Other treaties provide for reimbursement to the Indian for damages to his personalty. For example, Article 4 of the Treaty of 1832 with the Potawatamies [79] contains a schedule listing the names of various Indians whom the United States agrees to reimburse for horses stolen from them during a war between the United States and the Sacs and Foxes.[80]

In accordance with treaties and acts of this type, Congress has various times caused to be paid to Indians sums for property taken from them.[81]

[79] Concluded October 20, 1832, proclaimed January 21, 1833, 7 Stat. 378. 379.

[80] For, examples of other treaties containing provision. of payment by. the United States for damages sustained, see Treaty with Shawnees, May 10, 1854, Art. 11, 10 Stat. 1053, 1057 ; Treaty with Shawnees, etc. February 23, 1867, Art. 12, 15 Stat. 513, 516 ; Treaty, with Kickapoos, June 28, 1862, Art. 9, 13 Stat 623 ; Treaty with Tabeguache Band of Utah Indians, October 7, 1863, Art. 6. 13 Stat. 673 ; Treaty with Pawnee Marhar Tribe, June 22, 1818, Art. 6, 7 Stat. 175, 178 ; Treaty with Chippewas of the Mississippi, May 7, 1864, *Art.* 3, 13 Stat. 693.

[81] Act of March 15, 1832, 6 Stat. 480 (Cherokee paid for slaves taken by white man) ; Act of July 13, 1832, 4 Stat. 576 (Cherokee Indians paid for livestock taken by United States citizens) ; Act of June 30, 1834, 6 Stat. 592 (Creek to be paid for horse stolen by white *men)* ; Appropriation Act of, September 30, 1850, 9 Stat. 544, 588 (Seminole reimbursed for money stolen by United States soldier) ; Appropriation Act of March 3, 1863, 12 Stat. 774, 791 (Omaha chief paid for horses killed by white settlers) ; Appropriation Act of March 3, 1865, 13 Stat. 541. 560 (Chippewa chief paid for loss of house and furniture) ; Act of January 19 1891, 26 Stat. 720 (Indians of Standing Rock and Cheyenne River agencies to be paid for ponies taken by United States); Appropriation Acts of December 22. 1927, 45 Stat.. 2, 16, and of March 4. 1929, 45 Stat. 1550.

SECTION 8. EXPENDITURE AND INVESTMENT OF INDIVIDUAL INDIAN MONEYS

As may be noted in the statutes cited in this chapter, the rules and regulations prescribed by the Secretary of the Interior with reference to the disposition of individual Indian moneys are subject to the congressional requirement that the funds shall be used for. the use and benefit of the Indian. The Secretary may not make gifts or donations on behalf of the Indian; nor create private trusts to which he might transfer the supervision and control that was intrusted to him.[82] Nevertheless, the meaning of the. term "for the use and benefit of the Indian" is relative, and in absence of a showing of fraud or a lack of understanding as to what might be within the purview of this phrase, the court will not set aside the act and judgment of the Secretary of the Interior.[83]

It has been held by the Solicitor for the Interior Department that the money is not spent for the use and benefit of the Indian when the Secretary of the Interior deducts from the royalties accruing to respective allottees from mining leases money to pay for the upkeep of the local Indian agency. For by his so doing the allottees who have royalties accruing pay for an object of general *welfare,* while other Indians who benefit from the maintenance of an agency but who have no such royalties accruing to them pay nothing.[84]

Large amounts of individual moneys are under the control of the Secretary of the Interior.[85]

The regulations provide that withdrawal of money from the Indian's account shall be made by check, upon the application of the disbursing agent, approved by the Commissioner of Indian Affairs.[86] Minors and adults may receive monthly allowances not to exceed $50 per month; specific authority from the Secretary of the Interior must be obtained for payment of larger amounts.[87] Another regulation provides that the disbursing agents, in their discretion, may turn over to any Indian who has received a patent in fee of his allotted land any individual funds *then* on deposit to his credit or which in the future accrue to his credit.[88]

Among the regulations are found several which provide that certain payments of money may be made to the Indian for his unrestricted use.[89] The purpose of this is stated to be the encouragement of personal responsibility, self-reliance, and business experience which will enable the Indian to become an independent and progressive member of the community.[90]

