

Britain. Land was dear in Great Britain and cheap in the United States in the protection '40's and the free trade '50's, and it is dear in Great Britain and in the United States now and cheap in Canada. Tax the unused land of Great Britain high enough to make the lordly monopolists eager to sell it, and British migration will cease.

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## THE BALLINGER INVESTIGATION.

There is in progress at Washington, as every newspaper reader knows, a Congressional inquiry into the official conduct of Richard A. Ballinger, Secretary of the Interior, the successor (under President Taft's appointment) to James R. Garfield, who was appointed by President Roosevelt and who held the place until President Roosevelt's term expired.

The investigating committee consists of the following members of the two Houses:

Republicans: Senators Nelson (chairman), Flint, Sutherland and Root; Representatives McCall, Madison, Olmstead and Denby.

Democrats: Senators Fletcher and Purcell; Representatives James and Graham.

The testimony taken is voluminous, and a summary of that which has been produced by Louis D. Brandeis, the Boston lawyer who is prosecuting the charges, has been furnished to the American press. The points of this brief of facts, the only summary as yet available for public use, we purpose here setting out.

### I.

The first point relates to the Cunningham coal claims of Alaska.

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Some time prior to March 4, 1907, about 900 coal claims in Alaska had been "located," which means staked out by intending claimants; and only 33 of these had passed to "entry," which means to the point of payment of \$10 an acre to the government and the delivery of a receipt therefor. Those 33 were the so-called "Cunningham claims."

Nothing remained to be done regarding the Cunningham claims, in order to transfer title from the government to the claimants, but the issue of "patents" for them by the Commissioner of the General Land Office in the Department of the Interior.

While they were in that state, and on March 4, 1907, Mr. Ballinger became Commissioner of the General Land Office under Secretary Garfield.

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Meanwhile the Land Office had been frequently

advised of fraudulent schemes for monopolizing Alaska coal mines.

Consequently, Assistant Commissioner Dennett instructed Special Agent Jones on June 21, 1907, to investigate and report. But sometime between July 20 and 29, 1907, Commissioner Ballinger told Jones to make only a partial report—enough to enable him (Ballinger) to advise Congress intelligently to enact legislation favorable to Alaska claimants.

Jones accordingly furnished only a partial report. He recommended, however, that a strict investigation of every claim be made; and at a later date, August 13, 1907, he reported to Commissioner Ballinger a list of claimants of different groups, one of them being the Cunningham group, for use "in a further investigation of frauds in coal lands in Alaska." The latter report closes with a recommendation "that these entries be carefully investigated by an experienced and fearless agent."

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In November, 1907, Louis R. Glavis, another special agent, got permission to go to Washington, where he laid before his superior, Commissioner Ballinger, reasons for strict inquiries before "clear listing" the claims. "Clear listing" a land claim means to "O. K." it for a "patent," and implies that if there was ever any suspicion it has been removed through investigation.

Notwithstanding that recommendation, however, and about December 26, 1907, Commissioner Ballinger ordered the Cunningham claims "clear listed." He explains now that he did so upon a favorable report by Special Agent Love of August 2, 1907. But after that report Mr. Love wrote that he "did not 'clear list' those entries for patent, but on the contrary raised a question of their regularity." He is borne out in this assertion by the text of the very report upon which Commissioner Ballinger says he acted.

Right at this point a peculiarly significant fact appears. An option for a half interest in the Cunningham claims which had been bought (before Mr. Ballinger became Commissioner of the Land Office) by the syndicate composed of J. P. Morgan's banking house and the Guggenheim family, was taken up by the Morgan-Guggenheim syndicate at about the time that Commissioner Ballinger (against the advice of his agents, Glavis and Love) ordered the Cunningham claims to be "clear listed." The inference would not be far fetched, therefore, that Commissioner Ballinger was influenced not by Love's report, as he weakly ex-

plains, but in some way by the interests of the Morgan-Guggenheim syndicate.

