreted in *United Stales* v. *Ferguson*, *247* U. S. 175 (1918). Accord : *Cully* v. *Mitchell*, 37 F. 2d 493 (C. C. A. 10, 1930).

It has been held that Congress is not hound by the tribal rule regarding membership and may determine for itself whether a person is an Indian from the standpoint of a federal criminal statute. *United States* v. Rogers, 4 How. 567 (1846)

[116] *Wilbur* v. *United States ex rel. Kadrie*, 281 U. S. 206 (1930).

[117] See *Stephens v. Cherokee Nation. 174* U. S. 445, 488 (1899); Op. Sol. I. D.. M.27759, January 22. 1935. Of. Lone *Wolf* v. *Hitchcock*, 187 U. S. 553 (1903).

[118] 235 u. s. 441 (1914).

[119] *Gritts* v. *Fisher*, 224 U. S. 640 (1912), discussed in Chapter 9 sec. 3. An example of "final" pro rata distribution of tribal assets is found in the Appropriation Act of May 31, 1900, 31 Stat. 221, 233 (Siletz Reservation). *Cf.* Art of April 21, 1904, 33 Stat. 189, 201 (Otoe and Missouria, Stockbridge and others).

^120204 u. s. 415 (1907).

[121] 32 Stat. 641, 647.

[122] *See Stephens v. Cherokee Nation, 174* U. S. *445* (1899). and *Wallace* v. *Adams*, 204 U. S. 415. 423 (1907). Also see Chapter 19, sec. 4.

[123] United *States v. Atkins*, 260 U. S. 220 (1922).

[124] 244 U. s. 111 (1917).

cases, in which it has been held that in the absence of a subject-matter of jurisdiction an adjudication that there was such is not conclusive, and that a judgment based upon action without its proper subject being in existence is void. * * * (Pp. 118-119.) (Pp. 118–119.)

* * * * *

* * * We think the decision of such tribunal, when not impeached for fraud or mistake, conclusive of the question of membership in the tribe, when followed, as was the case here by the action of the Interior Department confirming the allotment and ordering the patents conveying the lands, which were in fact issued. * * * (P. 120.)

SECTION 7. ADMINISTRATIVE POWER—INTRODUCTION

By necessity Congress has delegated much of its power over the Indians to administrative officials. This power is dependent upon and supplementary to the legislative power. Although rhetorical figures of speech, like "guardianship," [125] have tended to blur the distinction between administrative and legislative powers, it is important to distinguish between the problem of whether Congress possesses the authority to pass certain legislation and the problem of whether Congress has vested its power in an administrative officer or department.

"We have no officers in this government," the Supreme Court said, in the case of *The Floyd Acceptances*,[126] from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority." (Pp. 676–677.)

Therefore, in seeking to trace the scope of administrative power in the field of Indian law, our primary concern must be with the statutes and treaties that confer such power.

The interplay of the legislative and administrative branches of Government in Indian affairs has caused the frequent application of two rules of administrative law. The first is that if properly promulgated pursuant to law the rules and regulations of an administrative body have the force and effect of statutes and the courts will take judicial notice of them.[127] The Supreme Court in *Maryland Casualty Co.* v. *United States*,[128] said:

> * * * It is settled by many recent decisions of this court that a regulation by a department of government. addressed to and reasonably adapted to the enforcement of an act of Congress, the administration of which is confided to such department, has the force and effect of law if it be not in conflict with express statutory provision. *United States v. Grimaud, 220 U. S. 506; United States v. Birdsall, 233 U. S. 223, 231; United States v. Smull, 236 u. s. 405, 409, 411; United States* v. *Morehead*, 243 U. S. 607. * * * (P. 349.)

The second principle is that courts and administrative authorities give great weight to a construction of a statute consistently given by an executive department charged with its administration,[129] especially if it is a rule affecting considerable property or a doubtful question.[130]

The Supreme Court has given great weight to an administrative interpretation even if not long continued.[131]

These rules are based on the theory that the failure of Congress by subsequent legislation to change the construction of administrative bodies charged with the administration of a statute constitutes acquiescence in the practical construction of a statute.

[125] See Chapter 8. sec. 9.

[126] 7 Wall. 666 (1868). Also see *United States* v. *MacDaniel*, 7 Pet. 1 (1883): *United States v. McMurray*, 181 Fed. 723, 728 (C. C. E. D. Okla.. 1910); 34 Op. A. G. 320 (1924). The power of administrative authorities to carry Out treaty promises is shown in 23 Op. A. G. 214 (1900). Also see Chapter 3. sec. 3.

[127] The Circuit Court of Appeals in the case of *Bridgeman* v. *United States*, 140 Fed. 577 (C. C A. 9, 1905) said:

> Counsel are agreed that the rules and regulations of the Indian Department promulgated under the authority of law have the force and effect of statutes, and that the court will take judicial notice of them. * * * (P. 583.)

[128] 251 U. S. 342 (1920). Also *see Montana Eastern* Limited v. *United States*, 95 F. 2d 897 (C. C. A. 9, 1938).

[129] *United States ex rel. West v. Hitchcock, 205* U. S. 80 (1907); 4 Op. A. G. 76 (1842); 38 L. D. 553 (1910); *United States v. Jackson*, 280 U. S. 183, 193 (1930).

> When the law has been so construed by Government Departments during a long period as to permit a certain course of action, and Congress has not seen fit to intervene, the interpretation so given is strongly persuasive of the existence of the power. * * * (34 Op. A. G. 320 326 (1924).)

The Supreme Court in *Cramer* v. *United States*, 261 U. S. 219 (1923), said:

> That such individual occupancy [by a non-reservation Indian] is entitled to protection finds strong support in various rulings of the Interior Department, to which in land matters this Court has always given much weight [citing cases]. (P. 227.)

[130] 4 Op. A. G. 75 (1842). Also see *Wisconsin* v. *Hitchcock*, 201 U. S. 202 (1906); *Kindred* v. *Union Pacific R. R. Co.*, 225 U. S. 582, 596 (1912).

[131] The Supreme Court in *United States* v. *First National Bank*, 234 U. S. 245 (1914), said:

> While departmental construction of the Clapp Amendment does not have the weight which such constructions sometimes have in long continued observance, nevertheless it is entitled to consideration, the early administration of that amendment showing the interpretation placed upon it by competent men having to do with its enforcement. * * * (P. 261.)

A recent administrative interpretation will sometimes be given weight, though conflicting with early interpretation. *United States v. Reynolds*, 250 U. S. 104, 109 (1919). Departmental sponsorship of legislation is also considered. The Supreme Court in *Blanset v. Cardin*, 256 U. S. 319 (1921). said:

> * * * And there can be no doubt that the act was the suggestion of the Interior Department, and its construction is an assistant, if not demonstrative criterion, of the meaning and purpose of the act. *Swigart* v. *Baker*, 229 U. S. 187; *Jacobs* v. *Prichard*, 223 U. S. 200; *United States* v. *Cerecedo Hermanos*, 209 U. S. 337. And the regulations of the Department are administrative of the act and partake of its legal force. (P. 326.)

SECTION 8. THE RANGE OF ADMINISTRATIVE POWERS

The specific functions of officials of the Indian Service and of other federal officials dealing with Indian affairs are necessarily discussed in various parts of this chapter and in other chapters.[132] It may be warth while, however, at this point, to indicate the scheme of authorities which Congress has conferred iu this field.

In general, administrative powers in the field of Indian affairs have been conferred upon the President, the Secretary of the Interior, and the Commissioner of Indian Affairs.

Administrative powers of the President include the consolidation of agencies, and, with the consent of the tribes, the consolidation of one or more tribes on reservations created by Executive order;[133] dispensing with unnecessary agents,[134] or transferring

[132] See especially Chapter 2. Chapters 9 to 11 deal largely with administrative powers over property. Chapter 12 discusses administrative duties regarding federal services for the Indians: Chapter 16 deals with licensing of traders: Chapter 17, sec. 5. covers administration of liquor laws.

[133] Act of May 17. 1882. sec. 6. 22 Stat. 68, 88, 25 U. S. C. 63; Act of July 4. 1884. sec. 6. 23Stat. 76. 97. 25 U. S. C. 63.

[134] Act of June 22, 1874. sec. 1, 18 Stat. 146, 147, 25 U. S. C. 64; Act of March 3, 1875, sec. 1. 18 Stat. 420, 421, 25 U. S. C. 64, interpreted in 15 Op. A. G. 405 (1877).

any agent "from the place or tribe designated by law, to such other place as the public service may require." [135]

The Secretary of the Interior, who has been described by a Solicitor of his Department as "guardian of all Indian interests," [136] acts on behalf of the President in tbe administration of Indian affairs. His acts are presumed to be the acts of the president.'"

