

to be vetoed again. Conservation means not giving away to private interests valuable rights which belong to the whole people without compensation to the whole people from those interests. The Nation owns and controls the navigable waters of the country. It should not grant valuable privileges on those navigable waters without an adequate return, and an effective provision for control. The right of the Government to demand payment for such privileges when granted by it is questioned by the sponsors for this bill and by the members of the National Waterways Commission. But, as President Roosevelt said in his veto message: "When the public welfare is involved, Congress should resolve any reasonable doubt as to its legislative power in favor of the people and against the seekers for a special privilege." If Congress believes in this principle, it will not pass the James River Dam Bill.

**SECRETARY BALLINGER
CROSS-EXAMINED BY
MR. BRANDEIS.**

Secretary Ballinger has at last been subjected to cross-examination before the Joint Committee chosen by Congress to investigate his department and the Forestry Service. He has been subjected to the relentless questioning of Mr. Brandeis, who is counsel for Mr. L. R. Glavis, the official discharged for insubordination against Mr. Ballinger. It is evident that the cross-examination has been something more than the interrogation of a witness by a lawyer; it has been a struggle between two lawyers; it has been the effort of an accuser to bring the accused into difficulties and the effort of the accused to avoid them. Although occasionally there has been objection made to the mode of questioning on the ground that it did not comport with the usual rules of a court of law, there has been no indication of the presence of what is essential to a court—a judicial bench. The Committee has throughout been, as a whole, a body of bi-partisan spectators. In consequence, many of Mr. Ballinger's answers have been unresponsive, and some of them have developed into speeches addressed to the Committee. Under the fire of Mr. Brandeis's questions, Secretary Ballinger has not

always found it possible to maintain his composure. He has been drawn into several exhibitions of anger; he frequently avoided giving direct replies; and once or twice he flatly refused to answer. At the beginning Mr. Brandeis made a rather unexpected attack. He asked Secretary Ballinger concerning the appointment of men to certain places in the Land Office, and drew from the Secretary the information that these places were excepted from the usual requirements of competitive examination, and were made for the purpose of securing certain experts, as coal and mineral experts. He then called Secretary Ballinger's attention to a letter the Secretary had written directing that in making appointments for these places, so far as they were not filled by suggestion of the President, his subordinate should consult not only the President but also Postmaster-General Hitchcock. Inasmuch as Secretary Ballinger had been very insistent that he could find no statutory authority for the supervisory power to withdraw public lands in the interest of the public, Mr. Brandeis asked him, with disconcerting irony, if he or his legal advisers had found any acts of Congress which gave supervisory power over appointments in the Interior Department to the Postmaster-General. Secretary Ballinger first said that he understood that some of these positions were political appointments, then denied that he followed "any act in the matter of appointment that was based upon political consideration," and finally refused to give any definite reason for wanting the Postmaster-General's opinion. In his refusal he was sustained by a close vote in the Committee, in which Messrs. McCall and Madison, Republicans, voted with the Democrats in demanding an answer. This episode, apparently not important, revealed the identity of political interests to be found in the Committee and in the Department which it is investigating. On a later occasion, when Secretary Ballinger appealed to be protected against what he called the "continued imputations" of counsel, he found the Committee unmoved. This time, however, there was a difference: the ground of his appeal was not political but personal. So the cross-examination pro-

ceeded, Mr. Brandeis trying to secure from the witness definite answers, and Mr. Ballinger making time and again generalized statements instead of specific replies. After repeated questioning Mr. Ballinger on occasions did give a definite reply. For example, Mr. Brandeis asked what Mr. Lawler, an Assistant Attorney-General, took with him on a journey to see the President. "A grip with some clothes in it," answered Secretary Ballinger. "I do not know what else he took." Then, after questions, the Secretary acknowledged that he knew Mr. Lawler had some other things, some records—some records in the Glavis-Pinchot case—some memoranda. Then he acknowledged that, as the records had already gone in, what Mr. Lawler took was some memoranda he had prepared. Then he acknowledged that it was a memorandum covering a résumé of the case; then that it had been prepared with the assistance of others. Then, when he was closely questioned, Secretary Ballinger acknowledged that he had himself gone over the memorandum. Inasmuch as this memorandum was a résumé of Mr. Ballinger's own side of the case in answer to the charges Mr. Glavis had brought to the President, it was really of more consequence to the Investigating Committee than the "grip with some clothes in it." Secretary Ballinger repeatedly, when questioned about a letter or telegram that he had signed, said that it was initiated by some subordinate and then brought to him, the Secretary, for signature. In one case, however, when he made that answer, and then was confronted with the original in his own handwriting, he declared with some show of excitement that he accepted responsibility for the telegram itself. Very often, after Mr. Ballinger had made a long statement, the question would have to be put again in another form or repeated literally by the stenographic reporter, because it had not been answered.