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Although he had already "clear listed" the Cunningham claims, Commissioner Ballinger officially notified Glavis, on December 28, 1907, that the investigation of the Alaska coal frauds was placed in his (Glavis's) charge. Yet, as soon as January 6, 1908, the patents were actually before Commissioner Ballinger for his signature; and the next day, January 7, 1908, a letter from Commissioner Ballinger's bureau informed Mr. Glavis that the Cunningham claims had been taken out of his jurisdiction and referred to the patenting division.

It was upon receipt of that letter that Mr. Glavis became "insubordinate," in order to prevent the fraudulent transfer of millions of dollars worth of coal lands to the Morgan-Guggenheim syndicate and other claimants. He telegraphed Commissioner Ballinger that the Cunningham coal entries "should not be clear listed." This telegram he followed with a letter in which he said: "During the summer of 1907, said entries among others were partially investigated by Special Agent H. T. Jones, who, under date of August 10, 1907, reported that from the preliminary investigation made, he believed that the said entries were fraudulent and recommended further investigation; twice since making said report he has called your attention to the same, recommending further investigation of all the Alaska cases."

Commissioner Ballinger's official recognition of this "insubordinate" protest consisted in a reply to the impatient inquiries of a representative of the claimants, dated February 28, 1908, that there was "temporary delay caused by report of field agent."

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A new line of procedure was then adopted by Commissioner Ballinger. He drew a Congressional bill relating to the Cunningham clauses, known as the Cale bill, and on March 3, 1908, appeared before a Congressional committee to urge its approval. He himself explains the last section of that bill by saying that it provides "for the consideration of existing entries, and *does not call for proof of good faith* of the original entrymen." He did not succeed in getting the bill passed.

On March 4, 1908, the day following his advocacy of that bill before the Congressional committee, Commissioner Ballinger resigned.

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A few days later, ex-Commissioner Ballinger became attorney for the Cunningham claimants.

For this he is criticised as for a breach of professional ethics. Also for violation of a Federal statute making it unlawful for a Federal officer to act as counsel "for prosecuting any claim against the United States" which was pending in any department while he was such officer, within two years after ceasing to be such officer. But, Attorney General Wickersham advised the President that it was not unlawful under this statute for Mr. Ballinger to become counsel for the Cunningham claimants. His advice was based upon an opinion of Hoke Smith, when Secretary of the Interior, to the effect that the statute applies only to money claims. But Mr. Wickersham ignored the opinion of Secretary Lamar (then of the Interior Department and afterwards a Supreme Court Justice), which held the exact opposite, and with far better reason as any fair man might infer.

Mr. Ballinger continued to represent Alaska coal land claimants at the Land Office at various times thereafter until President Taft appointed him Secretary of the Interior in place of Secretary Garfield, about a year after his resignation as Commissioner.

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Immediately upon becoming Secretary of the Interior, Mr. Ballinger ordered quick action on the Cunningham claims.

He directed Mr. Glavis to complete his investigation in 60 days and denied his request for further time. A new coal land law had meantime been passed, and Glavis asked Secretary Ballinger to have it interpreted by the Attorney General. Ballinger promised to do so, but referred it instead to a subordinate of his own named Pierce, who made an interpretation admitting the Cunningham claims to patent. Mr. Glavis was then ordered to report the claims in accordance with the Pierce opinion.

Unwillingly he did so, but again became "insubordinate" by securing an interview over Secretary Ballinger's head with Attorney General Wickersham. The Attorney General overruled Pierce's opinion, and the Cunningham patents were once more withheld.

Glavis then re-applied to Secretary Ballinger, July 16, 1909, for further time to investigate, and getting no satisfaction he became "insubordinate" again. This time he brought the Cunningham claims to the attention of the Secretary of Agriculture, who, July 24, 1909, wrote to Secretary Ballinger for a postponement on the ground that the coal fields in question were on a forest reserve.