Administrative powers of the Secretary of the Interior include tbe establishing of superintendencies, agencies, and subagencies by tribes or by geographical boundaries,[138] the appointment of members of the Indian Arts and Crafts Board," and the appointment of various Indian Bureau employees.[140]

Other duties are expressly delegated to the Commissioner of Indian Affairs, such as issuing trader's licenses [141] and publishing statutory provisions regulating the duties of Indian Bureau. employees.[142]

Provisions in many statutes [143] and occasional treaties confer on the President [144] or the Secretary of tbe Interior [145] or the Commissioner of Indian affairs [146] or all three [147] power to make rules and regulations.[148] The wide range of regulations concerning Indians is shown by title 25 of the Code of Federal Regulations.[149] Important statutes. providing for rule-making in relation to the Indian which are included in title 25 of the United States Code are discussed in various parts of this volume.[150] A brief description of tbe subject matter of some of them will therefore suffice to show the variety of statutes expressly conferring regulatory power on tbe Secretary of the Interior. He is authorized to make regulations governing the business *of* the Indian Arts and Crafts Board,[151] concerning the operation of various types of leases affecting restricted Indian lands,[152] concerning service fees from individual Indians,[153] to secure attendance at school,[154] to admit white children to Indian day

[135] Act of June 30, 1834, sec. 4, 4 Stat. 729, 735, 25 U. S. C. 62. The power given in this section is not affected by the Senate being in session. 15 Op. A. G. 405 (1877). Also see *Morrison* v. *Fall,* 290 Fed. 306 (App. D. C. 1923), aff'd 266 U. S. 481 (1925), which also discusses the power of *the* President over agents.

The early tendency to place administrative responsibility on the President is exemplified by the Act of July 22, 1790, 1 Stat. 137, and the Act of March 3, 1795. 1 Stat. 443, which appropriated $50,000 for the purchase of goods for the Indians, and provided "that the sale of such goods be made under the direction of the President of the United States."

The President delegated to Indian superintendents and agents his duty to disburse funds. 15 Op. A. G. 66 (1875).

Other Presidential powers of appointment are conferred by the Act of May 25, 1824. sec. 1, 4 Stat. 35, and the Act of July 20, 1867. 15 stat. 17.

See Act of May 20, 1826, 4 Stat. 188, providing for commissioners to treat with the Choctaw and Chickasaw Indians; Joint Resolution of May 7, 1872; 17 Stat. 395, to inquire into depredations; Act of January 12. 1891, 26 Stat 712. to arrange for selection of reservations for Mission Indians in California. Also see Act of March 3. 1797. 1 Stat. 498. 501; Act of February 19, 1799, 1 Stat. 618; Act of May 1, 1876, 19 Stat. 41: Act of September 30, 1890 (Southern Utes), 26 Stat. 504, 524; Act of September 25, 1890. 26 Stat. 468: Act of April 30. 1908. sec. 1. 35 Stat. 70. 73, 25 U. S. C. 12.

Other statutory powers granted to the President regarding the Indians are discussed In later sections of this Chapter. Also see 25 U. S. C. 27, 28, 51. 65, 72. 112, 139, 140, 141, 153, 174, 180. 263. 331-333. For examples of treaty powers see Chapter 3, sec. 3B(5).

[136] 42 L. D. 493. 499 (1913).

[137] *Wolsey* v. *Chapman,* 101 U. S. 755, 769 (1879). The action of the Commissioner of Indian Affairs must be presumed to be the action of the President. *Belt v. United States,* 15 C. Cld. 92 (1879). The same rule has been applied for other departments. *Maxwell v. United States,* 49 C. Cls. 262. 274 (1914). The direction of the President is generally presumed in instructions and orders issuing from competent federal departments. 7 Op. A. G. 453 (1855).

In the absence of statutory authority subordinate officials have no power with respect to the duties of an office involving the exercise of judgment and discretion. *United States* v. *Watashe,* 102 F. 2d 428 (C. c. A. 10, 1939). See also Robertson v. United *States, 285* Fed. 911 (App. D. C., 1922); *Turner* v. *Seep,* 167 Fed. 646 (C. C. E. D. Okla., 1909). mod. 179 Fed. 74; Memo. Sol. 1. D., December 11, 1937.

Administrative or ministerial functions may be delegated without statutory authorization. The Secretary of the Interior has delegated some of his regulatory power over Indians to other officials or bodies. For instance, he has delegated administrative authority to the judges of the Court of Indian Offenses and to tribal courts.

The Solicitor of the Department of the Interior, in an opinion dated September 29, 1921, 48 L. D. 455 (1921). wrote:

> * * * During earlier times the Indians were practically confined on reservations and controlled by the strong arm of the Military. The President as "The Great White Father" was looked to as the protector of their interests, and was charged with many responsibilities and duties in their behalf. Gradually. by specific statute in some cases, but more rapidly within comparatively recent times by general legislation, that responsibility and duty has been lodged elsewhere. notably in the Secretary of the Interior. * * * (P. 457.)

As late as 1895. the Attorney General was asked whether the President must personally approve depredation claims. 21 Op. A. G. 131 (1895).

Also see Chapter 3. sec. 3: 3 Op. A. G. 367 (1838) and 471 (1839); 6 Op. A. G. 49 (1853) and 462 (1854); 16 Op. A. G. 225 (1878): 17 Op. A. G. 258, 259, (1882). and 265 (1882); and Goodnow, Administrative Law of the United States (1905).

[138] Act of June 30. 1834. 4 Stat. 735, amended by Act of March 3. 1847.9 Stat. 202. 26 U. S. C. 40.

*Act of August 27, 1935, sec. 1, 49 Stat. 891, 25 U. S. C. 305.

[140] Act of March 3, 1819, 3 Stat. 516, 25 U. S. C. 271; Act of March 2, 1889, sec. 10, 25 Stat. 980, 1003, 25 U. S. C. 272; Act of March 3, 1863, sec. 1, 12 Stat. 774, 792, 25 U. S. C. 41. Various special acts provide for agents for particular tribes, Act of May 18, 1824, 4 Stat. 25 (Osage); Act of February 25, 1831, *4* Stat. *445* (Winnebago); Act of July 1, 1862, 12 Stat. 498 (Grand River and. Wintah).

The Secretary of the Interior, under the direction of the President, has been authorized to discontinue the services "of such agents, sub-agents, interpreters, and mechanics, as may, from time to time, become unnecessary, in consequence of the emigration of the Indians, or other causes." Act of July 9, 1832, sec. 5, 4 Stat. 564, amended by Act of February 27, 1877, sec. 1, 19 Stat. 240, 244, 25 U. S. C. 65.

[141] See Chapter 16.

[142] Act of May 17, 1882, sec. 7, 22 Stat. 68, 88, 25 U. S. C. 3.

[143] Act of July 31, 1854, 10 Stat. 315; Act of March 3, 1865, 13 Stat. 541; Act of May 8, 1872, 17 Stat. 85; Act of May 23, 1876, 19 Stat. 55; Act of February 28. 1891, sec. 3, 26 Stat. 794, interpreted in 18 L. D. 497 (1894); also see 40 L. D. 211 (1911); Act of August 1, 1914. 38 Stat. 582, 583; Act of February 14, 1920, 41 Stat. 498. 410. 25 U. S. C. 282; Act of May 26, 1928; 45 Stat. 750, 25 U. S. C. 318a; Act of April 16, 1934, sec. 2. 48 Stat. 596, amended June 4, 1936. 49 Stat. 1458. 25 U. S. C. 454; Act of June 7. 1935. 49 Stat. 331; also see special statutes: Act of March 3. 1863. 12 Stat, 819 (Sioux); Act of March 3, 1931. c. 414, 46 Stat. 1495 (Crow); Act of February 14, 1931. 46 stat. 1107 (Chippewa).

[144] Treaty of October 14, 1864, with the Klamaths, 16 Stat. 707; Treaty of September 30, 1854, with the Chippewas, 10 Stat. 1109, 1110; unpublished treaty with the Creeks, Archives 17, August 7, 1790; Treaty of November 14, 1805, with the Creeks, 7 Stat. 96.

[145] Treaty of February 8, 1831, with the Menominee, 7 Stat. 342; Treaty of March 6, 1865, with the Omaha, 14 Stat. 667.

[146] Treaty of October 21, 1867, with the Kiowas and Comanches, Art. 9, 15 Stat. 581.

[147] Treaty of June 9, 1863, with the Nez Perce, Art. 3, 14 Stat. 647.

[148] The procedure adopted by the Office of Indian Affairs in drafting regulations is discussed in Monograph 20, Attorney General's Committee on Administrative Procedure (1940).