The regulations authorize the expenditure of money for educational and agricultural purposes.[91] Further regulations provide that disbursing agents may pay necessary medical and funeral expenses, within specified maximum limits.[92] Administrative practice permits the superintendent to apply restricted funds of an Indian toward the support of an illegitimate child of such Indian.[93]

"Debts of Indians will not be paid from funds under the control of the United States * * * unless previously authorized by the Superintendent, except in emergency cases necessitating medical treatment or in the payment of last illness or funeral expenses * * * and any other exceptional cases where specific authority is granted by the Indian Office." [94]

The regulations provide that when personal property, such as wagons, horses, farm implements, etc., is purchased for an Indian, singly or in the aggregate value of $50 or more. the superintendent shall take a bill of sale therefor in his name as vendee, expressly in trust for the Indian.[95]

In *the* case of *United States* v. *O'Gorman,*[96] under a regulation such as the above, the superintendent of the Winnebago Agency bought several horses with the trust money held by him for an incompetent Indian. The bill of sale, which was promptly recorded, recited that the horses were bought with trust funds and that the sale was made to the superintendent The Indiin was permitted to have the use of the team of horses and hired the defendant to care for it. When he failed to receive payment for his services, the defendant asserted a claim of lien against the team. The court held that as trustee, the United States could maintain an action of replevin to recover the team from the possession of the defendant.[97]

[82] See Chapter 5, secs. 5D and 12.

[83] *United States* v. *McGugin, 28* F. 2d 76 (D. C. Kans. 1928). and *United States v. Mott.* 37 F. 2d 860 (C. C. A. 10, 1930). cert. granted 281 U. S. 714 (1930). aff'd sub nom. *Mott* v. *United States, 283* U. S. 747 (1931). indicate how different courts can disagree as to whether an act Of the Secretary of the Interior was in fact for the use and benefit of the Indian.

[84] Op. Sol. I. D., M.23117, October 6. 1927.

[85] The statement of the Indian Office shows that as of June 30. 1939, it had in its control the sum of $53,200,000 belonging to individual Indians,

[86] 25 C. F. R. 221.2.

[87] *Ibid., 221.4.*

[88] *Ibid., 221.6.*

[89] Ibid., 221.5, 221.6, 221.18.

[90] Ibid., 221.5.

[91] Ibid., 221.10–221.14.

[92] *Ibid.,* 221.8. 221.17.

[93] Memo. Sol. I. D.. September 8. 1938.

[94] 25 C. F. R. 221.20.

[95] *Ibid., 221.27.*

[96] 287 Fed. 135 (C. C. A. 8. 1923).

[97] In accord. *Cochran* v. *United States,* 276 Fed 701 (C. C. A. 8. 1921). For a fuller discussion of tbe rights of the United States with respect to trust property. see Chapter 5. On the protection from State taxation of property. purchased with restricted funds. see *United States* v. *Hughes,* 6 F. Supp. 972 (D. c. N. D. Okla. 1934) ; and see Chapter 13.

SECTION 9. DEPOSITS OF INDIVIDUAL INDIAN MONEYS

Ordinarily, restricted Indian funds are held in the custody of a Government official. Several statutes, however, authorize the deposit of such funds under prescribed conditions.

Section 1 of the Act of June 25, 1910,[98] provided that any "Indian agent, superintendent or other disbursing agent of the Indian Service" might "deposit Indian moneys, individual or tribal, coming Into his hands as custodian, in such bank or banks as he may select," subject to certain bond requirements.

The Appropriation Act of May 25, 1918,[99] provided for the segregation of tribal funds to the credit of the individual member. The funds so segregated were to be deposited to the individual's credit in any bank *selected* by the Secretary of the Interior, in the state or states in which the tribe is located. The act contained general legislation in the form of a proviso:

> . That no . * . individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate and shall have furnished an acceptable bond or collateral security therefor, and United States bonds may be furnished as collateral security for * * . individual funds so deposited, in lieu of surety bonds: Provided *further*, That the Secretary of the Interior . * * may invest the trust funds of any . * * individual Indian in United States Government bonds: * * *