Mr. Glavis had meanwhile—July 21, 1909—been relieved of the Cunningham cases on the ground that he was not expeditious.

The agent appointed to the work as his successor, James M. Sheridan, had had no previous experience with the cases; and August 25, 1909, Mr. Glavis went over the facts with Gifford Pinchot, then chief forester, who advised him to lay them before the President, Mr. Taft.

On the 11th of August, 1909, Mr. Glavis did this, and on the 18th of September, 1909, he was dismissed from the service.

In sustaining Secretary Ballinger, President Taft (vol. xii, pp. 920, 921, 922) delivered a remarkably sweeping opinion, which now finds defense only upon an assumption that somebody had deceived him.\*

## II.

The second point of the brief of facts we are considering, relates to water power sites.

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In the last year of his service as Secretary of the Interior, Mr. Garfield withdrew from entry large areas of public land bordering upon rivers. He did this to preserve water power for governmental irrigation, and also to prevent private monopolization of water power sites.

As soon as Mr. Ballinger became Secretary of the Interior in Garfield's place, under the cabinet reorganization which President Taft made immediately upon coming into office, he ordered his subordinates, Director Newell and Chief Engineer Davis, to recommend the restoration to entry of

\*This was the opinion which Mr. Taft now admits (not in the brief of facts we are condensing, but by letter of President Taft to Senator Nelson, Chairman of the Congressional Investigating committee), was drafted by the Assistant Attorney General in Mr. Ballinger's department. He had co-operated with Secretary Ballinger in the hearing on the Glavis matter before President Taft, at which Mr. Glavis was not present nor represented. The President revised the draft prepared for him at his request by Secretary Ballinger's Assistant Attorney General, before adopting it.

In the course of the Congressional inquiry subsequent to the proofs embodied in the brief of facts here under consideration it came out that Mr. Taft had based his decision in the Glavis-Ballinger controversy upon a report by Attorney General Wickersham to the President, which was alleged to have been antedated, but which the Congressional committee, in executive session and by a vote of 7 to 5—one Republican, Mr. Madison, voting with the minority—refused to ask for. In his letter of May 15 to the committee, explaining his use of Secretary Ballinger's draft opinion in making public his decision in favor of Mr. Ballinger, President Taft has now admitted and explained the antedating of Attorney General Wickersham's report.—See News Narrative in this week's Public at page 466.

the water power sites which Garfield had withdrawn, saying that the withdrawals were illegal. This means that public land which had been withdrawn from private appropriation by Secretary Garfield and President Roosevelt was to be reopened for private appropriation by President Taft and Secretary Ballinger.

Secretary Ballinger's two subordinates protested, but Secretary Ballinger peremptorily directed them to proceed. He acted, so Mr. Davis testifies, "as though a great crime had been committed in making the withdrawals."

Significant here is the fact that Secretary Ballinger afterwards told the President, so the President says in his sweeping decision of September, 1909,\* in favor of his Secretary of the Interior, that in restoring the water power sites to entry he had acted upon the very recommendation which the evidence now shows he had ordered his subordinates to make.

Other testimony is outlined in the summary before us, which goes to show that Secretary Ballinger's motives for placing again within the reach of water power monopolizers the sites his predecessor had withdrawn, must have been extra-official.

To quote the summing up on this point of the brief of facts here condensed, the testimony indicates—

that not only did Mr. Ballinger give the President an essentially false explanation of his acts, but that he also gave such an explanation to Senator La Follette, Mr. Pattison, and others who made inquiries of him. It shows, too, that his original excuse given to his subordinates for restoring the lands to entry, namely, that the withdrawals were contrary to law, was abandoned by him as untenable when the President ordered him to rewithdraw the lands on exactly the same warrant of law that Garfield had acted upon; and that he then attempted to justify himself for restoring the water power site to private entry by offering other excuses, also essentially false, to-wit: that the restrictions were recommended by Messrs. Newell and Davis (his subordinates), and that Garfield's withdrawals were made upon insufficient information.