[149] The subjects covered in this Code are noted in Chapter 2, sec. 3A.

[150] Chapters 2, 4, 8, 9, 10, 12, 15, 16.

[151] Act of August 27, 1935, sec. 3, 49 Stat. 891, 892, 25 U. S. 305b.

[152] Act of May 11, 1938, sec. 4, 52 Stat. 347, 348, 25 U. S. C. 396d; see Chapter 15, sec. 19.

[153] Act of May 9, 1938, sec. 1. 52 Stat. 291. 313 as amended by Act of May 10. 1939. sec. 1, 53 Stat. 685. 708. 25 U. S. C. 561.

[154] Act of July 13. 1892. sec. 1, 27 Stat. 120, 143, 25 U. S. C. 284; Act of March 3, 1893. sec. 1. 27 Stat. 612, 628. 25 U. S. C. 283; Act of February 14, 1920, sec. 1, 41 Stat. 408, 410, 25 U. S. C. 282; Chapter 12, sec. 2.

schools [155] and Indian boarding schools,[156] for the conduct of an Indian reform school,[157] for disposal by will of restricted allotments,[158] governing the use of water on irrigation lands [159] and the apportionment of irrigation costs,[160] and covering trading licenses.'"

In addition to those statutes which confer regulatory power for specific purposes, there are several general statutes which have sometimes been relied upon as the basis for the exercise of administrative power. Section 17 of the Act of June 30, 1834,[162] provides :

> * * * the President of the United States shall be, and he is hereby, authorized to prescribe such rules and regulations as he may think fit, for carrying into effect the various provisions of this act, and of any other act relating to Indian affairs, and for the settlement of the accounts of the Indian department.

This general statute fills the needs of practical administration arising from the fact that many acts of Congress require the issuance of regulations for their proper interpretation and enforcement, although such regulations are not expressly authorized.[163]

Section 1 of the Act of July 9, 1832,'" as amended by the Act of March 3, 1849,[165] establishing the Department of the Interior, provides that a Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and "agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations."

This statute. enacted in 1832, was obviously not intended to vest in the newly created office of the Commissioner of Indian Affairs the power to regulate Indian conduct generally. Since the acts of the Commissioner were expressly made subject to regulations prescribed by the President, the limits of which have already been outlined, the phrase "management of all Indian affairs" clearly does not mean "management of the affairs of the Indians," any more than the phrase "management of for eign affairs" means "management of the affairs of foreign nations or of foreigners." [166] The phrases "Indian affairs" and "Indian relations" are intended to cover the relations between the United States and the Indian tribes, which relations are commonly established either by treaty or by statute.'*

Whether the President, the Secretary of the Interior, or *the Commissioner of Indian Affairs has "general supervisory authority" over Indians in the absence of specific legislation has been questioned in several cases

In the case of *Francis* v. *Francis* [168] the President, pursuant to treaty reserving land to individual Indians and their heirs, issued a patent conveying a title with restrictions upon conveyance. The Supreme Court held ineffectual the restrictive clause because the "President had no authority, in virtue of his office, to impose any such restriction ; certainly not, without the authority of an act of Congress, and no such act was ever passed." (P. 242.)

The question of whether internal affairs of Indian tribes, in the absence of statute, are to be regulated by the tribe itself or by the Interior Department was squarely before the Supreme Court in the ease of *Jones v. Meehan.*[169] *One* of the questions presented by that case was whether inheritance of Indian land, in the absence of statute, was governed "by the laws. usages, and customs of the Chippewa Indians" or by the rules and regulations of the Secretary of the Interior.[170] In line with numerous declsions of lower courts, the Supreme Court held that the Secretary of the Interior did not have the power claimed, and that in the absence of statute such power rested with the tribe and not with the Interior Department.

In *Romero v. United States,*[171] a regulation of the President regarding the salaries of Indian Service officials was held invalid despite the claim that this might be justified under Revised Stat-

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[155] Act of March 1, 1907, 34 Stat. 1015, 1018, 25 U. S. C. 288.

[156] Act of March 3, 1909, 35 Stat. 781, 783. 25 U. S. C. 289.

[157] Act of June 21. 1906, 34 Stat. 325. 328. 25 U. S. C. 302.

[158] Act of June 25. 1910, sec. 2, 38 Stat. 855. amended by Act of February 14, 1913, 37 Stat. 678, 25 U. S. C. 373; see Chapter 11 sec. 6B.

[159] Act of February 8, 1887, sec. 7, 24 Stat. 388. 25 U. S. C. 381: see Chapter 12, sec. 7.

[160] Act of April 4, 1910, secs. 1 and 3, 36 Stat. 269 ; Act of August 1, 1914, sec. 1, 38 Stat. 582. 25 U. S. C. 385; see Chapter 12, sec. 7.

[161] Act of July 31, 1882. 22 Stat. 179, 25 U. S. C. 264 ; also see Chapter 17; for other examples in 25 U. S. Code see secs. 14 (money accruing to Indians from governmental agencies) ; 192 (sale by agents of unnecessary cattle and horses) ; 275 (leaves of absence to certain employees of Indian Service) ; 292 (suspension of schools) : 319 (rights-of-way) ; 454 (standard of state services). Many of the *rules* and regulations require the Secretary of the Interior or the Commissloner of Indian Affairs to approve or disapprove specified transactions. See for example 25 Code of Federal Regulations (1940). secs. 21.13, 21.9, 21.46 and 28.35.

[162] 4 Stat 735, 738. 25 U. S. C. 9.

[163] The Act of February 14. 1903. sec. 12, 32 Stat. 825, 830, as embodied in 5 U. S. C. 485. provides:

> The Secretary of the Interior is charged with the supervision of public business relating to the following subjects :
>
> . . . . . .
>
> Second. The Indians.

[164] 4 Stat. 564, 25 U. S. C. 2.

[165] 9 Stat. 395. Also see Act of July 27. 1868, 15 Stat. 228.

[166] See the explanation of a similar phrase in. *Worcester v. Georgia,* 6 Pet. 615, 653 (1832). discussed in Chapter 3. sec. 4C. And see definition of duties of Commissioners and other department employees in Act of January 17, 1800. 2 Stat. 6, in terms of "facilitating or preserving a friendly intercourse with the Indians. or for managing the concerns of the United States with them, . . ."

[167] 5 U. S. C. 22, R. S. § 161, as derived from the Acts of July 27. 1789, 1 Stat. 28; August 7, 1789. 1 Stat. 40: September 2, 1789, 1 Stat. 65: September 15, 1789, 1 Stat. 68; April 30. 1798, 1 Stat. 553; March 3, 1849, 9 Stat. 393, 395; June 22, 1870. 16 Stat. 163 ; June 8, 1872, 17 Stat. 283, provides:

> *Departmental regulations.*—The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

This statute is obviously directed to the regulation of internal matter within the various departments, such as the allocation of authority to officials, the forms to be used in departmental business, and 'other matters *ejusdem generis.* It cannot be reasonably construed as a grant of power to any administrative officer to promulgate regulations requiring obedience outside of the federal service.

[168] 203 U. S. 233 (1906).

[169] 175 U. S. 1 (1899). Similarly in other fields: The case of *United States* v. *George,* 228 U. 8. 14 (1913) holds that a regulation of the Interior Department relating to public lands is invalid where not authorized by any act of Congress. The argument that general power to prescribe reasonable regulations governing public lands Is conferred by Revised Statutes, section 441, and by other similar statutes, was rejected by the Supreme Court in this case with the following comment :

> It will be seen that they confer administrative power only. This is undubitably so as to sections 161. 441, 453. and 2478; and certainly under the guise of regulation legislation cannot be exercised, *United States* v. *United Verde Copper Co.,* 196 U. S. 207. (P. 20.)

Also see Morrill v. Jones, 106 U. S. 466, 467 (1882).

Unless empowered by statute, the Secretary of the Interior is not authorized to issue regulations granting an extension of time for the payment of certain accrued water right charges. Op. Sol, I. D.. M. 26034. July 3, 1930. nor to create a charge against the Indians on their lands. Op. Sol. I. D., M. 27512. February 20, 1935. Also see *Romero v.* United *States, 24 C.* Cls. 331 *(1889)* ; *Leecy v. United States,* 190 Fed. 289 (C. C. A. 8, 1911); app. dism. 232 U. S. 731 (1914) ; *Mason* v. *Sams,* 5 F. 2d, 255 (D. C. W. D. Wash. 1925), and Role v. Wilder, 8 Kans. 545 (1871).

[170] 175 u. s. 1, 31.