The Act of June *24.* 1938,[100] superseding section 2 of the Act of June 25. 1910, and section 28 of the Appropriation Act of May 25, 1918,[101] provides that the Secretary of the Interior may deposit individual trust moneys in banks selected by him, under such rules and regulations as he may prescribe, provided that the bank agrees to pay a reasonable rate of interest thereon and to furnish security of a specified type. The Secretary of the Interior may waive interest on demand deposits. The act also permits the Secretary. if he deems it for the best interest of the Indian, to invest the Indian moneys in any federal public-debt obligations and in any other ohligations which are unconditionally guaranteed both as to interest and principal by the United States.[102]

In practice, the deposit of individual Indian moneys is made in the name of the United States; the disbursing agent keeps account of the amounts due the various individuals; the bank in which the funds are deposited has no account with the various individuals on whose behalf the funds were deposited.

Though these funds are deposited by the United States in its representative capacity, yet in case the bank fails, such deposits, being debts due to the United States, are entitled to priority under R. S. *Sec. 3466.* In the case of *Bramwell* v. *United States Fidelity & Guaranty Co.*,[103] the court under R. S. Sec. 3466, giving the United States priority in payment of claims against an insolvent estate, granted priority to deposits of Indian moneys, individual and tribal, made by the superintendent of the Klamath Reservation.

In enforcing the terms laid down by Congress for the deposit of Indian funds, the Department of the Interior issued regulations governing deposits. Under regulations approved March 5, 1938,[104] a bank seeking to qualify as a depository must file an application showing its *financial* condition, the amounts of money it will accept, the rate of interest that will be paid and the type of security that will be furnished. The regulations provide for deposits in the name of the disbursing agent and interest is payable semiannually. Monthly statements of receipts and checks on the Indian money account and other statements of information shall be furnished when required. Definite provisions as to the type of security, such as bonds of corporations. individuals or of the United States are made.

[98] Sec. 1. 36 Stat. 855, 856. amended in other respects by Act of February 14. 1913. 37 Stat. 678. 25 U. S. C 373. This provision was unchanged by the Art of March 3. 1928. 45 Stat. 161, and the Act of April 30. 1934. 48 Stat. 647. 25 U. S. C. 372. amending the Act Of 1910 but was superseded by the Act of June 24, 1938. discussed below.

[99] 40 sat. 561 591. 25 U. S. C. 162.

[100] 52 Stat. 1037. 25 U. S. C. 162a.

[101] Sec. 28. 40 Stat. 561. 591. 25 U. S. C. 162.

[102] The authority to waive interest on demand deposits included in the 1938 act was occasioned by the passage of the Banking Act of August 23. 1935. 49 Stat. 684. 714. 715. The Act of May 25. 1918, had limited the class of eligible depositories of Indian funds to those paying reasonable Interest. But under the 1935 act. as interpreted by the Solicitor of the Department of the Interior (Op. Sol. I. D., M.28231, March 12. 1936). banks which are members of the Federal Reserve System or of the Federal Deposit Insurance Corporation are prohibited from paying any interest on demand deposits and all statutory requirements nconsistent with this prohibition are repealed. Following a parallel opinion of the Attorney General in the case of postal savings funds. the Solicitor of the Interior Department held that deposits might be made without interest in banks prohibited. under the 1935 Ranking *Act,* from paying interest.

[103] 269 U. S. 483 (1926). aff'g 299 Fed. 705 (C. C. A. 9. 1924), aff'g 295 Fed. 331. See also United *States* v. *Barnett,* 7 F. Supp. 573 (D. C N. D. Okla. 1934). Cf. United States v. *Johnson,* 11 F. Supp. 897 (D. C. N. D. Okla. 1935). aff'd 87 F. 2d 135 (C. C. A. 10, 1936) (holding United States not entitled to priority In debt of bank to guardian to whom funds had been unlawfully paid). On rights of creditors of Indians. see Chapter 8. sec 7C.

[104] Regulations of March 2. 1938. Department of the Interior. Office of Indian Affairs; 25 C. F. R. 230.1–230.18.