SOME FACTS AS
THEY STAND

In view of the manner of Secretary Ballinger's answers to Mr. Brandeis's questions, it is not easy to say just what he meant to state on cross-examination. If at one time he made a statement that seemed to be clear, he would at another

time make a statement that showed either that he had forgotten what he had said before, or that he had understood by it something quite different from what the ordinary person would understand by it. He did not, therefore, on the one hand, clearly make many admissions of error or misstatement, or, on the other, correct many impressions that had been created by testimony unfavorable to him. It became evident on cross-examination that Secretary Ballinger was well acquainted with a number of claimants to coal lands in Alaska known as the Cunningham group. Particularly Secretary Ballinger made it clear that he was on good terms with two or three of the more prominent men among them. He denied with feeling that any acquaintance he might have with them influenced his action as Commissioner of the Land Office in having their claims clear-listed for patent. He minimized the service which Glavis, the head of the field division, and Jones, a field agent, did in securing information about these claims, and went so far as to deny that after he had clear-listed the claims for patent he had canceled the order for clear-listing on account of any question which Mr. Glavis had raised; and yet he could point to no reason for the cancellation of that order, an act which prevented these lands from falling into the hands of a syndicate, except the telegram and letter of Mr. Glavis. He was asked to explain coincidences between actions of Cunningham claimants and corresponding actions by the Land Office apparently favorable to the claimants, and especially coincidences connected with telegraphic communication between himself and one of the claimants (telegraphic communication which he could not ascribe to a subordinate), but he could give no explanation. He stated, in answer to questions, that Mr. Glavis had done a hard task considerably in going to him directly with his fears about the danger to public lands in Alaska. When questioned about one particular phase of this, however, he failed to show convincingly that Mr. Glavis did not also have a good share in bringing a knowledge of this danger to the Attorney-General. Indeed, it was the attempt of Mr. Glavis, after finding Mr. Ballinger unresponsive, to appeal to the

Attorney-General and the President that evidently did most to arouse Mr. Ballinger to indignation on the stand and to express resentment at what he called aspersions on his character. He acknowledged that he took considerable pains, involving some journeying, to put his answer to Mr. Glavis's so-called charges before the President, and that he himself had a hand in preparing the counter-statements that reflected on Mr. Glavis; and at the same time that he had made no effort to give Mr. Glavis a chance to know what these counter-charges against him were. He could not point to anything which showed that he had anything against Mr. Glavis until he heard that Mr. Glavis had appealed to the President. In connection with this fact a letter was elicited from the Attorney-General, stating that the Attorney-General's opinion against Mr. Glavis was delivered orally to the President, then put into writing and amplified to a long summary and report, and when finally prepared was dated back to the day of the oral delivery of the opinion, although in the meantime the President had taken action. Secretary Ballinger could not make it clear what he meant when he said that the Cale bill, in favor of which he appeared before a Congressional committee, would not benefit the Cunningham claimants, and that in appearing before that committee he did not have these claimants in mind. The fact uncontradicted is that these claimants themselves regarded this bill as beneficial to themselves, and Secretary Ballinger himself interpreted the bill so as to make it clear that in one way or another it would be advantageous to these claims; and another fact which he could not deny was that he had instructed a field agent to get information regarding coal entries for him to use in his appearance before this committee, and that these were the only coal entries in existence in Alaska at that time, and that three days before that he was in communication with a representative of the Cunningham claimants. Secretary Ballinger, moreover, gave several explanations for being attorney and counsel for these same claimants, but nothing that he said was in actual contradiction to the statement that he was their counsel and attorney. He explained that it was only for a land

claim, that he had only a small fee and really acted as a matter of accommodation for these very well-to-do men, and that he did not legally "appear" on their behalf. He advised them and represented them in legal matters, but he did not wish it said that he was their legal adviser or representative. He was very indignant at the idea that in the list of documents to justify his course which had been laid before the President there had been any selection, and yet in several cases he could give no other answer to the question why a certain letter or telegram or statement of fact was withheld than that in his opinion it was not material, although, as Mr. Brandeis pointed out, Mr. Glavis might have thought it was very decidedly material. In this instance, as in a great number of instances, Mr. Ballinger protested that he was not familiar with the contents or even the existence of letters and telegrams he had signed, and he referred matters regarding them to his subordinates. Secretary Ballinger was not able to state that the President was not mistaken in some respects in his public announcement of what he understood to be the facts in connection with his decision to dismiss Mr. Glavis and to exonerate Mr. Ballinger.

THE CO-OPERATIVE AGREEMENT

One subject that has been much beclouded by the Pinchot-Ballinger controversy is the co-operative agreement. Under President Roosevelt the executive departments of the Federal Government were encouraged to work in harmony. Instead of the traditional red tape and wasteful independence, there grew up a habit of mutual helpfulness and economical interchange of advice and service between bureaus and departments. This was notably true of the Indian Office and the Forest Service. The Indian Office, which is a bureau in the Department of the Interior, has charge of the Indian tribes that are under the care of the Nation. The Forest Service, which is a bureau in the Department of Agriculture, has the care of the forests belonging to the Nation. Now, it happens that on the Indian reservations there are great stretches of forest lands. It seemed wise that the Indian Office should make