[171] 24 C. Cls. 331 (1889).

utes, section 465.[173] The court declared that such regulations "must be in execution of, and supplementary to, but not in conflict with the statutes." The actual holding in this case may be explained on the theory that the regulation questioned conflicted with general provisions of law on tenure of office.

In the case of *Leecy* v. United *States* [174] the claim of the Department that Revised Statutes 441 [174] and 463 [175] were a grant of general regulatory powers was again rejected. In this case, as in the *Romero* case, it may be argued that the regulation in question was in derogation of the statutory rights of the Indians. A fair reading of the opinion, however, indicates that the supposed statutory rights invaded were so tenuous that every unauthorized regulation of the conduct of an Indian, or any other citizen. could similarly be regarded as a violation of statutory or constitutional rights. The real force of the decision is the holding that sections 441 and 463 of the Revised Statutes do not create independent powers.^176

The claim of administrative officers to plenary power to regulate Indian conduct has been rejected in every decided case where such power was not invoked simply to implement the administration of some more specific statutory or treaty provision.

There is sometimes a tendency to regard the scope of administrative authority over Indians as broad enough to encompass almost every form of regulation. This idea, like the view of an omnipotent congressional power,[177] has been nurtured by descriptions of the extent of this power in dicta in decisions involving a specific legislative grant of administrative power.[178] Such language may influence later decisions in doubtful cases involving questions as to whether administrative power was implicit though not clearly delegated by.. the language of the statute.

The scope of administrative powers raises problems of particular importance in flve flelds: (a) tribal lands;[179] (*b*) tribal funds;[180] (c) individual lands;[181] (d) individual funds;[182] and (e) tribal membership.^183

[173] Act of June 30. 1834. sec. 17. 4 Stat. 735. 738. 25 U. S. C. 9.

[174] 190 Fed. 289 (C. C. A. 8. 1911), app. dism. *United States v. Leecy,* 232 U. S. 731 (1914).

[175] Derived from Act of March 3, 1849, 9 Stat. 395, 5 U. S. C. 485.

[176] Derived from Act *of* July 9. 1832, 4 Stat. 564, 25 U. S. C. 2.

[177] *In LaMotte v. United States, 254* U. S. 570 (1921), mod'g and aff'g 256 Fed. 5 (C. C. A. 8, 1919), the Supreme Court upheld the validity of regulations covering the leasing of restricted lands which were subject to the approval of the Secretary of the Interior by the Act of June 28, 1906. sac. 7, 34 Stat 539, on the ground that "The regulations appear to be consistent with the statute, appropriate to its execution. and in themselves reasonable."

In United *States* v. *Birdsall,* 233 U. S. 223 (1914), rev'g 206 Fed. 818 (D. C. N. D. Iowa 1913), the regulation challenged and upheld dealt with the conduct of departmental employees, and was authorized by Revised Statutes § 2058. 25 U. S. C. 31. derived from Act of June 30. 1834. sec. 7, 4 Stat 736, Act *of* June 5, 1850. sec. 4, 9 Stat. 437, and Act of February 27, 1851, sec. 5, 9 Stat. 587.

[178] Chief Justice Hughes (then associate justice), in describing the functions of the Office of Indian Affairs, said in United *States* v. *Birdsall, 233* U. S. 223 (1914), rev'g 206 Fed. 818 (D. C. N. D. Iowa 1913) :

> . . * The object of the establishment of the office was to create an administrative agency with broad powers adequate to the execution of the policy of the Government, as determined by the acts of Congress, with respect to the Iudiins under its guardianship. * * (P. 232.)
>
> . . . . .
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> . . In executing the powers of the Indian Office there is necessarily a wide range for administrative discretion and in determining the scope of official action regard must be had to the authonty conferred : and this, as we have seen, embraces every action which may properly constitute an aid in the enforcement of the law. (P. 235.)

In upholding the power of the Commissioner of Indian Affairs to requlre bill collectors to remain away from the Indian agency on the days when payments were being made, Mr. Justice Van Devanter, then on the Circuit Court of Appeals, wrote In *Rainbow* v. *Young,* 161 Fed. 835 (C. C. A. 8, 1908) :

> * * * we turn to the statutes bearing upon the authority of the Commissioner of Indian Affairs, and in considering them it is well to remember, as was said in *United States* v. *Macdaniel,* 7 Pet. 1, 14, 8 L. Ed. 587, that :
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> "A practical knowledge of the action of any one of the great departments of the government must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law ; but it does not follow that he must show statutory provision for everything he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out, and limitations imposed on the exercise of its powers there are numberless things which must be done, that can neither be anticipated nor defined, and which are essential to the proper action of the government." (P. 837.)
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> * * * * *
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> In our opinion the very general language of the statutes makes it quite plain that the authority conferred upon the Commissioner of Indian Affairs was intended to be sufficiently comprehensive to enable him, agreeably to the laws of Congress and to the supervision of the President and the Secretary of the Interior, to manage all Indian affairs, and all matters arising out of Indian relations, with a just regard, not merely to the rights and welfare of the public, but also to the rights and welfare of the Indians, and to the duty of care and protection owing to them by reason of their state of dependency and tutelage. And, while there is no specific provision relating to the exclusion of collectors from Indian agencies at times when payments are being made to the Indians, it does not follow that the commissioner is without authority to exclude them ; for by section 2149 he is both authorized and required, with the approval of the Secretary of the Interior, to remove from any tribal reservation "any person" whose presence therein may, in his judgment, be detrimental to the peace and welfare of the Indians. This applies alike to all persons whose presence may be thus detrimental, and commits the decision of that question to the commissioner. Of course, it is necessary to the adequate protection of the Indians and to the orderly conduct of reservation affairs, that some such authority should be vested in someone, and it is in keeping with other legislation relating to the Indians that it should be vested in the commissioner. *United States ex rel. West* v. *Hitchcock,* 205 U. S. 80, 27 Sup. Ct. 423, 51 L. Ed. 718. There is no provision for a re-examination by the courts of the question of fact so committed to him for decision, and, considering the nature of the question, the plenary power of Congress in the matter, and the obvious difficulties in the way of such a re-examination, we think it is intended that there shall be none. *United States ex rel. West* v. *Hitchcock, supra; Stanclift* v. *Fox,* 81 C. C. A. 623, 152 Fed. 697 (pp. 838–839).

See also *United States ex rel. West v. Hitchcock, 205* U. S. 80 (1907) ; Memo. Sol. I. D., February 28, 1935, which refers to *United States* v. *Clapox, 35* Fed. 575, *577* (D. C. Ore. 1888) ; *Adams v. Freeman, 50* Pac. 135. 138 (1897) ; Memo. Sol. I. D., August 30, 1938: Op. Sol. I. D.. *M. 27750,* July 14, 1934 ; 32 Op. A. G. 586 (1921).

[179] See sec. 9, *infra.*

[180] &e sec. 10, *infra.*

[181] See sec. 11, *infra.*

[182] See sec. 12. *infra.*

[183] See sec. 13. *infra.*

SECTION 9. ADMINISTRATIVE POWER-TRIBAL LANDS

A. ACQUISITION

One of the most important powers granted to the Secretary of the Interior is the power to acquire land for tribes. Apart from the many special statutes in this field,[184] two provisions of general law deserve mention.

Section 3 of the Wheeler-Howard Act [185] provides :

> The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale. or any other form of disposal by Presidential proclamation, or by any of the public-land laws

[184] See Chapter 15. secs. 6–8.

[185] Act of June 18. 1934, 48 Stat. 984. B85. 25 U. S. C. 463.

> *of the* United States: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: *Provided further,* That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation : * * *

This provision was originally framed in mandatory language, but was amended to make the restoration a discretionary act.[186] The administrative determination of this question may be guided by the fact, among others, that the protection of the property rights of the tribes is a federal function in which the public at large is interested.[187]

A second method by which the Secretary of the Interior is authorized to acquire lands for Indian tribes is set forth in section 5 of the Wheeler-Howard Act.[188] This section authorizes the Secretary :

> * * * in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface right to lands, within or without existing reservations, including trust and otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

The procedure followed under this authority and the status of lands thereby acquired are elsewhere discussed.^189

B. LEASING

The Secretary of the Interior has no power to enter into or approve a lease without authority from either a treaty^199 or a statute.[191] A few statutes permit the Secretary alone to make tribal leases for land rights,[192] but the law covering the leasing of most tribal land permits the tribal council to lease the lands subject to the approval of the Secretary.[193] Some of these statutes have been recently summarized by the Solicitor of the Department of the Interior.[194] Under existing laws,[195] and under many tribal charters [196] adopted pursuant to the Wheeler-Howard Act,[197] the tribal council has a right to make leases and permits on its own initiative subject to the approval of the Department. Under most of the statutes it is held that the Secretary acts in a quasi-judicial capacity in acting upon the recommendations of the superintendent and the actions of the tribal council regarding these leases, and hence cannot delegate this function to the superintendent.^198 It has been administratively held that the determination of the council should be conclusive upon the Department of the Interior, at least in the absence of evidence of mistake, fraud, or undue influence.[199]

C. ALIENATION

The general prohibition against alienation of tribal lands is elsewhere analyzed.[200] These restraints upon alienation apply to. federal administrative officers, as well as to tribal authorities, and to interests less than a fee as well as to conveyances in fee simple.[201] Thus, in the absence of express statutory authorization, the Secretary of the Interior has no power to diminish the tribal estate by withdrawing a right-of-way for the construction of irrigation ditches.[202] Congress; however, has conferred upon administrative authorities various statutory powers to alienate interests in tribal land less than a fee, particularly easements and rights-of-way.^203 Generally these statutes do not make tribal consent a condition to the validity of the alienation, but as a practical administrative matter tribal consent is frequently made a condition of the grant.^204

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[186] Memo. Sol. I. D.. September 29, 1937 : Op. Sol. I. D., M. 29798, June 15, 1938. See also Op. Sol. I. D.. M. 29616, February 19, 1938.