SECTION 10. BEQUEST, DESCENT, AND DISTRIBUTION OF PERSONAL PROPERTY

A. IN THE ABSENCE OF FEDERAL LEGISLATION

In the absence of federal legislation, the bequest. descent, and distribution of the Indian's personalty is subject to tribal rule and custom.[105]

Because the inheritance of allotted lands is governed on substantive questions by state law,[106] the Indians of allotted reservations have, in some cases, adopted the state law as their own with respect to the descent of personalty, thus achieving the advantage of having a single body of law determine the descent of real and personal property.[107] A typical body of rules governing descent and distribution of unrestricted personalty is that set forth in the Code of Ordinances of the Gila River Pima-Maricopa

[105] See Chapter 7. sec. 6. *Cf. Trujillo* v. Prince, 42 N. M. 337. 78 P. 2d 145 (1938). holding that the state court has power to appoint an administrator for a deceased tribal Indian to enforce a right Of action created by a state wrongful death statute.

[106] See Chapter 11. sec. 6.

[107] Swinomish Law and Order Code. chap. 3. sec. 5 (adopted March 15. 1938. approved March 24. 1938) : Pine Ridge Tribal Court and Code of Offenses, chap. 4. sec. I (adopted February 20, 1937. approved March 2. 1937) : Cheyenne River Code. chap. 3. sec. 2 (adopted October 6, 1938. approved October 8. 1938). The Blackfeet Code of Law and Order (May 6. 1937) provides that the tribal court shall apply its own law If proved: otherwise. the state law Is to be used. Similar provisions are to be found in the Flathead Code (adopted December 22. 1936. approved December 24. 1936). and the Makah Tribal Court and Code of Offenses (adopted February 15. 1938. approved February 28. 1938). And *cf. Gray* v. *Coffman,* 10 Fed. Cas. No. 5. 714 (C. C. Kans. 1874), where the court poin's out that the Wyandot probate laws have been copied from the Jaws of Ohio with certain modifications, such as a provision that only living children should inherit.

Indian Community, adopted June 3, 1936; approved August 24, 1936. The governing ordinance [108] provides, that after the payment of the debts and funeral expenses,, the remainder passes to the surviving spouse. If no spouse survives, then the property descends to the children or grandchildren of the deceased. If none of these exist, then the property goes to the parents or parent Of the deceased. And if no parents survive, the nearest relatives take. The code provides. that if there is more than one heir, the heirs are 'to meet and decide among themselves what share each shall take and file their decision with-the tribal court, If these heirs cannot agree, upon petition by. any one of them, the tribal court will pass upon the distribution.:

B. UNDER FEDERAL ACTS [109]

By virtue of its power over Indian property,[110] Congress may provide for a system of bequest, descent, and distribution of an Indian's personalty.

1. *Descent.*—Congress has never enacted general legislation.[111] governing the descent of an Indian's personal property, and this is a matter, therefore, that remains generally subject to tribal jurisdiction.[112] Congress has provided, however, that upon the death, intestate, of "any Indian to whom an allotment of land has been made * • * before the expiration of the trust period and before the issuance of a fee simple patent," the Secretary of the Interior shall determine the heirs of the allottee, and his decision shall be final.[113] Although this statute is directed primarily to the problem of the inheritance of allotments, and is discussed in more detail, in connection with that subject,[114] the Interior Department has construed the power to determine heirs in the cases specified, as a power to determine *heirs for all purposes.*[115] Thus, in determining the heirs of an allottee, the Secretary of the Interior actually rules on the descent of personal property in the decedent's estate. This practice probably has the force of law, with respect to the estates of allottees, and it may be argued that au established course of administrative construction has extended the power of the Department to persons who are not within the language of the statute because they are not Indians "to whom an allotment of land has been made."

The regulations of the Interior Department refer to "an Indian of any allotted reservation," [116] which obviously defines a broader class than the class defined by the statute, since there are many Indians on allotted reservations who were born too late to receive allotments. The regulations of the Interior Department do not provide for departmental distribution of estates on uoailotted reservations, although this practice is occasionally resorted to with the consent of all parties in interest where tribal judicial agencies are unavailable.

Under the Law and Order Regulations of the Indian Service. the Court of Indian Offenses determines heirship with respect to 'property other than au allotment or other trust property subject to. the jurisdiction of' the United States."[117]

Tribal courts of organized tribes 'sometimes exercise like jurisdiction over all personal property.[118]

In some cases, tribal councils have requested the Interior Department to handle estates involving personal property, and the Department has done so.