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Quite apart from the summary of evidence we are here condensing, it should be noted, regarding the lawfulness of withdrawals of land from entry, that the utmost that can be said for Secretary Ballinger is that there was a doubt. In this view of the law his position is no better than if the law had clearly not been as he construed it. For whereas such doubt as there may have been was resolved by Secretary Garfield in favor of the public

\*See previous footnote.

interest, Secretary Ballinger resolved that doubt in favor of the ring of water power monopolizers.

### III.

The reclamation question is third in the order of the brief of facts here under consideration.



In Secretary Ballinger's department there is a branch known as the Reclamation Service. It has charge of reclaiming (generally by means of irrigation) the arid lands of the West, and its Director is T. H. Newell.



Soon after Mr. Ballinger was called into the President's cabinet, it came to be believed by the best men in this branch that Secretary Ballinger was trying to destroy the usefulness of the Reclamation Service, and Gifford Pinchot laid the matter before President Taft. The President gave him assurances; but the situation continued, and subsequently the President publicly justified Secretary Ballinger. According to the brief of facts, Secretary Ballinger had completely stopped one of the important projects of the Reclamation Service which Secretary Garfield had set a-going.

That project was a system under which associations of settlers upon arid lands did reclamation work under the direction of government engineers. As compensation they were allowed reductions in payments for their land, and the associations thereupon issued to their members, individually, co-operative certificates—popularly known as "Garfield currency"—for their respective contributions of work. "This," to quote the brief of facts, "was merely doing the work by contract with the settlers instead of the usual contractors."

Although the system had worked well, and good reasons for pronouncing it unlawful have not been brought out, Secretary Ballinger seems to have had no difficulty in getting an opinion against it from the new Attorney General.

President Taft, too, found the system illegal, but upon a basis of fact which did not exist. He found that the law prohibited the "Garfield currency" because there was not, as the law required there should be, "money enough in the Reclamation Fund to pay for the project or the part thereof contracted for." But, in fact, there was a clear \$8,000,000 available in that fund at all times to meet these certificates, which did not exceed \$500,000 in the aggregate.



Another matter in connection with the Reclamation Service related to "the Perkins affair."

An engineer in that service of the name of Perkins, had been exposed as a hired lecturer for the Harriman railroad interests. His lecturing in exploitation of reclamation projects, the railroads paying his expenses, were approved by Secretary Ballinger and not objected to by Director Newell—upon condition, however, that all the railroads be invited to participate. But it subsequently appeared that Perkins was drawing a monthly salary from the Harriman roads of \$300 above his expenses. It appeared also that he favored the Harriman roads in the shipment of reclamation freight. Those facts were officially reported to Secretary Ballinger, and Director Newell asked Perkins for his resignation. For doing this, Director Newell was reprimanded by Secretary Ballinger. Perkins is still retained in the service by the Secretary, and with increased official power.

### IV.

Secretary Ballinger's attack upon the forest service, a bureau of the Department of Agriculture, is the fourth point in the brief of facts before us.

The Director of this service, established in 1897, was Gifford Pinchot, who became Chief of the Bureau of Forestry in 1877. Its special function is the conservation of timber on government lands.



In the prosecution of the work of this bureau it had been customary for the Secretary of the Interior, upon request from the Secretary of Agriculture, to withdraw from entry small pieces of land as "ranger" stations, or headquarters, where rangers could have cabins for themselves and pasture for their horses. But requests of this character were refused by Secretary Ballinger on the ground that they were illegal. He did not solicit an opinion from the Attorney General, however, until the Secretary of Agriculture protested; and the opinion he then solicited has not yet been given. Meanwhile the Forest Service is hampered in its conservation work.



Secretary Ballinger also annulled an arrangement between the Departments of the Interior and of Agriculture of 18 months' standing, with reference to forestry on Indian reservations. He pronounced the arrangement illegal, but upon a Comptroller's precedent which was not relevant and had not before been applied in this way.