Even prior to the passage of this section, the Secretary of the Interior had adequate authority to withdraw lands from the public domain for public purposes.

See Act of June 25, 1910, 36 Stat. 836, 847. relating to "public lands." The authority to make temporary withdrawals was. expressly preserved by sec. 4 of the *Act* of March. 3. 1927. 44 Stat. 1347, which provides :

> That hereafter changes in the boundaries of reservations created by Executive order. proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: *Provided* That this shall not apply to temporary withdrawals by tbe Secretary of the Interior.

Memo. Sol. I. D., September 17, 1934.

[187] For discussion of tribal property see Chapter 15,

[188] 48 Stat. 984. 985. 25 U. S. C. 465.

[189] See Chapter 15. sec. 8. See also Memo. Sol. I. D., August 14. 1937 ; Memo. Sol. I. D., September 29. 1937.

[190] See 23 Op. A. G. 214. 220 (1900).

[191] 18 Op. A. G. 235 (1885) ; 18 Op. A. Cl. 486 (1886). It has been customary to utilize revocable permits on tribal lands which could not be leased under the statutes In order to preserve the value of the lands and to obtain a revenue from them rather than allowing them to lie idle. Memo. Sol. I. D.. January 12, 1937.

[192] Act of June 28, 1898. sec. 13. 30 Stat. 495 (Indian Terr.). Statutes of this nature concerning mineral leasing are described in Chapter 15, sec. 19.

[193] Act of February 28. 1891. 26 Stat. 794. sec. 3, 25 U. S. C. 397, extended by Act of August 15, 1894. sec. 1, 28 Stat. 286, 305, 25 U. S. C. 402. Alse see Act of May 11, 1938. sec. 1, 52 Stat. 347, 25 U. S. C. 396a. and Chapter 15. sec. 19.

[194] Memo. Sol. I. D., October 21, 1938 :

> Leases or permits covering use of tribal lands, entry or residence thereon, or removal of resources therefrom. may be executed through the concurrent action of the tribe and the Secretary of the Interior. or his duly authorized representative, under the following statutes and regulations: United States Code. title 25, sections 179, 397, 398, and 402 ; regulations governing the leasing of tribal lands for mining purposes, approved May 31, 1839, section 2 ; general grazing regulations, approved December 23, 1935, section 6 ; see 55 Decisions, Department of Interior 14, at pages 50–56.
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> * * *
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> The tribe may, with departmental approval, assign certain tracts of tribal land to individual members of the tribe or to particular families.
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> Such assignments may be purely for personal use and occupancy or they may permit leasing to outsiders under departmental supervision. * * *
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> * * *
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> * * * The tribe has no right to lease any part of the reservation without departmental appioval. So, too. he individual Indian has no right to make a lease covering any part of the reservation without departmental approval.
>
> The Department may withhold its approval from any lease, permit or assignment which does not do substantial justice to the claims of the tribe as a whole and the individual Indians who may have built improvements in particular areas.

Also see Chapter 15. secs. 19 and 20. On the power of the President to authorize the sale or other disposition of dead timber on reservations. see Act of February 16, 1889, 26 Stat. 673. 25 U. 8. C. 196.

[195] See Act of June 7, 1924, sec. 17, 43 Stat. 636: Act of May 29, 1924. 43 *Stat.* 244, 25 U. S. C. 398, interpreted in *British-American* Co. v. *Board,* 299 U. S. 159 (1936).

[196] See Chapter 15, secs. 19 and 20. Some tribal charters require departmental approval of leases but not of permits. *Ibid.* sec. *20.*

[197] 48 Stat. 984.

[198] Memo. So. I. D., March. 25, 1939. Some permits, like grazing permits for tribal lands, are frequently issued by the superintendent and then approved by the governing body of the tribe.

[199] Memo. Sol. I. D., May 22. 1937, containing a discussion of the principles which should guide administrative practice. Also sea *White* Bear v. *Barth,* 61 Mont. 322, 203 Pac. 517 (1921).

Although an original lease of tribal lands was signed by the Secretary and a lessee, it has been administratively held tbat after the passage of tbe Wheeler-Howard Act and the adoption of a tribal constitution conferring power to prevent any lease affecting tribal land without the consent of the tribe, the Secretary of the Interior cannot modify such lease without securing the approval of the Indian tribe. Memo. Sol. I. D., July 19, 1937.

[200] See Chapter 15, sec. 18.

[201] See Memo. Sol. I. D.. September 2. 1936 ; Memo. Sol. I. D.. September 6. 1934, and Memo. Sol. 1. D.. March 11, 1935. See also 25 C. F. R. 256.83.

[202] Memo. Sol. I. D., April 12, 1940 (Flathead).

[203] See 25 U. S. C. 311-322.

[204] See 25 C. F. R. 256.24, 256.53, 256.83.

Where statutory authority, for the issuance of a right-of-way exists, it has been administratively held that such authority is not repealed by section 4 of the Act of June 18, 1934.[205] In thus construing the Act of June 18, 1934, the Solicitor for the Interior Department, declared :[206]

> * * * The only limitations which the Reorganization Act imposes upon the exercise of authority conferred by such specific acts of Congress are : (a) a tribe organized under section 16 may veto the grant under the broad power given it by that section "to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe" and (b) a tribe incorporated under section 17 may be given the power to make such grants without restriction.

Although the grant of an easdment is held to be outside the prohibition, of section 4 of the Act of June 18, 1934, it would appear that section 16 of the act[207] requires the consent of an organized tribe to any grant of right-Of-way which the Secretary is authorized to make.[208] Tribal consent is likewise required where the Secretary of the Interior seeks to set aside tribal lands for reservoir purposes for an irrigation project.[209]

> * * * It is true that the United States in its sovereign capacity may condemn tribal land for certain purposes and may even appropriate tribal land- by act of Congress subject to constitutional requirements of compensation. But the rights and powers with respect to tribal property granted by the Constltutloo and Charter of the Confederated Salish and Kootenai Tribes are effective against officers of the United States not acting under direct mandate of Congress. Indeed, unless officers of the Department can be restrained by the Tribe from disposing of tribal property, all meaning has vanished from the provision in section 16 of the Indian Reorganization Act granting to an organized tribe the power "to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe." The only persons against whom this provision can be directed are officers of the United States. Private individuals never have had the power to sell tribal land or to dispose of tribal assets. If then * * * the restrictions contained in the above-quoted provision do not run against the United States, they are meaningless and the constitutional provisions enacted in accordance therewith are a false promise.

[205] 48 Stat. 984, 985, 25 U. S. *c. 464.*
[206] Memo. Sol. I. D., September 2, 1936.
[207] 48 *Stat. 986. 25* U. S. *C.* 476.
[208] See 25 C. F. R. 256.83.
[209] Memo. Sol. 1. D., July 8, 1936. And see 25 C. F. R. 256.44.

SECTION 10. ADMINISTRATIVE POWER—TRIBAL FUNDS*[210]

In defining the scope of federal administrative power over tribal funds it is important to bear in mind certain distinctions between various classes of funds, all of which are, in some sense of the word, tribal.