The question of what law applies to au estate of personal property should be distinguished from the question of what agency shall administer the estate. The Secretary of the Interior may apply tribal custom and the tribal councils may apply state law. As a matter of practice, the examiners of inheritance, acting for the Interior Department, and applying state law. to the determination of the inheritance of real property, commonly apply the same rules to the inheritance of personal property., Where, however, the record shows a discrepancy between tribal custom and state law, a determination by an inheritance examiner of the descent of the personal estate of an unallotted Indian in accordance with state law, and in violation of, tribal custom has been held illegal. 10 *Estate of Yellow Hair, Unallotted Navajo,*[119] the Solicitor for the Interior Department disapproved such a determination, declaring :

> I believe that this conclusion is unjustified either as a matter of strict law or as a matter of policy. On the legal question I call your attention to the following paragraphs in the opinion of this Department, approved October 25, 1934, on "Powers of Indian Tribes"' (M-27781). [See 55 I. D. 14] :
>
> * • * With respect to all property other than allotments of land made under the General Allotment Act, the inheritance laws and customs of the Indian tribe are still of supreme authority.
>
> On the policy question involved I can see no necessity for departmental regulation of iolieritaod of personal property of Navajo Indians. The recently promulgated departmental regulations relating to the determination of heirs and the approval of wills specifically restrict departmental supervision over the inheritance of personal property to reservations which have been allotted. (Sections 13 and 22.) Likewise, the recently approved law and order regulations provide that Indian judges shall apply tribal custom in the distribution of personal property.
>
> I therefore recommend that instead of returning this case for the purpose of redistributing in accordance with Arizona law the personal property which has been distributed in accordance with tribal custom, it should be returned so that the entire estate may be distributed in accordance with tribal custom. The Examiner of Inheritance should take testimony as to such customs of inheritance, in their application to the facts of this case, and submit a revised order determining heirs for departmental approval.

2. Bequest.-The power to bequeath personalty is specifically granted by Act of February 14, 1913,[120] amending the Act of June 25, 1910.[121] It provides that any person of the age of 21 years or over may dispose of his interest in any restricted allotment, trust moneys, or other property held in trust by the United States before expiration of the restrictive period, by will in accordauce with regulations prescribed by the Secretary of the Interior. To be valid, the will must be approved by the Secretary of the Interior. The act provides further:

> That the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator. and in case where a will has been approved and it is subsequently discovered that there has been fraud in

[108] Chapter 4. sec. 7.

[109] This discussion excludes the Five Civilized Tribes and Osages. For a discussion of descent and related problems affecting them, see Chapter 23. secs. 9. 12D.

[110] See Chapter 5. sec. 5.

[111] The Act of January 19. 1891. 26 Stat. 720. provides for the payment to individual Indians of the Standing Rock and Cheyenne River agencies for ponies they were deprived of and states that "If any Indian entitled to such compensation shall have deceased the sum to which such Indian would be entitled shall be paid to his heirs at law, according to the laws of the State of Dakota • • • ."

[112] See Chapter 7. sec. 6.

[113] Act of June 25, 1910, sec. 1. 36 Stat. 855. 25 U. S. C. 372.

[114] See Chapter 11. sec. 6.

[115] 25 C. F. R. 81.13, 81.23. Regulations governing Determination of Heirs and Approval of Wills of India&! approved May 31, 1935, sew.,13, 22. 55 I. D. 263, 266. 268. This rule does not bind organized tribes.

[116] See fn. 115. *supra.*

[117] 25 C. F. R. 161.31: 55 I. D. 401. 407 (1935).

[118] See Chapter 7. scc. 6.

[119] 55 I. D. 426. 427–429 (1935). Also see Chapter 7, sec. 6.

[120] Sec. 2. 37 Stat. 678, 679. 25 U. S. C. 373.

[121] 36 Stat. 855.

> connection with the execution or procurement of the will the Secretary of the Interior is hereby authorized. . . . to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the lows of the State wherein the property is located: [122] . . . .

In the case of *Blanset* v. *Cardin*,[123] the Supreme Court held that a will by a Quapaw allottee disposing of her moneys derived from her restricted lands and which were held in trust by the United States is governed by the 1913 act. The Court held inapplicable a statute of the State of Oklahoma regulating the portion of an estate that may be transferred by will, stating that the will is valid if approved by the Secretary of the Interior and executed in accordance with his regulations.