Secretary Ballinger's act in this connection has crippled forest timber conservation on Indian reservations.

Still another of Secretary Ballinger's interferences with the forestry service related to the technical training of forest rangers.

Fully trained men for this highly important duty could not be had. Those partially trained were therefore at first instructed in groups by officers of the forestry service who went from place to place for the purpose. Then camp schools were improvised by the forestry officers for courses of eight or ten weeks. Finally the men were sent to agricultural colleges which offered courses prescribed by the forestry service.

"We sent no men to college," Mr. Pinchot testifies, "in the sense in which that term is used; we simply ordered them to go where they could get instructions in their duties, partly from officers of the government and partly from other men; and we did so on the basis of a very considerable experience, and with the foreknowledge that that was the best scheme open to us for raising the standard of the work." Instruction at these colleges was given to the rangers free, and the government paid their traveling expenses but not their living expenses.

This system of ranger education was stopped by the Secretary of Agriculture, after the President had dismissed Mr. Pinchot from the service at the instigation of Secretary Ballinger. It was stopped as illegal, upon an opinion of the Comptroller. Of that opinion the brief of facts before us says: "The matter was presented to the Comptroller without notice to the forest service and without giving its law officers opportunity to present their side of the case;" and "the document submitting the question of legality to the Comptroller is practically a brief against the forest service."

#### V.

The fifth and final point of this brief of facts relates to what is known as "the Ronald letter," and goes to show that Secretary Ballinger has been untruthful in his public defense.



He had been editorially defended by the Outlook on the basis of President Taft's sweeping and now badly damaged vindication; but with a reservation to the effect that he had acted in "bad taste" in becoming the Cunningham claimants' attorney before the bureau of which he had been the head while that claim was pending there. To that reservation J. T. Ronald, a former partner with Mr. Ballinger, took exception, admitting that it would be just if the facts upon which it rested were true, but asserting that they were not true.

In making this assertion Mr. Ronald relied upon annotations by Mr. Ballinger upon the Outlook editorial. Thereafter and until further developments, the Outlook "maintained an editorial column distinctly friendly to Mr. Ballinger."

From those circumstances it is argued that Mr. Ballinger vouched for the veracity of the Ronald letter, the statements of which are now proved to be false. On the subject of his motive in that connection, the brief makes note of the additional fact that "at the time this happened, no Congressional inquiry was contemplated and the chance that the records of the Land Office disproving Ronald's inspired statements should be made public was remote."

#### VI.

The foregoing summary of evidence in the Congressional investigation comprises only the evidence against Secretary Ballinger. The committee proceeded with testimony in Secretary Ballinger's behalf, and he himself has been a witness. So far then as oral testimony enters into this summary, it must be taken with the understanding that it may be in conflict with evidence for the defence. But in so far as it rests upon public records and reasonable inferences therefrom (as most of the important facts stated above do), it cannot but be regarded as a strong indictment against Mr. Taft's Secretary of the Interior. Mr. Taft's own conduct in connection with the matter can hardly be characterized more gently than it has been by one of his newspaper defenders which calls it "clumsy."

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## INCIDENTAL SUGGESTIONS

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### PRICES AND LAND VALUES.

Morgantown, W. Va.

Though it is generally true that high prices make dear land, and not dear land high prices (p. 293), I wish to call attention to circumstances that suspend the operation of that well-proved law. They may be of interest in our present era of high prices.

The market price of an article is determined by its cost of production on the leanest land that must be worked to supply the market's demands, or on what is called "marginal" land by Ricardo, in his law of rent. An increase in the price of an article would thus mean that its cost of production on marginal land had gone up.

On marginal or rentless land only the cost of labor and capital affect the cost of production, and an advance in the latter would mean either a rise in wages or interest or that more labor and capital than formerly had to be exerted to obtain the same output, i. e., that marginal land had become leaner.

As the recent rise in interest has been little or nothing, and as the general rise in wages has been