Funds which an Indian tribe has derived from its own members or from third parties without the interposition of the Federal Government, as where tribal authorities hold a fair or dance and charge admission, are, in a very real sense, "tribal," yet it has never been held that federal administrative authorities have my control over such funds.^211

A second class of funds which may be called "tribal" comprises those funds held in the treasury of a tribe which has become incorporated under section 17 of the Act of June 18. 1934,[212] or organized under section 16 of that act.[213] In both cases the scope of departmental power with respect to such funds is marked out by the provisions of tribal constitution or charter. Typically, departmental review is required where the financial transactions exceed a fixed level of magnitude or importance, but not in lesser matters. In the case of incorporated tribes, such departmental supervisory powers are generally temporary.[214]

A third class of funds consists of moneys held in the Treasury of the United States in trust for an Indian tribe. It is this class of funds which is customarily referred to under the phrase "tribal funds." These funds arise from two sources, in general :

1. Payments promised by the Federal Government to the tribe for lands ceded or other valuable consideration,[215] usually arising out of a treaty, and
2. Payments made to federal officials by lessees, land purchasers, or other private parties in exchange for some benefit, generally tribal land or interests therein.[216]

In view of the fact that the land itself was subject to a considerable measure of control, it was natural to find a similar control placed over the funds into which tribal lands were transmuted. Congress has, in general, reserved complete power over the disposition of these funds, requiring that each expenditure of such funds be made. pursuant to an appropriation act, although this strict rule has been relaxed for certain favored purposes.[217] Thus it has developed that administrative authority for any disbursement of "tribal funds," in the strict sense, must be derived from the language of some annual appropriation act or from those statutes which are, in effect, permanent appropriatlous of tribal funds for specified purposes[218]

[210] The Act of April 1. 1880, c. 41. 21 Stat. 70, provided :

> That the Secretary of the Interior be, and he is hereby, authorized to deposit, in the Treasury of the United States, any and all sums now held by him, or which may hereafter be received by him. as Secretary of the Interior and trustee of various Indian tribes. on account of the redemption of United States bonds, or other stocks and securities belonging to the Indian trust fund. and all sums received *on* account of sales of Indian trust lands. and the sales of stocks lately purchased for temporary investment. whenever be is of the opinion that the best interests of the Indians will be promoted by such deposits. In lieu of investments ; and the United States shall pay interest semi-annually, from the date of deposit of any and all such sums in the United States Treasury. at the rate per annum stipulated by treaties or prescribed by law. and such payments shall be made in the usual manner. as each may become due. without further appropriation by Congress.

Previous to the enactment of this law. the Secretary of the Inferior Invested tribal funds in various kinds of bonds, including state bonds. some of which were defaulted.

[211] It has been suggested that the Federal Government might bring suit on behalf of an Indian to insure a fair distribution of such funds, but there are no decisions on this point. See Memo. Sol. I. D.. November 18, 1936 (Palm Springs).
[212] See Chapter 15, secs. 23 and 24.
[213] See Chapter 15. sec. 23.
[214] *Ibid.*, secs. *23* and 24.
[215] See Chapter 1. sec. 1; Chapter 2, sec. 2; Chapter 3. sec. 3C(3) ; Chapter 15, sec. *23.* The payment of annuities and distribution of goods is a ministerial duly, enforceable by mandamus, if the Secretary is arbitrary or capricious. *Work* v. *United States,* 18 F. 2d 820 (App. D. C. 1927). *Cf. United States ex rel. Coburn v. Work,* 18 F. 2d 822 (App. D. C. 1927) ; *United* States *ex rel. Detling* v. *Work,* 18 *F.* 2d 822 (App. D. C. 1927).
[216] See Chapter 15, sec. 23.
[217] *Ibid.*
[218] The Act of May 18, 1916, sec. 27, 39 Stat. 123, 158. 159. requires specific congressional appropriation for expenditure of tribal funds except as follows :

> * * * Equalization of allotments. education of Indian children in accordance with existing law. per capita and other payments. all of which are hereby continued in full force and effect : * * *

See Chapter 15. sec. 23. Provisions relating to the deposit or investment of funds are numerous. For example. the Secretary of the Interior is authorized to "invest in a manner which shall be in his judgment most safe, and beneficial for the fund, all moneys that may be received under treaties-containing stipulations for the payment to the Indians. annually, of interest upon the proceeds of the lands ceded by them ; and be shall make no investment of such moneys, or of any portion, at a lower rate

Among the most importnut of the permanent authorizations for the disbursement of tribal funds are the various statutes providing for the division and apportionment of tribal funds among the members of the tribe.^219

While any administrative control over these funds must be bssed on statutory authority, it is not necessary, nor is it indeed possible, that every detail of the expenditure shall be expressly covered by statute.[220]

The Court of Claims in the case of *Creek* Nation v. *United States*[221] said:

> • • • The Secretary of the Interior has only such authority over the funds of Indian tribes as is confided in him by Congress. He cannot legally disburse and pay out Indian funds for purposes other than those authorized by law. This rule is the test by which the legal right of the Secretary of the Interior to make the disbursements involved must be determined. The contention, however, that the Secretary of the Interior could legally make only such disbursements as were expressly authorized by Congress cannot be conceded. The authorities cited in plaintiff's brief in support of this contention, when considered in the light of the precise questions presented, do not sustain it. The opinion of Attorney General Mitchell of October 5, 1929 (36 Op. *Attys. Gen.* 98–100), in fact, refutes the contention. and in effect lays down the rule that the authority of the Secretary of the Interior over indian property may arise from the necessary implication as well as from the express provisions of a statute. We think this is the correct rule and will apply it in determining whether the Secretary of the Interior was authorized to make the payments in question. The authority of the Secretary of the Interior to make the payments, or his lack of authority to make them, must be found in the treaties between the United States and the Creek Nation, and tbe various acts of Congress dealing with Creek tribal affairs. (P. 485.)

Quite apart from the necessity of finding some statutory source for authority to expend funds held in the United States Treasury in trust for an Indian tribe, there are certain positive statutory limitations upon the ways in -which such funds may be disbursed. These statutes, which are elsewhere, listed,[222] limit tbe administrative authority derived from appropriation acts construed in conjunction with section 17 of the Act of June 30, 1834,[223] which gave the President power to "prescribe such rules and regulations as he' may think fit, for carrying into effect the various provisions of this act, and of any other act relating to Indian affairs, and for the settlement of the accounts of the Indian department."

Perhaps the most important of these statutory limitations in effect today is that imposed by section 16 of the Act of June 18, 1934,[224] which gives an organized tribe the right to prevent any disposition of its assets without the consent of the proper officers of the tribe. This includes the right to prevent disbursements of tribal funds by departmental officials, where the tribe has not consented to such disbursements. Unless an act of 'Congress authorizing disbursements of tribal funds expressly repeals relevant provisions of the Indian Reorganization Act, such appropriation legislation does not nullify the power of the tribe to prevent such expenditure.[225]

There is a fourth category of funds which may be called "tribal funds" but which are subject neither to the uncontrolled tribal power pertaining to the first class-of funds disc! ssed; to the defined tribal power of the second class. nor to the detailed congressional control pertaining to the third class This fourth category includes funds which have accrued to administrative officials as a result of various Indian activities not specially recognized or regulated by act of Congress.

The Act of March 3, 1883,[226] as amended, provides:

> The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the five civilized tribes, and not the result of the labor of any member of such tribe, shall be covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe; and the Secretary shall report his action in detail to Congress at its next session.

The Comptroller General in a report on Indian funds dated February 28, 1929,[227] stated:

> * * * The absolute control and almost indiscriminate use of these funds. through authority delegated to the several Indian agents by the Commissioner of Indian

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of interest tban 5 per centum per annum." (25 U. S. C. 158. R. S. § 2096. derived from Act of June 14. 1836, 5 Stat. 36, 47, as amended by Act of January 9, 1837. sec. 4. 5 Stat. 135.)