The right of the Indian to bequeath his shares in a tribal corporation organized under the Wheeler-Howard Act [124] is limited to the extent that be can give them only to his heirs, to tribal members. or to the tribal corporation.[126]

Since the statute governing the bequest of restricted personalty does not apply to unrestricted personalty. the tribal law on testamentary disposition of unrestricted personalty is supreme.[126] Even though the bequest of restricted personalty be subject to the rules and regulations of the Secretary of the Interior, nevertheless such rules and regulations [127] implicitly authorize approvalof wills made in accord with tribal customs or tribal laws regarding testamentary disposition where there has been no compliance with state law.[128]

[122] The act provides also that the death of testator and the approval of the will does not terminate the trust. and that the Secretary of the Interior may in his discretion regulate the distribution and expenditure of the money belonging to the legatee.

[123] 256 U. S. 319 (1921), aff'g 261 Fed. 309 (C. C. A. 8. 1919). This case is also discussed in Chapter 5, sec. 11C(2), Chapter 6. sec. 2A and Chapter 11. sec. 6B. *See also Blundell v. Wallace, 267 U. S. 373 (1925).*

[124] Act of June 18. 1934. sec. 4. 48 Stat. 984. 985. 25 U. S. C. 464.

[125] 55 I. D. 263. 279 (1935).

[126] *Estate of Yellow Hair, Unallotted Navajo,* 55 I. D. 426 (1935).

[127] The rules and regulations prescribed by the Department of the Interior for the execution of wills, as approved May 31, 1935, may be found in 55 I. D. 263, 275–280.

[128] 55 I. D. 14. 42 (1934). See also *Estate Of Yellow Hair, Unallotted Navajo, 55 I.* D. 426 (1935).

SECTION 11. INDIVIDUAL RIGHTS IN PERSONALTY-CROPS

Early in its dealings with the Indians, the government sought, by granting them agricultural aids, to encourage them in peaceful pursuits, that would provide a means of subsistence.[129]

As has been observed elsewhere in this chapter, when the Indian was compelled to vacate his land, provision was made for his reimbursement for the property be could not take with him. including crops.[130] Where possible. the Indian may have been permitted to remain on the land until he harvested his growing crops.[131]

Problems arising today concern chiefly the Indian's rights to dispose of all or some of his interest in his crops grown on restricted lands.

The law is not settled as to whether an Indian may without departmental approval, sell or mortgage[132] crops grown on restricted lands, but severed therefrom. A memorandum of the Solicitor of the Department of the Interior [133] presents the arguments on either side. On the one hand. it may he contended that even though severed from the restricted land; the crops are trust property while situated on the land. For as long as they remain there. the mortgagee cannot enter upon the land without the Government's consent. The contrary argument is that the sale or mortgage of severed crops does not come within the restrictions of the Indian's privilege to contract[134] nor does it affect the realty since severed crops are not part of the land; that there are no restrictions on the Indian's disposing of his crop as best he can.

To secure a loan from a tribal corporation under the Wheeler-Howard Act,[135] an Indian may mortgage his crops to the corporation.[136] since he might convey the land itself to the corporation.[137]

[129] *United States v. Gray, 201* Fed. 291. 293 (C. C. A. 8, 1912).

[130] *See* sec. *6. supra.*

[131] Treaty with Cherokees, February 27, 1819. 7 Stat. 195. 197.

[132] As for the sale or mortgage of the crops before severance, the case *of United States v. First* Nat. *Bank, 282* Fed. 330 (D. C. E. D. Wash. 1922). holds that the United States may enjoin the foreclosure sale of mortgaged crops. the mortgage having been made on growing crops and crops to be grown during that year. Memo. Sol. I. D., March 25. 1936.

[133] Dated January 5. 1938.

[134] For restrictions on the power to contract. see Chapter 8. sec. 7.

[135] 48 Stat. 984. 25 U. S. C. 461, *et seq.*

[136] Memo. Asst. Sec'y I. D., August 17. 1938. This memorandum discusses an opinion of the Attorney General of North Dakota, which holds that the 1932 Crop Mortgage Act of North Dakota, which declares void mortgages on growing and unharvested crops does not apply to such mortgages given by Indians to Indian corporations. The opinion holds that the proviso in the amendment of 1933 excepting from the scope of the 1932 act "any mortgage or lien in favor of the United States . . . or any department or agency of either thereof" excepts such tribal corporation as a federal instrumentality.