There are many special statutes relating' to the disposition of tribal funds. For example. the Act of June 20. 1936. 49 Stat. 1543. provides:

> That tribal funds now on deposit or later placed to the credit of the Crow Tribe of Indians. Montana. may be used for per capita payments, or such other purposes as may be designated by the tribal council and approved by the Secretary of the Interior. * * *

The Comptroller General has differentiated between two types of tribal funds:

> There are several classes of *trust funds* provided for by law. the moneys in which are held In trurt for certain beneficiaries specified therein. The following may serve as examples:
>
> (b) Section 7 of the act of January 14. 1889 (25 Stat. 645), provides that the net proceeds of sales of lands ceded to the United States by the Chippewape Indians shall be placed in the Treasury to the credit of said Indians as a permanent fund, which shall draw interest at the rate of 5 per centum per annum, principal and interest to be expended for the benefit of said Indians.
>
> (c) Section 5 of the act of June 15. 1880 (21 Stat.. 204), in consideration of lands ceded to the United States, provides as follows:
>
> "That the Secretary of the Treasury shall. out of any moneys in the Treasury not otherwise appropriated. set apart. and hohl as a perpetual trust-fund for said Ute Indians. an amount of money sufficient at four per centum to produce annually fifty thousand dollars. which interest shall be paid to them per capita in cash. annually." * * *
>
> The moneys in thr *general fund* and also those in *special funds* are available for public expenditures. There is however. an important distinction in these two classes of funds. Moneys In the *general* fund can only be withdrawn from the Treasury in pursuance of an appropriation mad· by law: but *moneys in special funds*, having been dedicated by Congress for expenditure for specified objects before they were covered into the Treasury, in which they have been placed for safe-keeping only. are subject to withdrawal from the Treasury for expenditure for these objects without an appropriation (13 Comp. Dec. 219. 700). It is true that in *some* instances, as in that of the *special fund* called the "reclamation fund" (3, *supra*), Congress has used the term "appropriation" in constituting certain moneys to be collected *special funds*: but as the term is so applied to the moneys before they are collected it is obvtous that the term is so used in a general sense only. for which the term "dedicated" appears to he more appropriate.
>
> Moneys In *trust funds* are not properly available for expenditures of the Government. They are payable to or for the nre of the beneficiaries only. The beneficiaries may be either a single person or a class of persons. In the three classes of *trust funds* given above. the trust moneys in the first class (a) were received directly from the donors: those in the second class (b) were collected as revenues of the United States charged with the trust; those In the third class (c) were a grant of moneys in the *general fund* of the Treasury in pursuance of a treaty obligation. (14 Decisions Comptroller Treasury. 361. 365-366 (1907).)

[219] These statutes are discussed in Chapter 9. sec. 6; Chapter 10, sec. 5; Chapter 15. sec. 23.

[220] Act of May 18, 1916. sec. 27, 39 Stat. 123. 158, requires with a few exceptions specific congressional appropriation for tribal expenditures of tribal moneys. The Act of May 25. 1918. secs. 27 and 28. 40 Stat. 561. authorizes the Secretary to invest restricted funds, tribal or individual. in United States Government bonds. Also see Chapter 13. sec. 22F.

[221] 78 C. Cls. 474 (1933). On the lack of power of the Secretary to restore to the Creek orphan fund the funds erroneously expended for general benefit *of* tribe. see 16 Op. A. G. 31 (1878).

[222] See Chapter 9. sec. 6 : Chapter 10, sec. 5 : Chapter 15, sec. 23.

[223] 4 Stat. 735, 738, 25 U. S. C. 9. construed to cover disbursement of tribal funds in 5 Op. A. G. 36 (1848).

[224] 48 Stat. 984.

[225] Memo. Sol. I. D. October 5. 1936.

[226] 22 Stat. 582. 590: amended Act of March 2. 1887. 24 Stat. 449. 463: Act of May 17. 1926. sec. 2. 44 Stat. 560; Act of May 29. 1928, sec. 68, 45 Stat. 986, 991. 25 U.S.C. 155.

[227] Sen. Doc. 263. 70th Cong. 2d sess.. 1928–29. For a discussion see American Indian Life. Bull. No. 14 (May 1929). American Defense Association, Inc.. p. 19.

Affairs pursuant to section 463, Revised Statutes, is apparently causing complaint on the part of groups of Indians. (P. 40.)

The report also contained some evidence justifying the discontent of the Indians.

> * * * "Indian moneys, proceeds of labor," were being used for such purposes as the purchase of adding machines and office equipment, furniture, rugs, draperies, etc., for employees' quarters, papering and painting the superintendent's house, and the purchase of automobiles for the fleid units. (P. 40.)[228]

The Comptroller General concluded that-

> * * * This condition has through the years of practice brought about a very broad interpretation of what constitutes "the benefit" of the Indian. (P. 39.)[229]

The Act of June 13, 1930,[230] provides :

> SEC. 2. All tribal funds arising under the Act of March 3, 1883 (22 Stat; 590), as amended by the Act of May 17, 1926 (44 Stat. 560), now included in the fund 'Indian Money, Proceeds of Labor,' shall, on and after July 1, 1930, be carried on the books of the Treasury Department in separate accounts for the respective tribes, and all such funds with, account balances exceeding $500 shall bear simple Interest at the rate of 4 per centum per aunum from July 1, 1930.
>
> SEC. 3. The amount held in any tribal fund account which, in the judgment of the Secretary of the Interior, is not required for the purpose for which the fund was created, shall be covered into. the surplus fund of the Treasury; and so much thereof as is found to be necessary for such purpose may at any time thereafter be restored to the account on books of the Treasury without appropriation by Congress.

The extent to which funds which are still called "I. M. P. L." are subject 'to the statutory limitations applicable to tribal funds in the strict sense is an intricate problem upon which no opinion will be here ventured^231

[228] Sen. Doc. 263, op. *cit.*

[229] *Ibid.*

[230] C. 483, 46 Stat. 584. There are 300 tribal "funds of principal" held in trust by the United States in tbe Treasury (Department of the Treasury, Combined Statement of Receipts nud Expenditures, Balances, etc. of the United States for Fiscal Year ended June 30, 1939, pp. 417–427), and 266 Interest accounts, which are classified by the Treasury as general funds (*Ibid.*, pp. 260–269). The Department of the' Interior breaks down many of the principal funds into subordinate classifications.

[231] See Chapter *15.* sec. 23A.

SECTION 11. ADMINISTRATIVE POWER-INDIVIDUAL LANDS.

Administrative power over individual Indian lands is of particular importance at five points :

(a) Approval of allotments,
(*b*) Release of restrictions,
(c) Probate of estates,
(*d*) Issuance of rights-of-way,
(*e*) Leasing.

A. APPROVAL OF ALLOTMENTS

The statutes and treaties which confer upon Individual Indians rights to allotments are elsewhere discussed,[232] as is the legislation governing jurisdiction over suits for allotments.[233] Within the fabric of rights and remedies thus defined there is a certain scope of administrative discretion^234 which is described in a recent ruling of the Solicitor for the Interior Department in these terms : [235]

> * * * The Secretary may for good reason refuse to approve an allotment selection, but he may not cancel his approval of an allotment except to correct error or to relieve fraud. Cf. *Corneleus* v. *Kessel* (128 U. S. 456) (public land entry). It is very doubtful whether the Secretary would be privileged *to* return allotment selections to tribal ownership simply on the ground that the Wheeler-Howard Act possibly forbids the trust patenting of such selections.
>
> * * * * *
>
> (2) Where the Secretary has approved an allotment, the ministerial duty arises to issue a patent, With approval his discretion is ended except, of course, for such reconsideration of his approval as he may find necessary (24 L. D. 264). Since only the routine matter of issuing a patent remains, the allottee after his allotment is approved is considered as having a vested right to the allotment as against the Government. Raymond Bear Hill (42 L. D. 689 (1929)). (Cf. Where a certificate of approval has issued as in the Five Civilized Tribe cases, *Ballinger* v. *Frost* (216 U. S. 240) ; and where right to a homestead is involved, *Stark* v. *Starre* (6 Wail. 402).) And then the allottee may bring mandamus to obtain the patent. See *Vachon v. Nichols-Chisolm Lumber Co.* (126 Minn. 303, 148 N. W. 288, 290 (1914).) *Cf. Lane* v. *Hoglund* (244 U. S. 174) ; *Butterworth* v. *united States* (112 U. S. 50) ; *Barney* v. *Dolph* (97 U. S. 652, 656).
>
> * * * * *
>
> (3) Where an allotment has not been approved, on the other hand, approval and the issuance of a patent cannot be compelled by mandamus. *West* v. *Hitchcock* (205 U. S. 80) ; *United States v. Hitch&k* (190 U. S. 316). But it is recognized that an allottee acquires rights in land with some of the incidents of ownership when the allotting agents have set apart allotments and he has made his selection. Until that time an Indian eligible for allotment has only a floating right which is personal to himself and dies with him. *La Roque* v. *United States (239* U. S. 62). See Philomme Smith (24 L. D. 323, 327). The owner of an allotment selection, even before its approval, has an inheritable interest *(United States v. Chase* (245 U. S. *89)* ; *Smith v. Bonifer* (166 Fed. 846) (C. C. A. 9th, 1909)) ; which will be protected from the outside world *(Smith* v. *Bonifer, supra)* ; and which he can transfer within limits (*Henkel* v. *United States. supra;* United *States v. Chase, supra)* ; and which is sufficient to confer an him the privileges of State citizenship as granted to all "allottees" by the act of 1887 (*State* v. *Norris, supra*). Moreover, where the Government has issued an erroneous patent for the allotment selections, the owner of such selection will be protected in his right against the adverse interests possessing the patent (*Hy-Yu-Tse-Mil-Kin v. Smith (194* U. S. 401) ; *Smith.* v. *Bonifer* (132 Fed. 889 (C. C. Ore. 1904), 166 Fed 846 (C. C. A. 9th, 1909)), and against the Government itself. *Conway* v.

[232] See Chapter 11. sec. 2.

[233] See Chapter 19. sec. 2.

[234] The Act of March 3. 1885, sec. 6, 23 Stat. 340 (Cayuse end others) which authorizes the Secretary to determine all disputes end questions arising between Indians regarding their allotments, exemplifies one of the many administrative powers over allotments. The Supreme Court *in Hy-Yu-Tse-Mil-Kin* v. *Smith,* 194 U. S. 401 (1904) said that if two Indians claim the same land, the allotment should be "made in favor of the one whose priority of selection and residence epd whose improvements on the lend equitably entitled such person to the land." (P. *414.)*

The Court in the case of *La Roque v. United States, 239* U. S. 62 (1915) said:

> * * * The regulations and decisions of the Secretary of the Interior, under whose supervision the act was to be administered, show that it was construed by that officer as confining the right of selection to living Indians and that he so instructed the allotting officers. While not conclusive, this construction given to the act iu the course of its actual execution is entitled to great respect and ought not to be overruled without cogent and persuasive reasons. (P. 64.)

On the scope of discretion of the Secretary of the Interior in allotting lands, see *Chase. Jr.. v. United States, 256* U. S. 1 (1921).

[235] Op. Sol., I. D.. M. 28086, July 17, 1935. And see Memo. Sol., I. D. September 17, 1934.

United States (149 Fed. 261) (C. C. Neb. 1907). In these cases the courts lay down the principle that where an Indian has done all that is necessary and that he can do to become entitled to land and fails to attain the right through the neglect or misconduct of public officers, the courts will protect him in such right. Again, where the claimant does all required of him he acquires a right against the Government for the perfection of his title. and the right is to be determined as of the date if should have been perfected. *Payne v. New Mexico* (255 U. S. 367); *Raymond Bear Hill.* supra.

Further, where the right to the allotment has failed to become vested through the neglect of public officers to attach approval to the selection, one court has indicated that the right to the allotment would be considered as already vested so as to be beyond the reach of a later act of Congress. *Lemieux* v. *United States* (15 Fed. (2d) 518. 521 (C. C. A. 8th. 1926)). In the Lemieux case the Secretary's approval under the act of 1887 would have had to include determination of the qualifications of the applicants but in the Fort Belknap situation. no question of qualifications arises since previous enrollment on the allotment list is made by statute conclusive evidence of the enrollee's right to allotment. Thus the position of the Fort Belknap allottee compels even more strongly to the conclusion suggested in the Lemieux case. It has also been suggested that where the Indian possesses all the qualifications entitling him to an allotment, the Secretary has no longer any discretion to refuse approval. *See State* v. *Norris, supra* (55 N. W. at 1089.)

In ruling that the Secretary of the Interior could disapprove allotment selections on a reservation which bad voted to exclude itself from the Wheeler-Howard Act, the Solicitor of the Depart. ment of Interior said: [236]

* * * the owners of allotment selections have certain rights and interests which will be protected against outside interests and errors by Government agents. *United States v. Chase (245* U. S. *89)*; *Hy-Yu-Tse-Mil-Kin v. Smith* (194 U. S. 401); *Smith v. Bonifer* (166 Fed. 846. C. C. A. 9th, 1909); *Conway* v. *United States (149* Fed. 261, C. C. Neb. 1907). But they ordinarily have no vested right to approval or to a patent. In other words, they cannot prevent Congress from annuling their selection (*Lemieux* V. United *States,* 15 Fed. (2d) 518,521 (C. C. A. 8th, 1926)), nor force the Secretary, to grant approval. *West v. Hitchcock* (205 *u. s.* 80).

Decidedly, the conservation of Indian land in tribal ownership when as imperative as in the Ft. Peck situation, if it can be accomplished, would appear to be sufficient justification for the exercise of the discretion of the Secretary to refuse approval to allotment selections. Precedent is not available for guidance here since cases dealing with the discretion of the Secretary to refuse approval to allotments have dealt only with his power as applied to particular applications for allotment and resulting from certain defects in the application. However, in one of these cases, *West* v. *Hitchcock* (205 U. S. 80), the stewardship of the Secretary over tribal property was recognized as a source of power to refuse allotments injurious to the tribe. The power would seem at least as great when applied on a large scale as in a single instance. Accordingly, I conclude that the Secretary is privileged to disapprove the Ft. Peck selections upon the grounds of policy.

The Solicitor of the Department of the Interior has further described the power of the Secretary over allotment selections in a snbsequent opiniou dealing with the Fort Peck Indian Reservation. He declared : [237]

Where allotment selections have been duly made under authority of the Department and pursuant to its official instructions and in accordance with a course of allotment on the reservation, in my opinion-it is probable that a court would hoid that the Secretary cannot decline to approve particular selections because of a subsequent change in land policy. His authority to disapprove such selections would be limited to disapproving particular selections not entitled to approval because of error or the ineligibility of the applicant or other such reason. I base my opinion on the fact that when an official allotment selection has been duly made in accordance with the laws and regulations at the time of the selection, in ordinary circumstances the selector acquires a certain property interest in the land and a right to the perfection of his title which courts will protect.

An Indian eligible for allotment wbo has not properly selected an allotment under the instructions of the Interior Department has only a floating right to an allotment which is not inheritable and which gives him no vested interest in any land. *La Roque* v. *United States,* 239 U. S. 62; *Woodbury* v. *United States,* 170 Fed. 302, C. C. A. 8th, 1909. After *proper* selection of an allotment, however, an Indian has been held to have an individual interest in the land with many of the incidents of individual ownership. His interest is inheritable, transferable within limits, and deserving of protection against adverse claims by third persons. *United States* v. *Chase. 245* U. S. 89; *Henkel* v. *United States,* 237 U. S. 43; *Hy-Yu-Tse-Mil-Kin* v. *Smith,* 194 U. S. 401; *Bonifer* v. *Smith,* 166 Fed. 846, C. C. A. 9th, 1909; see 55 I. D. 295, at 303.

The cases before the Interior Department and before the courts which are of most concern in this problem are the cases dealing with the protection of an allotment selection against adverse action by the Government, either by Congress or by the Executive. The Department has taken the view that acts of Congress limiting allotment rights in "undisposed of" tribal lands do not apply to allotment selections even though they have not been approved. *Fort Peck and Uncompahgre Allotments,* 53 I. D. 538; *Raymond Bear Hill,* 52 L. D. 689. In these decisions it was held that the filing and recording of an allotment selection segregates the land from other disposal, withdraws the land from the mass of tribal lands, and creates in the Indian an individual property right.

* * * * * * * a judicial determination of whether or not an allotment selection merits protection against adverse governmental action involves a weighing of the equities in the light of the intent of Congress and the history of administrative action. In the Palm Springs case the act contemplated that no allotments should be made until the Secretary of the Interior was satisfied of their advisability. No allotments were in fact made and the Secretary was clearly not satisfied of their advisability. If a court attempted to force the recognition and completion of tentative selections in the field, it would encroach upon executive discretion. In the *Payne* and *Leecy* cases, however, whatever discretion had been given to the Executive as to the advisability of allotments had been exercised and a course of allotment had been established. Thereafter, individual allotment selections were approved or disapproved according to their individual merits. In this situation a court could properly prevent, as an abuse of discretion, the failure to approve an individual allotment selection, not because of its own demerits, but because of extraneous policies.

B. RELEASE OF RESTRICTIONS .

Perhaps the most important power vested in administrative officials with respect to allotted land is the power to pass upon the alienation of such lands. We have elsewhere noted the rigid restrictions placed upon the alienation of tribal lands from early times.'" Allotments carried the obvious risk that the land given to the individual allottee would be speedily alienated.^239 Accordngly restrictions of various kinds were imposed upon allotments For the purpose of controlling alienation. Such restrictions were

[236] Memo. Sol. I. D.. July 17. 1935.

[237] Op. Sol. I. D., M. 30256. May 31, 1939. In reaching his conclusion, the Solicitor discussed. among other cases, the following: *United* Stoles v. *Payne,* 264 U. S. 446 (1924) : *Leecy* v. *United States,* 190 Fed. 289 (C. C. A. 8. 1911). app. dism. United *States* V. *Leecy,* 232 U. S. 731 (1914); and the Palm Springs Reservation case, *St.* Marie v. United states, 24 F. Supp. 237 (D. C. S. D. Cal. 1938). aff'd 108 F. 2d 876 (C. C. A. 10, 1940).

[238] See Chapter 15, sec. 18.

[239] See Chapter 11, sec. 1.