[137] Memo. Sol. I. D., March 25. 1936.

SECTION 12. INDIVIDUAL RIGHTS IN PERSONALTY-LIVESTOCK

To induce Indians to adopt agricultural pursuits. treaties with Indians frequently contained a promise by the United States that it would furnish livestock to them.[138] When these promises were fulfilled, the livestock remained the property of the United Stntes. the Indian having the right to possession and use.[139] Livestock was also purchased by the United States for the Indian. with his own money.[140]

In the Approprintion Act of July 4, 1884,[141] Congress probibited the sale of any cattle or their Increase, in possession or control of an Indian. which were purchased by the Government, to any person not belonging to the tribe to which said Indian belonged or to any citizen of the United States. except with the written consent of the agent of the tribe to which said Indian belonged. in the case of *United States* v. *Anderson*,[142] the Court held that this act applied to cattle purchased by the Government even with the Indian's funds. It has also been held that the Act of 1884 is not limited In application to cattle in possession of Indians

[138] *E. g.*, Treaty with the Sioux. April 29. 1868. Art. 10. 15 Stat. 635. 639.

[139] See *United States v. Anderson, 228* U. S. 52 (1913), rev'g 189 Fed. 262 (D. C. Ore. 1911).

[140] *United States v. Anderson, 228* U. S. *52* (1913). rev'g 189 Fed. 262 (D. C. Ore. 1911).

[141] 23 Stat. *76. 94. 25* U. S. C. 195.

[142] 228 U. S. 52 (1913), rev'g *189* Fed. 262 (D. C. Ore. 1911).

at the time of its enactment.[143] Since a sale cannot be made without the written consent of the agent, a mortgage on the cattle without such consent has been held void.[144]

However, a sale or other disposition of the livestock to nonmembers of the tribe, even with the consent of the agent, may be made illegal, as where the statute making the appropriation specifically states that no sales to such outsiders shall be made.[145]

The Appropriation Act of June 30, 1919,[146] also restricted the disposition of livestock purchased or issued by the United States and any increase. It provided that such animals could not be sold, mortgaged, or otherwise disposed of, except with the written consent of the federal officer in charge of the tribe; any transaction in violation of the statute would be void. It was further provided that all such stock was to be branded with the initials I. D. (referring to Interior Department) or with the reservation brand and could not be removed from the Indian country without the consent of the federal officer or by order of the Secretary of War in connection with troop movements.

An additional act affecting an Indian's interest in his livestock is the Appropriation Act of March 3, 1865,[147] which permits an Indian agent to sell livestock belonging to Indians which is not needed for subsistence. The sale is to be under rules and regulations prescribed by the Secretary of the Interior and the proceeds used for the benefit of the Indian.

In accordance with the federal policy of encouraging Indians in peaceful agricultural pursuits and of providing them with a means of livelihood and subsistence, the Secretary of the Interior has provided for certain preferential rights to Indians in the acquisition of grazing permits on Indian lands for his livestock.[148]

On reservations where sufficient tribal land is available, free grazing privileges maybe granted to Indians by the tribal authorities, as an encouragement for the breeding and raising of livestock.[149]

The Indian is protected in his care of livestock by regulations seeking to prevent the spread of contagious diseases among stock on Indian lands.[150]

[143] *Rider v. La Clair*, 77 Wash. 488, 138 Pac. 8 (1914).

[144] Ibid.

[145] Appropriation Act of March 2, 1889, sec. 17, 25 Stat. 888, 894 making provision for distribution of livestock among Sioux. Effect of this act upon Act of 1884 is discussed in *Fisher v. United States*, 226 Fed. 156 (C. C. A. 8; 1915).

[146] Sec. 1, 41 stat. 3, 9, 25 U. S. C. 163.

[147] Sec. 9, 13 Stat. 541, 563, R. S. § 2127, 25 U. S. C. 192. See Chapter 4, sec. 9.

[148] 25 C. F. R. 71.11. 71.13, 72.8.

[149] *Ibid.*, 71.9.

[150] *Ibid.*, 71.22. 72.10.